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OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 04/21/1994

State of Oregon
Department of Environmental Quality

A G E N D A

ENVIRONMENTAL QUALITY COMMISSION MEETING

April 21, 1994
Room 201, Hoke College Center
Eastern Oregon State College
6th & I Streets
LaGrande, Oregon

Thursday, April 21, 1994: Evening Meeting beginning at 7:30 p.m.

1. LaGrande Area Air Quality Non-Attainment Area: Status Report

2. Grande Ronde Watershed Activities: Information Report

Friday, April 22, 1994: Regular Meeting beginning at 9:30 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. Information Report: Project for Improving Effectiveness in Technical Assistance and Pollution Prevention

The Commission has set aside June 3, 1994, for their next meeting. This meeting is currently scheduled to be held in Portland.

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.

April 6, 1994

State of Oregon
Department of Environmental Quality Memorandum†

Date: 4-5-94

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item 2, April 21, 1994 EQC Meeting

Grande Ronde Watershed Activities

Statement of Purpose

To brief the Commission on current water quality-related watershed enhancement activities in the Grande Ronde Basin, particularly those in which the Department is a partner or participant, and to provide the Commission an opportunity to hear from local staff and citizens involved in these activities.

Background

WATER QUALITY: The Grande Ronde River was designated as water quality limited in 1986 due to frequent violations of the pH and fecal bacteria standards. The Department has conducted intensive water quality studies in the basin since 1991 to learn more about the water quality problems and to establish Total Maximum Daily Loads (TMDLs) and load allocations. The studies found relatively high levels of chlorophyll a and diurnal fluctuations of dissolved oxygen and pH indicating that excessive algal growth exists and is contributing to dissolved oxygen and pH violations. High ammonia concentrations, which can be toxic to aquatic life and create an oxygen demand, were found to be a concern in Catherine Creek. High temperatures have been found in the basin. Maximum temperatures of 75-78 degrees F have been recorded in the mainstem and temperatures up to 78 to 82 degrees F have been recorded in some tributaries.

TOTAL MAXIMUM DAILY LOADS: The Department began work on the Grande Ronde Basin in 1991. The Department expects to establish TMDLs and load allocations to address the river's pH, dissolved oxygen, algal growth and ammonia problems by the summer of 1994. Additional temperature data will be cooperatively collected during

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

1994 and a temperature TMDL or temperature reduction strategy will be proposed by mid-1995.

Following the establishment of TMDLs and load allocations, the Department will work with other agencies and local governments to develop and implement strategies to meet their assigned allocations. The Department will modify permits, review and approve nonpoint source plans and track implementation to ensure that the allocations are achieved within a reasonable amount of time.

RECENT POINT AND NONPOINT SOURCE ACTIVITY: In anticipation of the TMDLs and to address identified water quality, quantity and habitat problems, various implementation activities have been occurring.

The City of La Grande has been examining, in its facility planning, alternatives to discharging to the Grande Ronde River which include the use of constructed wetlands and land irrigation. The City has moved ahead on the construction of wetlands which currently receive part of their discharge and has had excellent public support.

In 1992, the Department directed $186,000 of Federal 319 Grant funds to support watershed enhancement efforts on private lands in the upper Grande Ronde. This work is being carried out through a joint agreement with the Union County Soil and Water Conservation District, Oregon Department of Agriculture, DEQ, U.S. Forest Service and U.S. Soil Conservation Service and will address water quality, quantity and fishery habitat concerns through planning and implementation activities. In addition, the Department initiated long-term effectiveness monitoring as part of a national effort to document changes in water quality due to implementation of nonpoint source controls and management practices. This monitoring activity is expected to continue for 6 to 10 years.

The Department has recently directed $165,584 of FY94 Federal 319 Grant funds to the Confederated Tribes of the Umatilla Indian Reservation to provide riparian and in-stream restoration work in the mainstem Grande Ronde River to improve water quality, fish habitat, flood plain function and improve the management of Vey Meadows for summer livestock pasture. A $50,000 FY94 Federal 319 Grant Award was made to Boise Cascade Corporation to implement: intensified livestock grazing management programs; sediment load reduction through road closures, gate installations, road seeding and up-land vegetation; riparian habitat restoration; and long-term water quality monitoring in Little Catherine Creek.

WATERSHED HEALTH PROGRAM AND MODEL WATERSHED PROGRAM: The Grande Ronde and South Coast/Rogue basins were designated as two areas in the state to receive implementation funds and coordinated state agency attention through the Watershed Health program. $10 million of lottery funding was appropriated to this program (for both areas) by the 1993 Legislative Assembly. This effort involves multiple agency core and field teams that work closely with Watershed Councils in each basin to assess watershed conditions and develop projects to address factors that limit water quality, quantity and fish habitat.

The Grande Ronde basin was designated a Model Watershed by the Northwest Power Planning Council in 1992 for the purpose of improving anadromous fish habitat and migration passage. Local citizens, agency field staff, and other interested and affected persons have formed various councils, teams, and work groups to implement the Model Watershed and Watershed Health programs. For example, the Grande Ronde Model Watershed Board of Directors was formed to be the local coordinating body of the Model Watershed activities. This same citizen Board is now recognized as the Grande Ronde Watershed Council and is very involved in the Watershed Health Initiative.

OTHER EFFORTS IN THE BASIN: GWEB has invested watershed enhancement grants; the U.S. Forest Service has a salmon and trout enhancement program for lands it manages; the Oregon Department of Fish and Wildlife has a number of ongoing projects; the U.S. Soil Conservation Service is doing a thorough assessment of conditions and needs; and most other state and federal natural resource agencies have made the basin a high priority for resource enhancement and protection.

Authority of the Commission with Respect to the Issue

The Commission has oversight authority over all the Department's activities in the area, particularly the TMDL program. The aggregate of activities in the basin is an experiment in how public/private, multi-agency partnerships can address watershed health in general, and nonpoint source control in particular.

Alternatives and Evaluation

This informational item will not focus on alternatives to current activities in the basin.

Summary of Public Input Opportunity

There has been and continues to be extensive public involvement in the various Grande Ronde watershed activities. DEQ's TMDL program development has included three public meetings (in the basin) and reports to the Model Watershed Board of Directors. As draft TMDLs are developed, DEQ staff will meet with affected parties to gain their input.

Conclusions

- There are significant water quality problems in the basin. These problems contribute to diminished support for fish and aquatic life.
- A number of agencies and programs have targeted the Grande Ronde Basin as a high priority for enhancement. DEQ programs are an important part of this effort.
- Aside from achieving the desirable improvement in water quality conditions, the major challenge is refining the multi-party, public/private cooperation so that it might serve as a model for tackling similar problems elsewhere in the state.

Intended Future Actions

The Department will keep the Commission informed of developments in the Basin. The Commission also will be kept informed or involved (in the Grande Ronde and elsewhere in the state) in the Department's watershed management, nonpoint source control, and TMDL programs. Informational or action items relating to these programs will be brought to the Commission at future meetings.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Attachments

None.

Reference Documents (available upon request)

- "Oregon's 1992 Water Quality Status Assessment Report" (DEQ).
- "1988 Oregon Statewide Nonpoint Source Assessment" (DEQ).

Approved:

Section: _____

Division: _____

Report Prepared By: Roger Wood

Phone: 229-6893

Date Prepared: 3/23/94

RW:
(File Name/Number)
(Date Typed)

Approved	_____
Approved with Corrections	_____

Minutes are not final until approved by the EQC

ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Thirty Fifth Meeting
March 10 and 11, 1994

Work Session

The Environmental Quality Commission work session was convened at 9:00 a.m. on Thursday, March 10, 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
Emery Castle, Vice Chair
Henry Lorenzen, Commissioner
Linda McMahan, Commissioner
Carol Whipple, Commissioner

Also present were Fred Hansen, Director, DEQ, and other DEQ staff.

1. <u>Hazardous Waste Program Overview</u>

Roy Brower, David St. Louis and Elaine Glendening of the Waste Management and Cleanup (WMC) Division provided the Commission with an overview of the hazardous waste program. They discussed the Resource Conservation and Recovery Act (RCRA), hazardous waste definitions and disposal facilities. This presentation was provided as background for Agenda Item E on the Friday agenda: proposed revision of hazardous waste rules to adopt federal hazardous waste regulations and to amend rules pertaining to certain special wastes, generator standards, laboratory standards and confidentially, and to amend and update toxic use reduction and hazardous waste reduction regulations.

2. Strategic Budget Planning

This work session item presented background information for the Commission's continuing discussion of the Department's 1995-97 budget proposal development. Beth Woodrow and Lydia Taylor of the Department's Management Services Division were available to answer Commission questions. The Commission previously discussed the budget at the January 27 work session. The Commission and staff discussed the goals and principles underlying budget development which included program alternatives, revenues and future actions.

3. Instream Water Rights

A panel consisting of Martha Pagel and Reed Marbut of the Water Resources Department (WRD), Jackie Greenleaf of the Parks and Recreation Department (Parks), Al Mirati of the Department of Fish and Wildlife (ODFW) and Neil Mullane the Department's Water Quality Division discussed the instream water rights program. The Commission had previously asked for a more complete discussion of the process for evaluation of instream water rights requests. This work session item also provided background information for Agenda Item H on the Friday agenda: review of instream water rights application submission to WRD for the Coast Fork Willamette River, Rickreall Creek and Bear Creek basins.

The Commission asked several questions regarding the impact of the program on current out-of-stream water rights holders. Several different water laws issues were discussed including the water rights seniority system and where instream rights factored into that system. The Commission also inquired about the public interest determination conducted by the WRD. Interest was also shown in the number of stream miles which have received instream water rights and what portion of the total critical stream flow miles this would cover. Commissioner Whipple expressed concern as to whether the state as a whole was considering overall water resource management and the broader economic and environmental issues surrounding this program. Panel members were asked to describe their agency's use of the program and respond on how it was working.

4. Discussion of Collaborative Process

The purpose of this item was to provide background information for a discussion of lessons learned from the recent collaborative process regarding the combined sewer overflow (CSO) correction program for the City of Portland and criteria for using the collaborative process or other alternative dispute resolution mechanisms by the Commission.

The Commission discussed the basis for how many Commission members were involved in the collaborative process. Commissioner Castle said his motivation in participating in the process was to help the City maintain the environmental quality of the water. Chair Wessinger said that the number had been suggested by the City.

Commissioner Lorenzen compared the collaborative process with the dioxin issue. He expressed concern that the Commission may lose the ability to struggle and deliberate an entity. He said two Commissioners now have additional knowledge, and the rest have been left behind which creates an imbalance. Commissioner Lorenzen indicated he was worried about the effect on the policy setting process.

Director Hansen said the CSO process was unique because it was a public process and there was a clear, established procedure for bringing the issue back to the full Commission. He said the process was an experimental approach. Director Hansen said that all the Commissioners had been invited to participate.

Commissioner Whipple said she was not uncomfortable attending the meetings and that she gained valuable information in the process. She said that the scheduled public hearing and subsequent consideration by the full Commission would provide an appropriate arena for the full Commission to further participate. She added, however, that she was sensitive to Commissioner Lorenzen's issue.

Commissioner Whipple said she believed a better environmental solution was achieved through the process and that it was unique because it was ongoing. Chair Wessinger said that because of the process, changes were made by the City's Bureau of Environmental Services staff. Director Hansen indicated the proposed revisions to the Stipulation and Final Order (SFO) did require that additional information be developed and presented.

Nina Bell, Northwest Environmental Advocates, spoke to the Commission about the collaborative process. She said she had concerns from the beginning and wondered what a collaborative process was. She questioned whether the process required full involvement of the differing parties. Ms. Bell said the process was not collaborative and that the public was relegated to only commenting. She indicated that the process created a poor precedent and compared it to a partial jury reporting to a full jury. She added that negotiating with a permittee was the Department's role. However, Ms. Bell commented that the City's change of attitude due to staffing and policy changes allowed the process to work. She added that having city council members present at the meetings helped.

Director Hansen said that the Department did not see this type of process happening frequently. He said a public hearing will be held on the SFO, that a hearing officer's report would be written and that the Department would make a recommendation to the full Commission. No testimony will be received by the Commission but that they would be able to ask questions. Director Hansen said he would make available to the Commission copies of the minutes of the collaborative process meetings and any other materials.

There was no further business and the work session was adjourned.

Regular Meeting

The Environmental Quality Commission regular meeting was convened at 8:30 a.m. on Friday, March 10, 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
Emery Castle, Vice Chair
Henry Lorenzen, Commissioner
Linda McMahan, Commissioner
Carol Whipple, Commissioner

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

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

Chair Wessinger called the meeting to order.

A. Approval of minutes.

Commissioner Castle moved approval of the minutes of the January 27 and 28, 1994, regular meeting; Commissioner Whipple seconded the motion. The motion was unanimously approved.

B. Approval of tax credits.

The Department recommended issuance of the following tax credit applications:

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.
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.

Application Number	Applicant	Description
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.
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

Application Number	Applicant	Description
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.
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 overfill 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.

Application Number	Applicant	Description
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:

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.

Commissioner Castle moved approval of the above-listed tax credit applications; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

C. Rule adoption: amendments to [the] Underground Storage Tank (UST) financial assistance rules to implement House Bill (HB) 2776.

The proposed rule amendments modify the UST financial assistance rules in response to HB 2766 adopted by the 1993 Oregon legislature. The proposed rule limits financial assistance to essential service grants of 75 percent 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 co-payment benefits, allows agreements other than property liens to secure grant monies and modifies the Letter of Intent and Consent Agreement requirements.

The Department recommended the Commission adopt the rules/rule amendments regarding underground storage tank financial assistance as presented in Attachment A of the Department's staff report.

Mary Wahl, Administrator for the WMC Division, briefed the Commission on the proposed rule amendment, explaining that the proposal incorporated the amendments to the statute adopted by the 1993 legislature.

Commissioner Lorenzen moved approval of the proposed amendments to UST financial assistance rules to implement HB 2776. Commissioner Whipple seconded the motion, and the motion was unanimously approved.

D. Rule adoption: proposed amendment of UST permit fee rule.

The proposed rule would increase the UST permit fee from $25 to $35. The fee increase provides adequate revenue for the UST compliance program even though permitted tanks have decreased from 23,500 in 1988 to 12,400 in 1993.

The Department recommended 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's staff report.

Ms. Wahl further briefed the Commission on the proposed rule amendment. She said that the 1993 legislature modified the statute to allow an increase of the UST permit fee to $35 per tank per year.

Commissioner McMahan moved approval of the proposed amendment of the UST permit fees rule; Commissioner Castle seconded the motion. The motion was unanimously approved.

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.

The proposed revisions would establish special waste management standards for treated wood waste and sandblast grit waste that fail the Aquatic Toxicity Test; would eliminate duplicative hazardous waste characterization requirements under the state-only "3 and 10 percent" rule for Toxicity characteristic constituents; would require

hazardous waste generators to meet specific container and tank management standards while accumulating hazardous waste and maintaining hazardous waste determination records; would specify in regulation the laboratory procedures for conducting a state-only hazardous waste determination using the Aquatic Toxicity Test; would establish procedures for claiming confidential business information for hazardous waste handlers; and would update and amend the Toxics Use Reduce and Hazardous Waste Reduction regulations.

The Department recommended the Commission adopt the rule amendments as presented in Attachment A of the staff report.

Roy Brower of the WMC Division introduced the rule package to the Commission and explained the rulemaking process. He also provided the Commission with an additional memorandum dated March 11, 1994, which presented a series of corrections or clarifications to the proposed rule amendments. Don Haagensen, chair of the Hazardous Waste and Toxics Use Advisory Committee, discussed the committee's involvement and explained that the proposed rules were the result of many public meetings and six Hazardous Waste and Toxics Use Advisory Committee meetings. He stated that while the committee recommendations represented the consensus of the committee, it was not unanimous.

Commissioner Castle moved approval of the proposed rules, including the proposed amendments, except for the used oil management rules; Commissioner Whipple seconded the motion. The motion was unanimously approved.

The Commission then heard testimony from Bill Briggs, Fuel Processors, Inc., about the proposed rules. Mr. Briggs stated that he was an national used oil expert with 15 years experience as a used oil processor and operator of seven used oil facilities. Mr. Briggs stated that the federal used oil rule in 40 CFR, Part 279, should be adopted as written with no changes by the state. He said that the process the state used to develop the rule was not adequate because it did not include used oil experts. He stated that the federal rule was a product of 15 years of intense work by the EPA and that many had commented on the rule. Mr. Briggs provided the Commission with copies of previously submitted information sent to the Department.

Mr. Briggs continued by saying he opposed the proposed change to the definition of "used oil" because it would limit the type of material he could receive and process as used oil, such as wastewaters and debris contaminated with used oil. He stated the proposed definition of "used oil" and the proposed minimum 5,000 BTU per pound minimum limit at which used oil could be burned for "legitimate" energy recovery would reduce the amount of material that he could process by 40 percent. He said

that the 5,000 BTU per pound value did not exist in the federal used oil rule and stated that he should be able to burn low heat value used oil mixtures to recover any available BTUs the material contained. He further stated that he is able to extract the heat value of a few drops of oil in a gallon of water if he desires.

The Commission questioned Mr. Briggs about his concerns. Mr. Brower indicated the Department's position that the burning of low energy wastes is not primarily energy recovery but treatment or incineration for disposal. Both Messrs. Haagensen and Brower stressed that the proposed rule as presented was a product of public input and discussion and contained recommendations by the Hazardous Waste and Toxics Use Advisory Committee. The Commission expressed concern that the Department might send the wrong message which would discourage recycling oily wastes for their energy value and drive disposal of the oil toward a less environmentally sound method.

Rick Volpel of the Department's WMC Division cited an EPA reference that stated that used oil is exempted from the hazardous waste regulations when it is going for "legitimate" recycling and that the EPA considers 5,000 BTU per pound to be a minimum for material being legitimately burned for energy recovery. The Commission questioned how the 5,000 BTU level was established. Mr. Volpel explained that the level was referenced in numerous EPA Federal Register discussions and letters. He also said that used oil fuel has a fuel value of approximately 14,000 BTUs per pound. The Commission questioned if the 5,000 BTU limit was not too low and suggested that additional information might indicate that it should be higher. The Commission wondered about alternate recycling methods. Mr. Volpel responded that there is interest in the state in establishing a used oil re-refinery that would recycle used oil back to lubricating stock.

Commissioner Lorenzen moved approval of the Department's proposed used oil rule with clarifying changes. Commissioner McMahan seconded the motion, and the motion was unanimously approved by roll call vote.

F. Rule adoption: proposed amendments to rules for enforcement procedures and civil penalties.

The proposed amendments addressed the following issues:

- 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.

- Clarification of the Department's methodology in calculating economic benefit; the ability of a violator to pay a civil penalty and determination of the magnitude of a violation.

- Amendments about who is authorized to sign certain enforcement actions to bring the rules into conformance with the new structure of the Department.

Ed Druback and Tom Bispham of the Enforcement Section presented this staff report to the Commission.

Commissioner Whipple moved that the proposed amendments to rules for enforcement procedures and civil penalties be approved; Commissioner McMahan seconded the motion. The motion was unanimously approved.

G. Rule adoption: adoption of amendments to Lane Regional Air Pollution Authority (LRAPA) rules as a revision to the Oregon State Implementation Plan (SIP).

The proposed amendments were adopted by the LRAPA Board of Directors and are required to be submitted to the EPA as SIP revisions. This is an administrative action since LRAPA cannot submit a SIP revision directly to the EPA without Commission approval.

The amendments affect LRAPA rules related to industrial permit fees, home wood heating curtailment enforcement, open burning and new source review. The amendments intend to make the rules affecting air pollution sources in Lane County consistent with Oregon rules and enable the LRAPA to comply with requirements of the 1990 Clean Air Act.

The Department recommended the Commission adopt as revisions to the SIP the rule amendments regarding LRAPA Titles 16, 34, 34 (coffee roasters), 38 and 47 as presented in Attachment A of the staff report.

Patti Seastrom of the Department's Air Quality Division presented a brief summary of this item to the Commission.

Commissioner Castle moved approval of the proposed amendments to the LRAPA rules as a revision to the Oregon SIP; Commissioner Whipple seconded the motion. The motion was unanimously approved.

H. Review of instream water rights application submission to WRD for the Coast Fork Willamette River, Rickreall Creek and Bear Creek basins.

The Department asked the Commission to review the Department's applications for instream water rights on Bear Creek, Rickreall Creek and the Coast Fork of the Willamette River. 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.

A 1987 law provides the Department with the authority to submit applications to the WRD 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 recommended the Commission review and comment on the instream water rights applications presented in Attachment A of the staff report.

The Commission asked staff to explain why these particular flows were necessary and if there were concerns with the flows requested. The instream flows requested were for water quality limited segments and would support the implementation of the total maximum daily loads which have been established for these waterbodies. There were not many concerns with these requests as they are relatively small amounts and junior to existing rights. Staff did, however, mention that future instream rights requests and, specifically, the work presently underway on the Willamette River could heighten concern over the Department's position of establishing instream water rights for pollution abatement. On the main stem Willamette River, permit waste loads have been established based on the flows in the rivers as provided by the releases from the various reservoirs. The maintenance of these flows is important to the maintenance of water quality in the river.

The Commission expressed support for the Department's applications.

PUBLIC FORUM

- Susan Sheets spoke to the Commission about the Little North Fork on the Santiam River. She said the clean and drinkable water and thriving fish need to be maintained in the river. She urged the Department to keep foresight, planning and dedication in deciding the fate of the three-basin rule.

I. Status report on St. Johns Landfill closure.

At the December 10, 1993, Commission meeting, Mr. Mikey Jones voiced his concerns about the St. Johns Landfill closure. In response, the Commission directed the DEQ to prepare a staff report updating the Commission on the status of the St. Johns Landfill closure and responding to Mr. Jones's concerns.

Four years ago, the 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. To clarify the St. Johns closure permit, the DEQ plans to issue a permit addendum that summarizes approved closure elements and creates a clear and enforceable schedule for completing remaining closure elements.

Chuck Donaldson and Joe Gingerich of the Department's WMC Division and Bob Martin, Dennis O'Neal and Jim Morgan of Metro presented the Commission with background information and also provided a slide presentation.

Mr. Jones told the Commission that the last two months of working and communicating with the Department had been helpful. He said he now better understands the problems associated with closure of the landfill. Mr. Jones commented about a barge that has been docked near the landfill for the past ten years and that the barge affects the water quality there.

J. Commission member reports.

There were no Commission member reports.

K. Director's report.

Umatilla Army Depot: A citizens' advisory committee, appointed by the Governor, has begun meeting on disposal options for the chemical weapons stockpile at the Umatilla Army Depot. The Depot has stockpiles of a variety of weapons containing nerve gas and mustard gas. The Army has deadlines established by Congress and International Treaty to eliminate the weapons by 2004.

The Army has been working with the Department and with the EPA to obtain the necessary environmental permits to construct an incinerator. We are currently in the process of negotiating what should be contained in the permit application, including a detailed risk assessment for the facility.

The Department will soon hire a permit coordinator to be stationed in Hermiston to head up the public involvement aspects of the permit process.

Three-Basin Rule: The Department is finalizing the advisory committee to review the three-basin rule. We hope to schedule the first meeting in the next few weeks.

Early Warning Team: The next meeting of the DEQ/local government "Early Warning Team" is scheduled for April 6.

Grazing Permits Lawsuit: Six Oregon environmental groups have given notice that they intend to file a lawsuit against the U.S. Forest Service under the Clean Water Act. The groups intend to sue the agency for not requiring that grazing permit be certified by the DEQ as meeting Section 401 of the Clean Water Act. The lawsuit will focus on Camp Creek, a tributary of the Middle Fork of the John Day River.

Futures Subcommittees and National Commission on Superfund (NCSF): Director Hansen gave a brief update on the EPA Science Advisory Board (SAB) Futures Subcommittee and NCSF of which he is a member.

HEARING AUTHORIZATIONS

The Department will propose a revision to the SIP to reflect changes in the Vehicle Inspection Program that are required by the EPA. The new requirements include procedures for inspector training, new testing equipment specifications and compliance efforts.

Paul Meyers of the Oregon Human Society indicated to the Commission that he had wished to speak at public forum but, however, missed the opportunity though in the audience. He spoke to the Commission about the Society's renewal fee for their air contaminant discharge permit. He said that non-profit agencies cannot recoup these types of fees. David Berg of the Department's Air Quality Division explained the fee increase to the Commission. He said that, unfortunately, the Society's renewal and compliance fees occurred at the same time.

There was no further business, and the meeting was adjourned at 12:30 p.m.

Environmental Quality Commission

☐ Rule Adoption Item
X Action Item
☐ Information Item

Agenda Item B
April 22, 1994 Meeting

Title:
Approval of Tax Credit Applications

Summary:
New Applications - 7 tax credit applications with a total facility cost of $1,582,283.00 are recommended for approval as follows:

- 2 Air Quality facilities with a total facility cost of:	$ 508,415
- 2 Field Burning related facilities recommended by the Department of Agriculture with a total facility cost of:	$1,014,603
- 2 Plastics Recycling facilities with a total facility cost of:	56,465
- 1 Solid Waste Recycling facility costing:	2,800

Two applications having a claimed facility cost exceeding $250,000 have been reviewed by an independent accounting firm contractor and the review statements are attached to the application review report.

The Department also recommends rejection of Tax Credit 4125, Blount, Inc., on the basis that the accounting review (enclosed) revealed that no percentage of the claim is allocable to pollution control. The applicant has withdrawn the application and requests a refund of the processing fee. A discussion of this application is presented in the Background section of this report.

Department Recommendation:
1) Approve issuance of tax credit certificates for 7 applications as presented in Attachment A of the staff report.

2) Deny issuance of a tax credit for application 4125, Blount, Inc., allowing for a refund of the applicant's processing fee.

Report Author | Division Administrator | Director

April 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[†]

Date: April 22, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item B, April 22, 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 3291	The Bag Connection	A Reclaimed Plastics facility consisting of an injection mold for plastic product.
TC 3906	The Bag Connection	A Reclaimed Plastics facility consisting of backing plates for plastic product molds.
TC 4136	Dayton Sand and Gravel	An Air Quality facility consisting of a Gencor-Bituma baghouse for controlling emissions from an asphalt plant.
TC 4187	Happy Danes Quality Auto Repair, Inc.	A Solid Waste pollution control facility consisting of an antifreeze recycling machine.
TC 4217	William J. Stellmacher	A Field Burning (Air Quality) facility consisting of a Rear's 15' grass vacuum implement to clean grass seed acreage after the majority of straw has been removed in baled form.

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

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

Application Number	Applicant	Description
TC 4204	Wilco Farmers, Inc.	An Air Quality facility consisting of baghouses, ductwork and plastic stripping to control the emission of particulate generated from the processing and shipping of grass seed.
TC 4207	Eichler Hay Company	A Field Burning (Air Quality) facility consisting of straw storage buildings (5), balers (3), stackers (2), squeezes (2), trailers (2) and a truck for a custom baling business.

Background

On August 2, 1993, Blount, Inc. submitted a tax credit application, TC 4125, to the Department using the best data available to prepare the allocation of costs analysis. This analysis showed that a portion of the facility cost was allocable to pollution control. A review of the actual supporting documents by the external accounting review firm hired by the Department indicated that the amounts of savings and revenue estimated in the application were significantly below the actual amounts. As a result, the return on investment of the facility was found to exceed the Referenced Rate of Return for facilities constructed in 1991 and no portion of the facility is allocable to pollution control. The accounting review and staff reports are included in this report. The applicant has withdrawn the application and requests a refund of the processing fee.

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

- 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.

- Proposed April 22, 1994 Pollution Control Tax Credit Totals:

Certificates	Certified Costs*	No.
Air Quality	$ 508,415	2
CFC	0	0
Field Burning	1,014,603	2
Hazardous Waste	0	0
Noise	0	0
Plastics	56,465	2
Solid Waste - Recycling	2,8000	1
Solid Waste - Landfills	0	0
Water Quality	0	0
UST	0	0
TOTALS	$1,582,283	7

* 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.

Calendar Year Totals Through March 11, 1994:

Certificates	Certified Costs*	No.
Air Quality	$1,249,585	3
CFC	17,760	7
Field Burning	132,692	2
Hazardous Waste	0	0
Noise	0	0
Plastics	181,312	6
Solid Waste - Recycling	218,316	1
Solid Waste - Landfills	0	0
Water Quality	207,973	2
UST	1,082,479	12
TOTALS	$3,090,117	33

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

Recommendation for Commission Action

It is recommended that the Commission approve certification for the tax credit applications as presented in Attachment A of the Department Staff Report. The Department recommends rejection of Tax Credit 4125 for the reasons presented in the Background section of this report.

Intended Followup Actions

Notify applicants of Environmental Quality Commission actions.

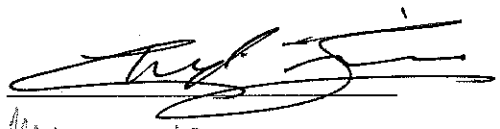
Attachments

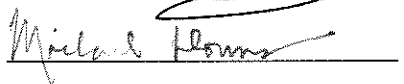
A. Pollution Control Tax Credit Application Review Reports.

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: April 5, 1994

Charles Bianchi
APREQC
April 5, 1994

Application No. TC-3291

State of Oregon
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT
TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

The Bag Connection
Bob Bunn, President
P O Box 817
Newberg, OR 97132

The applicant owns and operates a recycling bag manufacturing, recycling, and distribution facility at Newberg, Oregon.

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

Claimed Investment Cost: $37,655.00
(Accountant's Certification was provided.)

The claimed equipment is an injection mold for a plastic rack for holding recycling bags. This product is marketed as the "Bagit System". The mold will be owned by the Bag Connection and used by contract plastic molding companies to manufacture racks from recycled plastic.

3. Procedural Requirements

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

The investment met all statutory deadlines in that:

a. The request for preliminary certification was filed November 22, 1990.

b. The request for preliminary certification was approved on November 23, 1990, before the applicastion for final certification was made.

c. The investment was made on March 21, 1991, prior to June 30, 1995.

d. The request for final certification was submitted on January 2, 1992 and was filed complete on October 21, 1992.

4. Evaluation of Application

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

b. Allocable Cost Findings

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

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

This factor is applicable because the entire purpose of this mold is to manufacture racks out of reclaimed plastic.

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

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

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

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

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

5. Summation

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

b. The investment is eligible for final tax credit certification in that the equipment is necessary to manufacture a reclaimed plastic product.

c. The qualifying business complies with DEQ statutes and rules.

d. The portion of the investment cost that is properly allocable to reclaiming and recycling plastic is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of $37,655.00 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-3291.

WRB:b
wp51\tax\tc3291rr.rep
(503) 229-5934
March 15, 1994

Applications TC-3906

State of Oregon
Department of Environmental Quality

RECLAIMED PLASTIC TAX CREDIT
TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

The Bag Connection
Bob Bunn, President
P O Box 817
Newberg, OR 97132

The applicant owns and operates a recycling bag manufacturing, recycling, and distribution facility at Newberg, Oregon.

Application was made for Reclaimed Plastic Tax Credit.

2. Description of Equipment, Machinery or Personal Property

Claimed Investment Cost: $18,810.00
(Accountant's Certification was provided.)

The claimed equipment is backing plates for an injection mold claimed under tax credit TC-3291. The mold is for a plastic rack for holding recycling bag marketed as the "Bagit System". The mold and backing plates will be owned by the Bag Connection and used by contract plastic molding companies to manufacture racks from recycled plastic.

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 requests for preliminary certification was filed November 2, 1992.

b. The requests for preliminary certification was approved on November 6, 1992, before the application for final certification was made.

c. The investment was made on March 28, 1993. Both investment were made prior to June 30, 1995.

d. The requests for final certification were submitted on February 11, 1994. The applications were filed complete on February 16, 1994.

4. Evaluation of Application

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

b. Allocable Cost Findings

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

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

This factor is applicable because the entire purpose of this mold and backing plates is to manufacture racks out of reclaimed plastic. The backing systems were added to the molds to improve the product and increase productivity.

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

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

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

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

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

5. Summation

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

b. The investment is eligible for final tax credit certification in that the equipment is necessary to manufacture a reclaimed plastic product.

c. The qualifying business complies with DEQ statutes and rules.

d. The portion of the investment cost that is properly allocable to reclaiming and recycling plastic is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Reclaimed Plastic Tax Credit Certificate bearing the cost of $18,810.00 with 100% allocated to reclaiming plastic material, be issued for the investment claimed in Tax Credit Application No. TC-3906.

WRB:b
WP51\tax\TC3906RR.STA
(503) 229-5934
March 15, 1994

Application No. TC-4136

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Dayton Sand and Gravel
P.O. Box 177
McMinnville, Oregon 97128

The applicant owns and operates an asphalt plant in Dayton, 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 applicant's asphalt plant. The facility consists of a Gencor-Bituma baghouse that is a component of the Gencor Convertible Ultraplant hot asphalt mix plant.

Claimed Facility Cost: $244,810.10

The applicant indicated the useful life of the facility is 15 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 July 10, 1993 and placed into operation on May 10, 1993. The application for final certification was received by the Department on August 24, 1993. The application was found to be complete on March 8, 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 25, Rule 110. The applicant's Air Contaminant Discharge Permit, 36-5330, Condition 2, 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 the stationary hot mix asphalt paving plant. The claimed facility consists of a Gencor-Bituma 54,000 CFM primary bag filter. Installation of the facility required a foundation, ductwork, structural and electrical materials and labor. Department inspection records dated May 24, 1993 indicate that the facility is considered to be in compliance.

The baghouse system fan draws particulate emitted by the asphalt plant, 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 reverse air pulse supplied by an air compressor. The particulate is then reintroduced as a raw material in the asphalt plant.

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 usable commodity consisting of fine particulate which is reintroduced as raw material in the asphalt plant. The total

annual value of the fine particulate is estimated at $1,000.00.

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 net savings from the facility. The average cost of maintaining and operating the facility is $14,921.00 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 $244,810.10. 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 $244,810.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4136.

Dennis Cartier
SJO Consulting Engineers

March 11, 1994

Application No. T-4187

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. **Applicant**

Happy Danes Quality Auto Repair, Inc.
233 S. E. 2nd.
Bend, OR 97701

The applicant owns and operates an auto repair shop in Bend, Oregon. Application was made for tax credit for a solid waste pollution control facility.

2. **Description of Facility**

The facility is an antifreeze recycling machine. The machine takes dirty antifreeze from a car's cooling system, cleans the material, and places it back into the same cooling system. Used antifreeze was previously discarded into the environment or municipal sewer system.

Claimed facility cost: $ 2,800.00

A copy of the purchase invoice was provided.

3. **Procedural Requirements**

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

The facility met all statutory deadlines in that:

a. Installation of the facility was started on June 17, 1993

b. The facility was placed into operation on June 17, 1993

c. The application for tax credit was submitted to the Department on November 29, 1993, within two years of substantial completion of the facility.

d. The application was found to be technically complete and was filed on February 8, 1994.

4. **Evaluation of Application**

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

b. Eligible Cost Findings

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

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

This factor is applicable because the facility is used to recover dirty antifreeze, clean it, and return it to use. Prior to the use of this facility the dirty antifreeze was disposed of into the municipal sewer system.

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

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

There is no direct income from use of this machine. The recycled antifreeze is returned to the original vehicle without additional income to the applicant. The small annual operating cost of the machine has been incorporated into normal charges for cooling system service. Therefore, the calculated return on investment is zero.

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

The applicant considered other methods for recovery of antifreeze and determined that this method was environmentally acceptable and economically feasible. It is the Department's determination that the proposed facility is an acceptable method of achieving the material recovery objective.

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

There are no savings or decreases in costs which occur as a result of the use of this machine.

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

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

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

5. **Summation**

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

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

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

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

6. **Director's Recommendation**

Based upon the findings, it is recommended that a Pollution Control Facility certificate bearing the cost of $2,800 with 100% allocable to pollution control be issued for the facility claimed in Tax Credit Application No. T-4187.

WRB:wrb
wp51\tax\tc4187RR.STA
(503)229-5934
March 9, 1994

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

William J. Stellmacher
30416 Stellmacher Drive SW
Albany OR 97321

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

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

2. Description of Claimed Facility

The equipment described in this application is a Rear's 15 ft. grass vacuum with box, located at 30416 Stellmacher Drive SW, Albany, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $35,000
(Accountant's Certification was provided.)

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

The applicant has 900 acres under perennial grass seed cultivation. Prior to adopting alternative treatment methods for his grass seed fields the applicant open field burned as many acres as the smoke management program and weather permitted.

The first step of the alternative treatment method consists of removing the straw from the fields in baled form. The applicant trades the straw to a custom baler for the baling services. To keep the straw dry and in a salable condition the applicant provides a storage shed for the baler's use.

Initially, the second phase of the alternative treatment method involved propane flaming of the fields to destroy volunteer seeds and weed seeds. The applicant determined that under existing propane flaming regulations the effectiveness of the propane flamer was greatly diminished.

The applicant purchased the Rear's vacuum because vendor demonstrations and grower testimony indicated it will effectively pick up finer straw, volunteer seeds, and weed seeds from the baled fields.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on November 2, 1993. The application was submitted on February 28, 1994 and the application for final certification was found to be complete on March 8, 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 does not recover or convert waste products into a salable or usable commodity. The loaves produced by the vacuum are stack burned.

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 $2,500 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

   a. The equipment was purchased in accordance with all regulatory deadlines.

   b. The equipment is eligible 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 $35,000, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4217.

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

jb:bm4217
March 8, 1994

Application No. TC-4204

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Wilco Farmers, inc.
P.O Box 258
Mt. Angel, OR 97362

The applicant owns and operates a grass seed storage, cleaning, bagging, and shipping warehouse in Donald, Oregon.

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

2. Description of Facility

The claimed facility controls the emission of particulate generated from the processing and shipping of grass seed. The facility consists of baghouses, ductwork, and plastic stripping.

Claimed Facility Cost: $263,605.00

Accountant's Certification was provided.

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

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Installation of the facility was substantially completed on August 1, 1992 and placed into operation on July 31, 1992. The application for final certification was received by the Department on December 29, 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. 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, rules 015 and 050 through 060. The Air Contaminant Discharge Permit for this source, 24-1003, requires the permittee to limit the emissions of particulate to the atmosphere. The emission reduction is accomplished by the elimination of air contaminants as defined in ORS 468A.005.

Prior to installation of the new facilities, dust from all production systems was collected either in a cyclone system or in target boxes. The Department issued A Notice of Non-Compliance to Wilco Farmers on August 7, 1991. The Notice cited visual evidence of fugitive emissions and emissions opacities that were between 40 and 50 percent. Furthermore, it was noted that "large amounts of fugitive dust are generated during unloading and loading operations". A Notice of Violation and Intent To Access Civil Penalty issued by the Department to Wilco Farmers on September 13, 1991 requested Wilco Farmers submit a compliance schedule to achieve full compliance with permit conditions. The Department conducted an inspection of the warehouse on September 1, 1993 after installation of the claimed facility. The results of this inspection indicate the facility was in compliance with permit levels for all emission points.

The claimed facility consists of dust filters with rotary valves, a bag filter system, a blower, and extensive dust collection hoods and duct work. The claimed facility is a compilation of three projects:

a. A bag filter system replaced the Cleaning Plant No. 1 dust control cyclone system
b. A single baghouse system replaced three target boxes in Buildings 16B, 16C, and 17A.
c. Three new dust filter systems and upgraded dust control systems replace a dust tunnel and four associated cyclones on the Screenings Loadout Tube and Receiving Bays 2 and 3.

Dust generated by the grass seed cleaning process is drawn into the ductwork through hoods. The dust is then forced through the filters and the fine dust

particles are collected on the bag surface. The dust collected by the bag is then removed. Fugitive dust has been controlled in the receiving bay by upgrading the pit side vents, installation of dust pick up ducts over both doors, and installation of plastic strips over the entrance door.

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. Wilco Farmers pays a nearby animal feed producer to accept the waste.

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.

Baghouse control systems are technically recognized as an acceptable method for controlling the emissions of particulate from seed plants.

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

The increase in annual operating cost of the facility is $6,380.00 from the increased electricity use, property taxes, and insurance.

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 KPMG Peat Marwick (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 this factor or these factors is 100%.

5. Summation

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

b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by Department to control air pollution.

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

d. An independent accounting firm under contract with the Department has concluded that no further review procedures be performed on TC-4204 (see attached review report).

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $263,605.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4204.

Tonia C. Garbowsky : PRC Environmental Management, Inc.

February 16, 1994.

MISC\AH73372

KPMG Peat Marwick

Certified Public Accountants

Suite 2000
1211 South West Fifth Avenue
Portland, OR 97204

Telephone 503 221 6500

Telefax 503 796 7650

March 11, 1994

Environmental Quality Commission
811 S. W. Sixth Avenue
Portland, Oregon 97204-1390

Commissioners:

At your request, we have performed certain agreed-upon procedures, as discussed below, on certain accounting records of Wilco Farmers (the Company) and the Company's Pollution Control Tax Credit Application #4204 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for a Dust Control System in Mt. Angel, Oregon (the System). The application has a claimed system cost of $263,604. Our procedures and findings are as follows:

Procedures

1. We read the application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits - Section 468.150 through 468.190 (Statutes), and the Oregon Administrative Rules on Pollution Control Tax Credits---Sections 340-16-005 through 340-16-050 (OAR's).

2. We reviewed certain documents which support the Application.

3. We discussed the Application with certain DEQ personnel, including Charles Bianchi and Brian Fields, as well as with Tonia Garbowsky of PRC Environmental.

4. We discussed certain components of the Application with Company personnel including Jon Odenthal, Operations Manager.

5. 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) In accordance with ORS 468.155(2)(e), the System is not a "replacement or reconstruction of all or a part of any facility for which a pollution control facility certificate has previously been issued. . ."

   c) All costs included in the Application related directly to the construction of the System and were not related to maintenance and repairs.

d) 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 System in the normal course of business.

Findings

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

5. Company personnel confirmed that such assertions were true and correct.

* * * * * *

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

It is understood that this report is solely for the use of the State of Oregon Environmental Quality Commission, the Department of Environmental Quality and the Company and should not be used or distributed for any purpose to anyone who is not a party to the Application.

KPMG Peat Marwick

State of Oregon
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Eichler Hay Company
3085 NE Garden Avenue
Corvallis OR 97330

The applicant owns and operates a custom baling operation in Linn and Benton Counties, 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 located at 33757 Columbus Street SE, Albany, Oregon. The land and buildings are owned by the applicant.

Facility/Equipment	Claimed Cost	Acquisition Year
Straw storage buildings (5)	$557,160	1992
New Holland 500 baler	14,000	1992
Case big baler	53,750	1992
Freeman roadsider (stacker)	74,000	1992
New Holland Harrowbed (stacker)	48,825	1992
Stockton trailers (2)	9,951	1992
Hyster/H210XL Cat V160 (squeeze)	11,689	1992
	$769,375	1992
Case big baler	$ 55,870	1993
Hyster/H210XL Cat V160 (2 squeezes)	69,850	1993
Peterbilt truck	84,508	1993
	$210,228	1993

Claimed facility cost: $979,603
(Accountant's Certification was provided.)

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

The applicant stated that the client growers (16 listed representing 9,840 acres) used to open field burn or stack burn and propane flame prior to engaging the service of straw removal. The applicant rakes, bales, stacks, loads, stores, reloads and transports the straw to a compressor operator or domestic end user.

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 during 1992 and 1993. The application for final certification was found to be complete on January 13, 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 the means to remove it from the fields in packaged form and protect it from inclement weather.

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

The pollution control facility is integral to the operation of the applicant's business such that the business would operate at reduced income levels without the claimed pollution control facility. Following steps outlined in OAR 340-16-030 (5) and referencing Robert Morris Associates' (RMA) Annual Statement Studies the applicants primary four digit Standard Industrial Classification is 5261. The industry median profit before taxes as a percent of total assets (IMP) for the five years prior to the year of completion of the claimed facility from RMA, Annual Statement

Studies are 5.4, 5.4, 5.1, 5, and 3.3. Therefore, the industry average profit before taxes as a percent of total assets (IROI) is 4.84 (IMP/5). Selecting the reference annual percent return (RROI) of 6.8 (1992) and 5.5 (1993) from Table 2 that corresponds with the year construction or purchase was completed the percentage of actual costs allocable to pollution control (RROI-IROI/RROI x 100) is 29% for 1992 puchases and 12% for 1993 purchases.

Acquisition Year	Claimed Cost	Percent Allocable	Allocable
1992	$769,375	29%	$223,119
1993	$210,228	12%	$ 25,227
			$248,346

Allocable	/	Claimed Cost	=	Percent Allocable
$248,346	/	$979,603	=	25%

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

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

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

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

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

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

The actual cost of the facility properly allocable to pollution control as determined by using these factors is 25%.

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 25%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $979,603, with 25% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4207.

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

jb:bm4207
March 17, 1994

Coopers & Lybrand

certified public accountants

2700 First Interstate Tower
Portland, Oregon 97201

telephone (503) 227-8600

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

At your request, we have performed certain agreed upon procedures with respect to Eichler Hay Company's (the Company) Pollution Tax Control Credit Application No. 4207 regarding the construction of a Straw Disposal Facility in Linn County, Oregon (the Facility). The aggregate claimed Facility costs on the Application were $952,162. The following agreed upon procedures and related findings are as follows:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits - Sections 469.150 -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 discussed the Application and Statues with Charles Bianchi and Jim Britton of the Oregon Department of Environmental Quality (DEQ).

3. We discussed the Application and Statutes with Walter and Mary Eichler, owners of the Company.

4. We inquired as to whether there were any direct or indirect Company costs charged to the Facility costs claimed in the Application. We were informed that no direct or indirect costs were included in the Application.

   Based on our review of supporting documentation discussed in item no. 5 below, we noted no direct or indirect costs were included in the Application.

5. We reviewed supporting documentation for 90% of the amount claimed on the Application through review of vendor invoices. All costs which we reviewed supporting the Application appeared to be from third party vendors.

6. We discussed with Walter and Mary Eichler, owners of the Company, the extent to which non-allowable costs were excluded from the Application. This was accomplished by reviewing specific contractor invoices (see item no. 5) with Mr. and Mrs. Eichler. We determined that the Company had properly excluded all non-allowable costs from the Application. As detailed in the following schedule, we determined that the Company had not properly classified certain costs and had omitted certain eligible costs directly related to the pollution control project.

Facility/Equipment	Eligible Costs	Reclass-ifications	Eligible Costs Not Claimed	Revised Eligible Costs
1992				
Straw Storage Buildings(5)	$ 537,808		$ 19,352	$ 557,160
New Holland 500 Baler	14,000			14,000
Case Big Baler	53,750			53,750
Freeman Roadsider (stacker)	74,000			74,000
New Holland Harrowbed (stacker)	48,825			48,825
Stockton Trailers (2)	9,951			9,951
H210 HxL Cat V160		$ 3,600	8,089	11,689
	738,334	3,600	27,441	769,375
1993				
Case Big Baler	55,870			55,870
Hyster/H210 HxL V160	73,450	(3,600)		69,850
Peterbilt Truck	84,508			84,508
	213,828	(3,600)		210,228
Total	$ 952,162	$ -	$ 27,441	$ 979,603

Accordingly, the Facility costs claimed in the Application should have been $979,603 with $769,375 and $210,228 related to 1992 and 1993 respectively, instead of the claimed cost of $952,162.

7. We reviewed the calculations contained in Section 5 (b)(2) of the State of Oregon, Department of Agriculture "Tax Relief Application Review Report" and determine they had been computed correctly.

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 Application should be adjusted, except for the $27,441 of additional costs and $3,600 of reclassification of costs noted in item no. 6 above. Had we performed additional procedures, or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company taken as a whole.

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

Coopers & Lybrand

Portland, Oregon
February 10, 1994

Application No. T-4125

STATE OF OREGON
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. **Applicant**

Blount, Inc.
Oregon Cutting Systems Division
4909 S. E. International Way
Milwaukie, OR 97222-4679

The applicant owns and operates a manufacturing facility which produces fabricated metal products. Application was made for tax credit for a solid waste pollution control facility.

2. **Description of Facility**

The facility is an oil\scrap metal recovery system which receive oily scrap metal from the fabricating process. The oil is removed from the scrap in a Mayfran Model 5000 continuous centrifuge, Serial No. 907138. The dry scrap metal is stored and sold to scrap metal dealers. The dirty oil is filtered in a Sanborn Patriot I filter system, Serial No. MR901316. Filtered oil is stored and then reused in the manufacturing process.

Claimed facility cost: $ 549,728.00

An Independent accountant certification of costs was provided.

3. **Procedural Requirements**

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

The facility met all statutory deadlines in that:

a. Installation of the facility was started on February 6, 1991

b. The facility was placed into operation on October 1, 1991

c. The application for tax credit was submitted to the Department on August 2, 1993, within two years of substantial completion of the facility.

d. The application was found to be technically complete and was filed on September 7, 1993.

e. The applicant requested withdrawal of the application on March 21, 1994.

4. **Evaluation of Application**

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

b. Eligible Cost Findings

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

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

This factor is applicable because the facility is used to recover recyclable scrap metal and reusable oil. Prior to the use of this facility the scrap metal had a reduced value because it was contaminated with waste oil and the oil was not being recovered.

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

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

The independent accountant's review determined that there was income and cost savings in excess of those detailed in the original application. The original application and accountants review indicate that there is direct income from the sale of scrap metal and saving to the company through the use of reclaimed oil. When compared to annual operating costs these figures produce a positive annual cash flow. The cash flow results in a return on investment factor of 4.54. As a result of using Table 1, OAR 340-16-030, the return on investment for the claimed facility is 17.75% and the percent allocable is 0%.

Based upon this evaluation the applicant has requested that the application be withdrawn and that processing fee be refunded.

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

The applicant considered other methods for recovery on scrap metal and oil and determined that this method was environmentally acceptable and economically feasible. It is the Department's determination that the proposed facility is an acceptable method of achieving the material recovery objective.

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

There are no savings, other than those considered in (2) above, associated with the purchase or use of this facility.

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

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

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

5. **Summation**

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

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

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

d. The portion of the facility cost that is properly allocable to pollution control is 0%.

e. Based upon the independent accountant's review the applicant has requested that the application be withdrawn and that the application processing fee be refunded

6. **Director's Recommendation**

Based upon the findings, it is recommended that Tax Credit Application No. T-4125 be denied and that the application processing fee be refunded to the applicant.

WRB:wrb
wp51\tax\tc4125RR.STA
(503)229-5934
March 23, 1994

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 Blount, Inc.'s (the Company's) Pollution Control Tax Credit Application No. 4125 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the Solid Waste Pollution Control Facility in Milwaukie, Oregon (the Facility). The Application has a claimed Facility cost of $549,728. 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 for Pollution Control Tax Credits – Sections 340-16-005 through 340-16-050 (OAR's).

2. We discussed the Application, the Statutes and OAR's with certain DEQ personnel, including Charles Bianchi and Bill Bree.

3. We discussed certain components of the Application with Company personnel including Rob Breitbarth and Donald Lundbom.

4. We reviewed certain documents supporting the cost of the Facility.

5. We reviewed Section V of the Application to determine the portion of actual costs properly allocable to pollution control.

6. We toured the Facility with Mr. Breitbarth and Mr. Lundbom.

Findings:

The following matters came to our attention that caused us to believe that the Application should be adjusted:

A) The claimed Facility cost included $49,923 in spare parts that are considered non-allowable costs. Therefore, the adjusted claimed Facility cost would be $499,805.

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Phone: (503) 244-7350
Fax: (503) 244-7331

B) In accordance with the Oregon Administration Rules for Pollution Control Tax Credits – Section 340-16-030, none of the claimed costs of the Facility are properly allocable to pollution control as documented below:

	Amounts according to the Application		Amounts according to supporting documents
Calculation of annual cash flows:			
Gross annual income:			
Increase in scrap metal sales	$ 24,000		$ 34,884
Cost savings related to reduced purchases of oil	69,000		107,338
Cost savings related to reduced oil disposal and testing fees	20,720		20,720
	113,720		162,942
Annual operating expenses:			
Maintenance and labor	37,800		37,800
Insurance and property taxes	15,000		14,600
	52,800		52,400
Average annual cash flow	$ 60,920		$ 110,542
Useful life of claimed Facility	10 years		10 years
Return on investment factor	9.0		4.5
Annual percent return on investment from Table 1	2.00		17.75
Reference annual percent return on investment from Table 2	5.5	(1)	7.2
Portion of actual costs properly allocable to pollution control	63.6%	(2)	0%

Since the annual percent return on investment exceeds the reference annual percent return on investment, no portion of the actual costs are properly allocable to pollution control.

(1) Since construction of the Facility was completed in 1991, the Company should have used a reference annual percent return on investment of 7.2. The reference annual percent return on investment used by the Company was for facilities completed in 1993.

(2) If the Company had used a reference annual percent return on investment of 7.2, the Company's calculation of the portion of actual costs properly allocable to pollution control would have been 72.2%.

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, we noted that the claimed Facility cost should be adjusted to $499,805 and that no portion of the actual costs are allocable to pollution control. Had we performed additional procedures or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company, taken as a whole.

This report is solely for the use of the State of Oregon Environmental Quality Commission and Department of Environmental Quality in evaluating the Company's Pollution Control Tax Credit Application No. 4125 with respect to its Solid Waste Pollution Control Facility in Milwaukie, Oregon and should not be used for any other purpose.

Symonds, Evans + Larson

March 17, 1994

BLOUNT, INC
OREGON CUTTING SYSTEMS DIVISION
4909 SE INTERNATIONAL WAY (97222 4679)
PO BOX 22127
PORTLAND OR 97269 2127
503 653 8881
FAX 503 653 4201

Oregon Department of Environment Quality
Management Services Division - 6th Floor
811 SW 6th Avenue
Portland, OR 97204

March 21, 1994

Attention: William R. Bree, Senior Policy Analyst

Re: Tax Credit T 4125

BLOUNT

Dear Mr. Bree:

Thank you for your letter of March 6, 1994. We concur with your recommendation and withdraw the following application. Please refund our applicaton processing fees.

Scrap Cleaner:	$2,748.64	(processing fee)
	50.00	(application fee)

Sincerely,

Don Lundbom /SKB

Don Lundbom
Division Financial Manager

/dj

OREGON

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☒ Information Item

Agenda Item C
April 22, 1994 Meeting

Title:

Project for Improving Effectiveness in Technical Assistance and Pollution Prevention

Summary:

The DEQ has recently completed an analysis of its technical assistance efforts and pollution prevention initiatives agencywide to identify ways to deliver them more effectively.

DEQ's approach to pollution prevention in the context of this project was to look at DEQ's regulatory actions from the perspective of the individual decisionmaker and determine how they affect the individual's decisions toward pollution prevention. The project defined pollution prevention in terms of economic "cost signals," and how to align the costs and create avoidable costs, so that pollution prevention works with the profit motive to achieve environmental goals.

The project recommendations cover a number of initiatives and approaches which will help the Department incorporate pollution prevention incentives into all of our interactions with the regulated community, and establish a coordination mechanism to ensure that full coordination occurs in both delivery of technical assistance and in developing pollution prevention initiatives.

Department Recommendation:

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Marianne Fitzgerald — Report Author
Stephanie Hallock — Division Administrator
Fred Hansen — Director

April 5, 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: April 5, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item C, April 22, 1994, EQC Meeting

Project for Improving Effectiveness in Technical Assistance and Pollution Prevention

Statement of Purpose

DEQ's mission to "be an active force to restore, enhance and maintain the quality of Oregon's environment" has traditionally been accomplished through command-and-control regulation of discharges or emissions. These approaches have worked well in cases where one can quantify and control individual pollution sources (such as in manufacturing processes), but they may not work as well with nonpoint sources or area sources where it is more difficult to link each discharge with its environmental impact. In recent years legislation and rules have been developed to address reduction in the amount of toxic chemicals used and hazardous wastes generated within facilities. This approach has worked well within the manufacturing sector, but does not address the breadth of environmental problems which DEQ is mandated to prevent.

In the fall of 1992, DEQ hired a contractor (Ross and Associates Environmental Consulting, Ltd.) to go beyond the traditional programs and beyond the toxics use reduction approach and examine how to integrate the concept of pollution prevention into all programs at DEQ. At the same time, DEQ asked the contractor to look at the many ways we deliver technical assistance to identify ways that these programs can deliver technical assistance more effectively in a coordinated fashion.

The contractor examined all DEQ regulations and programs, and worked with over 125 DEQ staff from all programs, to develop a database which identifies interrelationships of DEQ programs with specific pollution sources and environmental problems in the state. The contractor also developed an inventory of current DEQ pollution prevention and technical assistance initiatives across all environmental media programs (air, water, land) to determine how these initiatives overlap with pollution sources and problems.

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

The contractor concluded that although there are a number of initiatives at DEQ, the technical assistance programs are not coordinated and the pollution prevention initiatives are not integrated into the mainstream of environmental programs. They recommended a strategic approach which incorporates pollution prevention incentives into all of our interactions with the regulated community, and a mechanism for ensuring that coordination occurs in both delivery of technical assistance and in developing pollution prevention initiatives.

DEQ management and staff and the Environmental Quality Commission need to examine these recommendations, especially in light of the current budget issues, as we look to find ways we can carry out our mission making more efficient use of resources to encourage pollution prevention.

Background

Over the last few years, there has been a growing consensus among policy makers that pollution prevention makes sense as an environmental protection strategy. As our understanding of the interaction between human activities and the environment has grown, we now recognize that almost every aspect of human life has the potential to adversely affect the air, water, land, or other species.

The definition of "what" pollution prevention is has received much national attention. Pollution prevention is generally defined as elimination of pollution at the source. This definition explains what individuals should be doing but does not address why an individual or a regulated entity would choose a pollution prevention alternative. Understanding why an individual or regulated entity would choose a pollution prevention approach is fundamental to this project.

DEQ desired to create a framework that encourages pollution prevention choices by presenting those choices as being in the best interest of the individual or regulated entity. Generally, choices are made in response to "cost signals"--time, dollars, risk, etc. For example, it may be cheaper in terms of time and convenience to drive to work, but it may be cheaper in terms of dollars to ride the bus. In the context of this type of decisionmaking, the individual or regulated entity must be able to identify the full cost of environmental regulation of current practices and how much can be avoided through adopting alternative practices. The decisionmaker must also know that an alternative exists which serves the same purpose, but is environmentally-preferred. In this example, the individual would weigh the cost of driving and parking a car against the cost of taking the bus, factoring in other costs such as time, congestion, and air quality impacts, when making the decision.

The other fundamental concept underlying this project's approach to pollution prevention is that public agencies do not prevent pollution; instead, they contribute substantially to the economic environment in which pollution prevention decisions are made. Public agencies can use economic costs to influence choices, or they can use bans or mandates to achieve pollution prevention. We have identified four "cost signals" which describe how public agencies influence pollution prevention choices:

- the economic costs of generating pollution (i.e. requirements for permits, monitoring reports and fees);

- the cost of using input materials that may cause environmental damage (i.e. taxing certain chemicals);

- the cost of public concern, or societal pressure on the individual to make a better choice (i.e. through awards, press releases or other publicity); or

- the cost of adopting preferred alternatives through the provision of technical assistance (i.e. time spent researching alternative methods and suppliers of new equipment or materials).

Not all environmental costs are pollution prevention signals. In order to be successful as incentives, they must be clear and direct on the individual, imposed before the fact, linked to the polluting behavior, and avoidable. For example, an agency might decide to raise parking fees to make driving more expensive and encourage more people to ride the bus. If the driver pays the fee each time the car is driven, it would be a clear and direct cost and a strong pollution prevention signal; but if the employer pays the parking fee, or if the fee is deducted monthly from the driver's paycheck, it would not be as effective.

In certain circumstances it may be necessary to ban or mandate products or practices, such as when the public health is endangered or when it is not possible to get a sufficient level of pollution prevention by sending stronger cost signals alone. Bans and mandates are the "ultimate signal": they are clear and impose high costs for disregarding their message, but may be politically difficult to adopt and expensive to administer.

DEQ's approach to pollution prevention in the context of this project was to look at DEQ's regulatory actions from the perspective of the individual decisionmaker ("individual" in this context includes businesses, local governments, farmers, and other regulated entities as well as individuals). This project looked at the full extent to which all the regulatory and nonregulatory activities of DEQ affect the individual, and how to

pull those activities together to identify and implement new opportunities for pollution prevention.

Recommendations for Improving Effectiveness in Technical Assistance

Technical assistance was defined for this project as any guidance or direction given by DEQ personnel to the regulated community, or other parties external to DEQ, about environmental regulations, management practices, or processes, that DOES NOT include documenting violations and taking follow-up enforcement action.

Technical assistance at DEQ plays an increasingly prominent role in achieving our agency's mission. DEQ staff identified a wide range of technical assistance activities, including telephone assistance, on-site assistance, assistance to groups (including workshops, conferences, and meetings with trade associations), written materials, educational or training videotapes, and newspaper and broadcast media articles. Telephone assistance was most frequently cited, although several programs noted increased technical assistance activities in conjunction with new regulations.

The most comprehensive approach to technical assistance was found in the three programs which have been established by statute: Toxics Use Reduction and Hazardous Waste Reduction Program, the Hazardous Waste Small Business Assistance Program, and the Clean Air Act Small Business Assistance Program. These programs have staff resources to develop written materials, sponsor workshops, and provide on-site technical assistance.

Agencywide, two thirds of the technical assistance activities were described as achieving regulatory compliance, while one-third were described as facilitating pollution prevention. Many technical assistance efforts addressed overlapping audiences, such as service stations, dry cleaners, or local governments. DEQ has made several informal efforts to coordinate technical assistance (i.e. through joint on-site visits between the hazardous waste and air quality programs, or through joint workshops), and one formal effort to place all programs with a service-station audience under one manager in DEQ's Northwest Region.

Ross and Associates recommended that technical assistance be delivered in a more coordinated fashion with the establishment of a "Technical Assistance Coordinator Function" to provide the coordination mechanism between programs. This "function" (which could be one or more FTE) would provide the expertise and arrange for training in techniques for delivering technical assistance to reach specific audiences, reinforce the pollution prevention message in all technical assistance activities, develop materials such

as a master list of publications or relevant program literature for staff reference, and interact with the regulated community to develop a technical assistance strategy which meets their needs. The result of this increased coordination would be integrated written materials, workshops and other initiatives which would provide the full range of compliance information and environmental "costs" on the affected source, and would deliver a strong pollution prevention message.

Recommendations for Improving Effectiveness in Pollution Prevention

Pollution prevention can be defined as any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any wastestream or otherwise released into the environment prior to recycling treatment or disposal; pollution prevention can be achieved in a wide variety of ways, including equipment or technology modifications, raw material substitution, and reformulation or redesign of products.

The problem with this definition is that pollution prevention appears to be an activity which is delivered in an isolated manner from the environmental programs at DEQ. DEQ staff spent a considerable amount of time at the beginning of this project discussing pollution sources and their relationship to environmental problems, and we used the "cost signals" as a common language for defining pollution prevention among the many programs at DEQ.

The pollution prevention inventory prepared by Ross and Associates identified 26 initiatives which could be classified as pollution prevention in the hazardous waste, solid waste, air quality and water quality programs. The majority of these initiatives place primary emphasis on reducing the cost of pollution prevention (through technical assistance, best management practices, or development of written materials), with only limited efforts made to raise the cost of polluting behaviors, public concern, or toxic inputs.

Ross and Associates recommends a strategic approach to encouraging pollution prevention by aligning cost signals, and creating avoidable costs, so that pollution prevention becomes a decision which is made in the economic interest of the individual. Rather than creating environmental regulations which go against the profit motive, this approach works with the profit motive to achieve environmental goals.

The final report prepared by Ross and Associates contains detailed analysis of this strategic approach. The key points are summarized below.

First, DEQ should develop a framework for identifying and amplifying pollution prevention cost signals. This framework involves identifying the range of environmental problems we are dealing with and the kinds of sources associated with the environmental impacts, identifying the economic motivations for changing the behavior that causes the impacts, and aligning cost signals to decrease costs and increase benefits based on the source's decision to adopt practices which prevent pollution. This has been done for four focus areas in this project (metal finishing, sandblasting, agriculture, and local government coordination) and could be applied to other sources to determine the strength of these incentives.

Second, the DEQ should structure as many of its interactions as possible with the regulated community, local government and individuals to provide the maximum benefit for adopting pollution preventing behaviors. One example is structuring fee schedules to reward pollution prevention, such as the hazardous waste fees which combine a per-kilogram fee with additional fee incentives associated with specific waste management techniques.

Third, DEQ should help the regulated community, local government and individuals recognize and evaluate cost signals. Certain "windows of opportunity" exist where the economics of pollution prevention initiatives are likely to be more favorable. These windows include: sources seeking new permits, sources making modifications to existing permits, sources seeking permit renewals, sources receiving reporting forms or invoices, sources which are the target of new regulatory efforts (such as the new air quality federal operating permits), currently unregulated sources at the risk of crossing a major regulatory threshold (i.e. reaching 100 tons of regulated VOC emissions), sources under enforcement action, and local governments undertaking area-wide planning efforts (such as watershed health planning efforts).

At these "windows of opportunity," DEQ should "bundle" information on pollution prevention signals--i.e., develop an information package which is source-specific and explains the regulatory burdens and associated costs across all agency programs. The "bundle" should also include information on financial assistance available, cross-media impacts, and ways that sources can assess pollution prevention opportunities.

Instead of a technical engineering approach to pollution prevention assistance, DEQ should focus more on training sources to evaluate cost signals. This can be done through total cost accounting, process flow diagrams, continuous quality improvement techniques and other business management techniques. DEQ should also broaden its outreach to local universities, the financial community, and the Oregon Department of

Economic Development to leverage their involvement and support for incorporating economic incentives into pollution prevention.

The DEQ should develop a data system which supports an integrated approach by tying environmental impacts to particular sources wherever possible, and by analyzing each source's impacts on all environmental media (air, water, land). By reporting information back to the source and to local governments and the surrounding community, we can leverage public support for companies or individuals which have made progress in reducing pollution, and bring pressure to bear on sources which are lagging in their pollution prevention efforts (including the public itself, such as motor vehicle emissions).

Finally, DEQ should establish a "Pollution Prevention Coordinator Function" (similar to the "technical assistance coordinator function") to advocate for pollution prevention agencywide and provide the vision from a multimedia perspective to carry these ideas through into individual programs. The coordinator (which could be one or more FTE) would facilitate multimedia workgroups to pilot some of these recommendations. The pilots could include identifying "windows of opportunity" and developing "bundles of information" for specific sources. Some of these pilots have already been initiated: a draft guidebook for construction contractors has been developed, and a similar one is planned for local governments. The coordinator would also facilitate staff training in skills such as process flow mapping, or business decisionmaking techniques.

Together, the recommendations are designed to provide DEQ with a comprehensive approach to pollution prevention integration. Any of the recommendations could be adopted independently as appropriate (depending on resource constraints) and would result in DEQ achieving a greater reliance on pollution prevention. As a whole, however, they represent a different approach to solving environmental problems, and the support of senior DEQ management in implementing these recommendations is critical to their success.

Authority of the Commission with Respect to the Issue

DEQ's authority to deliver technical assistance is contained in three statutes: Toxics Use Reduction Technical Assistance, Hazardous Waste Small Business Assistance Program, and the Clean Air Act Small Business Assistance Program. These programs have staff available to provide outreach to individuals, local governments and the regulated community. In addition to these programs, ORS 468.035 states that the Department shall conduct and supervise programs of air and water pollution control education. The inventory developed by Ross and Associates emphasized that technical assistance is an integral part of almost every job at DEQ.

DEQ's authority for pollution prevention is less clear in statute, although reference to these concepts can be found in almost every program. The Toxics Use Reduction and Hazardous Waste Reduction Act (ORS 465.006) defines state policy for reducing the amount of toxic chemicals used and hazardous wastes generated, and recommends a multi-media approach to toxics use reduction plans. Many of these plans have been effective in reducing pollution from manufacturing sources and service operations. A similar requirement is contained in the hazardous waste statutes (ORS 466.075), household hazardous waste statutes (459.411), and in the solid waste statutes (ORS 459.015).

ORS 468A.015 (air quality) states that the purpose of the air pollution laws is to safeguard the air resources of the state by controlling, abating and preventing air pollution consistent with state policy. ORS 468B.020 (water quality) states that the Department shall take such action as is necessary for the prevention of new pollution and abatement of existing pollution by fostering and encouraging the cooperation of the people, industry, cities and counties, in order to prevent, control and reduce pollution of the waters of the state, and by requiring the use of all available and reasonable methods necessary to achieve water quality standards. These statutes provide sufficient authority to embark on pollution prevention initiatives in air and water quality programs.

Summary of Public Input Opportunity

The project for enhancing technical assistance and pollution prevention initiatives at DEQ was primarily an internal DEQ exercise. We involved a few outside resources when researching the four focus areas. The most significant public input came in the City of La Grande while discussing the concept of improving local government coordination. The city staff, as well as the Union County Planning Department and the local solid waste hauler, gave us numerous ideas and feedback on improving coordination between government agencies and enhancing pollution prevention and technical assistance.

The Department intends to utilize advisory committees and involve the regulated community and environmental groups when developing its implementation strategy.

Conclusions

This project looked at pollution prevention and delivery of technical assistance in a new light. It examined overlaps and gaps across all programs, and identified ways which public agencies could provide stronger incentives to prevent pollution.

This report is a first step in examining DEQ's approach to pollution prevention. The recommendations focus on internal agencywide strategies into which any number of individual technical assistance or pollution prevention initiatives could fit. It has established a framework for performing the analysis, and may by necessity need to be phased in over time. The next step is the development of an implementation strategy--to pilot some of the ideas, work with advisory committees, and work with DEQ staff to come up with realistic pilots to carry these ideas forward.

The consistent and persistent application of these principles through restructuring DEQ's interactions with the regulated community will serve both the environment and the economy well. Oregon's ability to prosper is directly related to the quality of its environment. Oregon's ability to protect its environment is directly related to the health of its economy. DEQ can demonstrate its understanding of the importance of both a healthy environment and a strong economy by explicitly and efficiently providing incentives to all sources which influence choices to adopt pollution prevention modes of behavior.

Intended Future Actions

DEQ agency management has created two positions within the Office of the Director to examine DEQ's pollution prevention approach and cost signals, and to identify ways of enhancing these incentives. These positions will be responsible for developing the implementation strategy, facilitating the implementation of the recommendations, and monitoring their effectiveness in preventing pollution.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Attachments

None.

Reference Documents (available upon request)

Final Draft Report, "Enhancing Technical Assistance and Pollution Prevention Initiatives at the Oregon Department of Environmental Quality," prepared by Ross and Associates Environmental consulting Ltd., with GEI Consultants, Inc., March 31, 1994

Approved:

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Division: Stephanie Hallock

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Phone: (503) 229-5946

Date Prepared: April 5, 1994

/mef
rosseqc
April 5, 1994

Environmental Quality Commission

☑ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item D
April 22, 1994 Meeting

Title:

Proposed Addition to Chemical Mining Rules to Require Persons or Entities who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

Summary:

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 have the power to direct or exercise significant control over the management or policies of 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. Such persons or entities may assume liability by joining with the permittee as a co-permittee or by such other means as the EQC, with advice of the Attorney General, may approve as being legally sufficient to protect the interests of the State and its citizens.

Fifteen persons provided testimony on the proposed rule. Nine supported the rule. Several opposed the rule, and two proposed amendments.

In response to testimony, the Department proposes amendments to the original proposal to clarify its intent and application. In particular, the indicators of situations where a person or entity may be deemed to be in "control" of the permittee are more clearly defined. Situations where a person or entity is not deemed to fall under the definition of control are also defined.

Department Recommendation:

It is recommended that the Commission adopt the rule with amendments made in response to public testimony as presented in the left hand column of Attachment A of the Department Staff Report.

Report Author	Division Administrator	Director

April 6, 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: April 6, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item D, April 22, 1994, EQC Meeting

Proposed Addition to Chemical Mining Rules to Require Persons or Entities who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

Background

On January 11, 1994, the Director authorized staff to proceed to a rulemaking hearing on a proposed rule which would provide 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 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.

Pursuant to the Director's 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 the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on January 24-27, 1994. More than 970 information packages were mailed.

A Public Hearing was held March 3, 1994, beginning at 10:00 a.m. in Conference Room 3a of the Department's offices at 811 S. W. 6th Avenue, Portland, Oregon, with Peter Dalke serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through close of business on March 10, 1994. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

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

Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment A. Since the proposed rule is an entirely new rule, the amendments shown in Attachment A reflect changes proposed in response to public input.

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

Proposals for large scale chemical mining operations are new to Oregon. In an effort to clearly establish environmental quality protection expectations in advance of any permit applications for such operations, the EQC adopted rules for Chemical Mining in September 1992.

Concern remains, however, relative to the assurances that a permittee will be able to meet long term obligations for a mining operation.

Experience in other states demonstrates that, at least in some instances, chemical process mines have produced extraordinary environmental harm, and the permittees have escaped responsibility for such harm. The Summitville mine in Colorado is an example of a relatively recent operation where problems developed, the financial assurance provided by the permittee was inadequate, the permittee declared bankruptcy, and the EPA is now initiating cleanup. EPA has already spent over $10 million in public money simply maintaining the site. The cost of actual cleanup could reach or exceed $120 million. (See Attachment H for additional information on Summitville.)

It is inherent in the nature of chemical process mining that income from the mining activity will likely cease before the obligations and costs of the permittee, thereby creating a serious risk that pollution will not be prevented and/or abated unless adequate financial safeguards are required.

It is common practice for corporations to establish subsidiary corporations for discrete portions of their operation. While there may be many reasons for this practice, one

potential result is that the parent corporation may be shielded from liability for actions of the subsidiary. Such shielding could have the effect of reducing the incentive for the subsidiary to do the best possible job in day to day operations to assure prevention of pollution and other problems.

The EQC has determined that it is appropriate to pursue reasonable and additional steps to assure continuing responsibility and accountability from those who control and profit from chemical mining activities.

Relationship to Federal and Adjacent State Rules

The Department is not aware of any requirements similar to this proposed rule being imposed by the federal government or by other states.

Authority to Address the Issue

Pursuant to Oregon Law, the Environmental Quality Commission has the authority and responsibility to take reasonable and necessary steps to prevent pollution and assure protection of the environment and public health. This authority is independent of and in addition to the authorities for regulation of a chemical mine that are administered by the Department of Geology and Mineral Industries pursuant to ORS Chapter 517.

The Reclamation Bond or alternative security required by ORS 517.987 and OAR 632-37-135 for a chemical mining facility is a major factor in providing the desired continuing responsibility and accountability, but may not be sufficient by itself. The bond is intended to provide adequate resources to cover the costs of reclamation and a credible accident. The amount of security required is to be determined at the time permits are issued and adjusted as necessary during site operations. The effectiveness of this requirement for security is only as good as the ability of the agencies to assess the nature of potential problems and the costs of reclamation and restoration. Lack of long term experience with chemical mining activities makes it difficult to confidently estimate the full range of problems that could develop after chemical mining activities have ceased. This bond may not be adequate to address the full range of costs for protection and restoration of the environment if the permittee defaults. It will not cover the full costs to the state if scarce resources must be diverted to oversight of reclamation activities at a failed site. If the amount of the bond were established based upon the worst conceivable scenario rather than the planned or expected costs of reclamation and

closure (with consideration of the environmental protection costs based on the credible accident analysis), bond costs would likely be prohibitive.

Therefore, a way to strike a balance and to add an additional increment of security is to require the parent corporation to stand behind the extraordinary risk rather than rely solely on a bond. Such a requirement would also tend to cause the permittee to exert greater diligence in the operation to minimize liability.

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

This proposed rule was developed by the Department in consultation with the Attorney General's office and members of the EQC. An advisory committee was not used in the development of this rule proposal. The Commission has expressed a desire to consider this rule as soon as practicable so that potential chemical mine permit applicants can reasonably address it in their permit application. One Company has filed a notice of intent to submit a permit application for a chemical mine, therefore time is of the essence. This rule also adds to rules on Chemical Mining that were adopted in September 1992 following extensive public input and debate. An extensive list of potentially interested parties was developed in the earlier rulemaking process and is available for purposes of informing and soliciting input from potentially interested persons.

Summary of Rulemaking Proposal Presented for Public Hearing.

The proposed rule provided that unless an exception is granted by the EQC pursuant to provisions of the rule, 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** the 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.

The rule also defined **control** to mean the possession, directly or indirectly, of the power to direct the management or policies of an entity, whether such power is exercised through one or more intermediary companies or pursuant to a written or oral agreement, and whether such power is established through ownership or voting of securities, or common directors, officers or stockholders, or voting trusts, holding trusts, or debt holdings, or contracts, or any other direct or indirect means.

Summary of Significant Public Comment and Changes Proposed in Response

Testimony was received from 15 people or organizations. Nine supported the rule. Information was provided on problems in other areas to support adoption.

Six persons either said the rule was not needed or strongly opposed it. Oregon's existing stringent laws, rules, and bonding requirements were the most often cited reason why the rule was not needed. Two suggested changes in the event adoption of a rule was pursued.

Attachment A to this report presents the rule with changes proposed in response to testimony. Since the original proposal was an entirely new rule, the amendments shown by underlining and strikeout in the left hand column in Attachment A reflect the changes made in response to comments. The right hand column presents summary discussion of requested changes and the Department's response. (More detailed discussion of testimony is in Attachment E.)

The most significant proposed changes related to "exceptions" (or exemptions) to the requirement that persons or entities in control of the permittee assume liability, and the breadth and definition of the term "control".

Exceptions

Testimony suggested several changes relative to exceptions:

- Change the word "exceptions" to "exemptions" because it would take an entity to whom the rule would otherwise apply out of the rule's reach.

- Change the word "may" to "shall" in the beginning of Section (3) to provide that the Commission shall grant an exception upon entering a finding that a particular chemical process mine does not pose a risk of substantial environmental harm.

- Broaden the basis for an exception to include the normal bond being found adequate or for other good cause as determined by the EQC.

- Add a section to provide that if the permittee or entity assuming liability are "publicly traded", the investors shall not be required to assume liability. Also add a definition for publicly traded.

The Department considered and rejected all but the last of these proposed changes because they would undermine the intent of the rule. The apparent rationale for the last suggestion was that entities have had to demonstrate that they meet rigorous financial and management criteria to become "listed" by the organizations cited in the proposed definition of "publicly traded" and that such listing should be accepted as evidence of an appropriately responsible entity. The Department has obtained summary criteria for listing from the entity offering the testimony (see Attachment G) and supports this addition.

Additional details of the Department's rationale regarding the proposed changes noted above are included in the right hand column of Attachment A and in Attachment E.

Control

Testimony suggested that the definition of "control" was extremely broad, difficult to interpret, may be difficult to comply with, may preclude the ability of a permittee to obtain financing, and may stretch the traditional corporate law interpretation of the term "control". The proposed requirement that ownership or the power to vote 10% or more of the securities of an entity could constitute "control" was specifically questioned.

Testimony suggested changes to the definition that would simplify the wording to make it clear that control means the power to direct the management or policies of the permittee, and that the power to direct arises principally from ownership, directly, indirectly, or through intermediary entities in the permittee. Finally the suggested change indicated that a presumption that control exists arises from the ownership of more than fifty percent of the voting securities of the permittee or the intermediary entities.

The Department agrees that a clearer definition of what constitutes control is appropriate. However, the testimony proposals appear to go too far in allowing persons or entities who may in fact have the power to direct or exercise significant control over the permittee to escape the liability assumption requirements intended in the rule. Therefore, the Department has proposed additional language to clarify when persons or entities may fall within the definition of "control". Specific proposals and discussion appear in Attachment A, pages 5 through 7.

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

The rule is intended to protect the public's interest by providing additional assurance that any permittee will be backed by sufficient assets to assure both short and long term environmental protection measures at a chemical mining site.

A potential chemical mine permittee will be directly affected by the rule. Unless the permittee secures an exception from the EQC based on criteria in the rule, a permit will not be issued without clear assumption of liability by persons or entities who control the permittee. This assumption of liability can be demonstrated by such persons or entities joining as a co-permittee or by other means that may be approved by the EQC, with advice of the Attorney General, as being legally sufficient to protect the interests of the State of Oregon and its citizens.

It is recognized that a permittee is required under other statutes and rules to provide a reclamation bond or alternative security for the purpose of assuring adequate resources for reclamation and restoration. The proposed rule is not intended to substitute for this requirement. Rather it is intended to supplement it and address some of the inherent uncertainty in estimating the amount of a bond when Oregon agencies do not have an experience base for providing such estimates.

If this rule is adopted, the Department will require all permit applicants for chemical mining activities to provide the required demonstrations as part of their permit application. Failure to provide an acceptable demonstration will result in denial of permit issuance by the Department.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule with amendments made in response to public testimony as presented in the left hand column of Attachment A of the Department Staff Report.

Attachments

A. Rule (Amendments) Proposed for Adoption
B. Supporting Procedural Documentation:
    1. Legal Notice of Hearing
    2. Rulemaking Statements (Statement of Need)

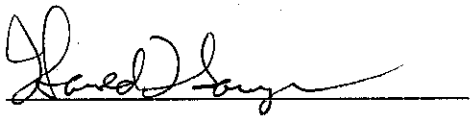
3. Fiscal and Economic Impact Statement
4. Land Use Evaluation Statement

C. Presiding Officer's Report on Public Hearing
D. List of Written Comments Received
E. Department's Evaluation of Public Comment
F. Rule Implementation Plan
G. Summary Criteria for Stock Exchange Listings
H. Additional Background Information that was included with the proposal package regarding the failure of the Summitville mine in Colorado

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Approved:

Section: 

Division: _____

Report Prepared By: Harold Sawyer

Phone: (503) 229-5776

Date Prepared: April 6, 1994

HLS:1

Note: The following rule is an entirely new rule. Additions and ~~[deletions]~~ shown below are proposed changes from the version that went to public hearing, in response to testimony.

Proposed Rule Language with Amendments Based on Testimony	Comments
Permit Conditions on Assumption of Liability ~~[for Substantial Environmental Harm]~~	This suggested amendment emphasizes that the person or entity is required to **assume** liability, rather than be subject to it as a matter of law.
OAR 340-43-025~~[190]~~	Testimony suggested that this amendment be placed in a more logical position within the Department's Rules for Chemical Mining -- After "Permit Required" and before "Permit Application". The Department supports this proposed change.
(1) This rule is necessary for the following reasons:	Testimony proposed relocation of Section (1) to **OAR 340-43-000 Purpose and Policies**, and suggested possible substitution of alternative wording which focused only on the rationale cited in subsection (h). The Department believes it preferable to keep Section (1) clearly attached to the propose rule and therefore rejects this proposed change. Also, the suggested alternative wording does not adequately suggest the rationale for this specific rule.
(a) ORS 468B.015 expresses an extremely strong state policy against pollution of the waters of the state; and (b) ORS 468B.010 declares that the "water pollution laws of this state shall be liberally construed for the accomplishment of the purposes set forth in ORS 468B.015"; and (c) ORS 468B.020 directs the Department to require the use of all available and reasonable methods necessary to achieve the purposes of ORS 468B.015; and	Testimony suggested that subsections (a) through (d) are unnecessary, duplicative, and should be deleted. The Department disagrees. These statements help to describe the basis and rationale for the requirements of the rule and are proposed to be retained.

Proposed Rule Language with Amendments Based on Testimony	Comments
(d) Under ORS 468.065, the Department, in any permit it issues, is required to specify conditions for compliance with the rules and standards adopted by the Environmental Quality Commission pursuant to state law.	
(e) Certain chemical process mines pose an unusual risk of substantial environmental harm.	Testimony suggested that subsections (e) through (i) are unsubstantiated yet common misperceptions and should be deleted because they tilt the field against reasonable exemptions contained in the proposed rule without factual basis.
(f) There is no significant operating history of chemical process mines in Oregon, and experience in other states demonstrates that, at least in some instances, chemical process mines have produced extraordinary environmental harm, and the permittees have escaped responsibility for such harm.	The Department disagrees. The statements in section (1)(e) through (i) of the proposed rule are reasonably supported by experience documented in other states in news reports and literature and serve the purpose of documenting the rationale for seeking additional assurance that those who exercises substantial control over the permittee will assume responsibility and liability for the permitted operation. The Department proposes that the statements be retained in the rule.
(g) It is inherent in the nature of chemical process mining that income from the mining activity will likely cease before the obligations and costs of the permittee, thereby creating a serious risk that pollution will not be abated unless adequate financial safeguards are required.	
(h) The Reclamation Bond or alternative security required by ORS 517.987 and OAR 632-37-135 for a chemical mining facility is intended to provide adequate resources to cover the costs of reclamation and a credible accident. The amount of security required is to be determined at the time permits are issued and adjusted as necessary during site operations. Lack of long term experience with	

chemical mining activities makes it difficult to confidently estimate the full range of problems that could develop after chemical mining activities have ceased. This bond may not be adequate to address the full range of costs for protection and restoration of the environment if the permittee defaults.

(i) It is appropriate to take reasonable steps to assure continuing accountability from those who profit from chemical mining activities.

(2) Unless an exception is granted by the EQC pursuant to section (3) of this rule, and consistent with the provisions of section (4) of this rule, the Department shall require, prior to issuing a permit for a Chemical Mining facility, and as a condition of the permit, that those persons or entities who control the permittee ~~[also]~~ assume liability for ~~[any]~~ environmental ~~[injury]~~injuries, remediation expenses, and penalties~~[which result as a consequence of activities that are associated with the permit]~~.

Testimony suggested that the word "exemption" be substituted for "exception" here and elsewhere in the rule because it would take an entity to whom the rule would otherwise apply out of the rule's reach. The Department does not agree with this proposal. If an "exemption" was granted and persons or entities in control were not required to assume liability under the rule, the word "exemption" could be mistakenly interpreted to imply that the persons or entities in control of the permittee would be exempted from actual responsibility and liability for any problems that later occurred. The Department does not wish to leave any possible room for such an interpretation.

Testimony also suggested adding language to the rule to essentially exempt investors in publicly traded corporations from liability outright. See discussion of this issue later relative to the proposed new section (4).

Testimony also suggested inserting the word "post-closure" to clarify that the rule is intended to only address concerns after

Proposed Rule Language with Amendments Based on Testimony	Comments
	mining activities have ceased. While the Department's concerns are perhaps greater in the post-closure period, the Department did not intend, and does not support limiting the applicability of this rule to the post-closure period. The amendments proposed in the wording are intended to more simply and clearly state the intent.
(3) The EQC may grant an exception to the requirements of section (2) of this rule upon entering a finding that a particular chemical process mine for which a permit is required does not pose a risk of substantial environmental harm. A finding under this section may be based upon one or more of the following factors which are deemed to relate to the risk of substantial environmental harm: (a) Nature of the chemical mining process; (b) Size and scope of the operations; (c) Types of discharges; (d) Sensitivity of the potentially affected environment; (e) Difficulty and costs of implementing remediation measures; (f) Potential for unintentional or unanticipated environmental injury and the potential magnitude of such injury; or	Testimony suggested changing the word "may" to "shall" and changing exception to exemption. The Department does not agree with these suggestions. The intent is to authorize but not mandate an exception. Testimony was also received opposing granting of any exceptions and favoring broadening the exception to include adequate bonding or other cause. Testimony also proposed a new rule section to give the EQC authority to waive the rule, in whole or in part. The Department believes that the current wording properly focuses on environmental factors and strikes an appropriate balance between the opposing views expressed in the testimony. The Department does not support either broadening the grounds for an exception, or totally prohibiting an exception all together, and does not support adding a blanket waiver provision. Testimony also expressed concern for lack of public involvement opportunity in consideration of an exception. While this rule does not include a public involvement provision, other applicable rules do require and assure opportunity for public involvement. First, the rule requires that the control requirements be included as a condition of

Proposed Rule Language with Amendments Based on Testimony	Comments
(g) Long-term operating history for the particular type of chemical process mine.	any permit. Under DEQ rules and the consolidated permit process required by the state Chemical Mining law, public hearings and public input opportunity are required before any permit can be issued. Second, under the rule, only the Commission can grant an exception, and any such action to do so would have to be in a public meeting with opportunity for input.
(4) If any of the securities of the permittee or of an entity assuming liability under Section (2) of this rule are Publicly Traded, the investors of such Publicly-Traded entity shall not be required to assume liability for environmental injuries, remediation expenses, and penalties. As used in this section, "Publicly Traded" means listed on the New York Stock exchange or the American Stock Exchange or designated under the National Association of Securities Dealers Automated Quotations System, Inc. National Market System.	Testimony proposed that an additional section be added to the rule to provide that if any of the securities of the permittee or an entity assuming liability under Section (2) of the rule are "Publicly Traded", the investors of such Publicly-Traded entity shall not be required to assume liability for post-closure environmental injuries, remediation expenses and penalties. A definition was also suggested for "publicly traded". The apparent rationale for this suggestion was that the organizations listed in the definition of "publicly traded" have had to demonstrate that they meet rigorous financial and management criteria to become listed and that listing should be accepted as evidence of an appropriately responsible entity. The Department has obtained summary criteria for listing (see Attachment G) and supports this addition.
(5~~[4]~~) As used in section (2) of this rule, "control" means ~~[the possession, directly or indirectly, of]~~ the power to direct or exercise significant control over the management or policies of the permittee.	The breadth of the original proposed definition of "control" prompted the most comments. The Department agrees that the original proposal was extremely broad, difficult to interpret, may be difficult to comply with, may preclude the ability of a permittee to obtain financing, and may stretch the traditional corporate law interpretation of the term "control".
(a) The power to direct or exercise significant control arises principally from ownership, directly, indirectly or through intermediary entities, of the permittee.	

Proposed Rule Language with Amendments Based on Testimony	Comments
~~[an entity, whether such power is exercised through one or more intermediary companies or pursuant to a written or oral agreement, and whether such power is established through ownership or voting of securities, or common directors, officers or stockholders, or voting trusts, holding trusts, or debt holdings, or contracts, or any other direct or indirect means. A rebuttable presumption that control exists]~~	Testimony suggested amendment of this section to simplify the wording, focus on ownership as the primary means for exercising control, and further specifying that control is presumed to exist with ownership of more than 50% of the securities of the permittee or entity. The Department agrees that simplification is appropriate, but believes the proposal defines control too narrowly and would too easily allow persons or entities with the power to direct or significantly control the permittee to escape liability.
(b) An important indicator of significant control arises from the ownership of or the power to vote~~[, directly or indirectly,]~~ ten percent (10%) or more of the securities of the permittee. ~~[such entity.]~~ Such ownership or voting rights may be either direct or indirect through intermediary entities.	The Department has proposed amendments which seek to define "control" in a somewhat more straight forward way and clarify circumstances that may be deemed to constitute significant control. It defines control to include those persons or entities with the power to direct or significantly control the management or policies of the permittee. It identifies indicators of significant control including shared officers or directors or the ownership or power to vote 10% or more of the securities of the permittee.
(c) An important indicator that significant control exists arises if the entities share a significant number of common directors or officers.	
(d) Individuals who hold status as officers, directors, employees, or agents of the permittee or intermediary entities shall not be deemed to fall under the definition of "control" for purposes of this rule solely as a result of such status.	The 10% number was selected to minimize the opportunity to divide ownership as a means of avoiding falling under the definition of control. For example, if the control was defined to include ownership of more than 50% of the securities as proposed in the comments, all the owners would have to do to avoid the rule is to divide the ownership equally between 3 people.
(e) Commercial lending institutions operating within the scope of their normal business activities shall not be deemed to fall under the definition of "control" for purposes of this rule.	Testimony also suggested specifying that status as an officer, director, employee, agent or lender should not constitute control. The Department understands that mere status as an

officer, director, employee or agent should not cause one to fall within the definition of control. However, if an officer, director, employee, or agent may be deemed to fall under the definition of control if other criteria in the rule are mat.

A statement has also been included to clarify that lending institutions operating within the scope of their normal business activities do not fall under the definition of control.

(6~~[5]~~) The assumption of liability provided for in section (2) of this rule may, at the option of the persons or entities who control the permittee, be accomplished by joining with the permittee as a co-permittee or such other means as the Environmental Quality Commission, with advice of the Attorney General, may approve as being legally sufficient to protect the interests of the State of Oregon and its citizens.

(7~~[6]~~) No permit for a chemical process mining activity shall be transferred without the prior written approval from the Department and full compliance with any applicable rules regarding permit transfer. Such approval may be granted by the Department when the transferee acquires a property interest in the permitted activity or agrees in writing to comply fully with all the terms and conditions of the permit and the applicable statutes and rules and demonstrates to DEQ's satisfaction the ability to fully comply.

Testimony suggested there should be a process for public input on permit transfers. Permit transfer requirements are addressed under two different existing rules, depending on whether the permit is an NPDES permit for discharge to public waters, or a WPCF permit for operation of facilities and disposal of waste without discharge to public waters. The NPDES rules provide that the director may transfer a permit where the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all terms and conditions of the NPDES permit and the rules of the Commission.

The rules applicable to WPCF permits state that permits are issued to the official applicant of record for the activities,

Proposed Rule Language with Amendments Based on Testimony	Comments
	operations, emissions, or discharges of record and shall be automatically terminated within 60 days after sale or exchange of the activity or facility which requires a permit. The implication is clear that the purchaser must apply for a new permit in such instance. This provision of the WPCF rules is difficult to administer because it realistically takes longer than 60 days to issue a permit. This aspect of the WPCF rules is a likely candidate for revision in the future. In order to assure consistency with existing rules governing permit transfer, additional wording will be proposed to point to permit transfer rules. With such a revision, the rule would require the transferred to agree to accept liability, will require written approval of the Department, and will require compliance with existing permit transfer procedures.
(8~~[7]~~) This rule shall apply to all permit applications either pending on or submitted after the effective date of this rule. This rule shall also apply to all transfers pending on or requested after the effective date of this rule and to all persons who control the associated transferee.	This proposed addition is intended to clarify the intent that the rule would fully apply to transferees and persons who control such transferees.

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality — Office of the Director

OAR Chapter 340

DATE:	**TIME:**	**LOCATION:**
March 3, 1994	10:00 a.m.	Dept. of Environmental Quality 811 S. W. 6th Avenue Portland, Oregon Conference Room 3a

HEARINGS OFFICER(s): Peter Dalke

STATUTORY AUTHORITY: ORS 468.020, 468B.010, 468B.015, 468B.020

ADOPT: OAR 340-43-190

AMEND:

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 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.

LAST DATE FOR COMMENT: March 10, 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: Harold Sawyer
ADDRESS: Department of Environmental Quality
811 S. W. 6th Avenue
Portland, Oregon 97204
TELEPHONE: (503) 229-5776 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 _____

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for a
New Rule to Require Persons or Entities who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

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 requires the EQC to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission. ORS 468B.010, 468B.015, and 468B.020 establish the state policy for protection of surface and ground water quality and the authority of the Commission to protect water quality and prevent pollution.

2. Need for the Rule

Experience in other states demonstrates that, at least in some instances, chemical process mines have produced extraordinary environmental harm, and the permittees have escaped responsibility for such harm. The Summitville mine in Colorado is an example of a relatively recent operation where problems developed, the financial assurance provided by the permittee was inadequate, the permittee declared bankruptcy, and the EPA is now initiating cleanup with costs estimated to approach or exceed $60 million.

It is inherent in the nature of chemical process mining that income from the mining activity will likely cease before the obligations and costs of the permittee, thereby creating a serious risk that pollution will not be abated unless adequate financial safeguards are required.

It is common practice for corporations to establish subsidiary corporations for discrete portions of their operation. While there may be many reasons for this practice, one potential result is that the parent corporation may be shielded from liability for actions of the subsidiary. Such shielding could have the effect of reducing the incentive for the subsidiary to do the best possible job in day to day operations to assure prevention of pollution and other problems.

The EQC has determined that it is appropriate to pursue reasonable and additional steps to assure continuing responsibility and accountability from those who profit from chemical mining activities.

Pursuant to Oregon Law, the Environmental Quality Commission has the authority and responsibility to take reasonable and necessary steps to prevent pollution and assure protection of the environment and public health. This authority is independent of and in addition to the authorities for regulation of a chemical mine that are administered by the Department of Geology and Mineral Industries pursuant to ORS Chapter 517.

The Reclamation Bond or alternative security required by ORS 517.987 and OAR 632-37-135 for a chemical mining facility can assist in providing the desired continuing responsibility and accountability, but is not sufficient by itself. The bond is intended to provide adequate resources to cover the costs of reclamation and a credible accident. The amount of security required is to be determined at the time permits are issued and adjusted as necessary during site operations. The effectiveness of this requirement for security is only as good as the ability of the agencies to assess the nature of potential problems and the costs of reclamation and restoration. Lack of long term experience with chemical mining activities makes it difficult to confidently estimate the full range of problems that could develop after chemical mining activities have ceased. This bond may not be adequate to address the full range of costs for protection and restoration of the environment if the permittee defaults. It will not cover the full costs to the state if scarce resources must be diverted to oversight of reclamation activities at a failed site. If the amount of the bond were established based upon the worst conceivable scenario rather than the planned or expected costs of reclamation and closure (with consideration of the environmental protection costs based on the credible accident analysis), bond costs would likely be prohibitive.

Therefore, a way to strike a balance is to require the parent corporation to stand behind the extraordinary risk rather than rely solely on a bond. Such a requirement would also tend to cause the permittee to exert greater diligence in the operation to minimize liability.

3. Principal Documents Relied Upon in this Rulemaking

The following documents were not relied upon in developing this rulemaking proposal, but provide a recent example of a failed chemical mine and support the need for additional steps to assure adequate financial assurances from permittees:

> "Chronologic Site History, Summitville Mine, Rio Grande County, Colorado", Volume I, May 25, 1993; prepared for the Summitville Study Group by Knight Piésold and Co., Consulting Engineers and Environmental Scientists.
>
> "The Summitville Mine: What Went Wrong", by Luke Danielson and Alix McNamara for the Colorado Department of Natural Resources, March 25, 1993.

4. Advisory Committee Involvement

No advisory committee has been involved in the development of this rule proposal. The Commission has expressed a desire to consider this rule as soon as practicable so that potential chemical mine permit applicants can reasonably address it in their permit application. One Company has filed a notice of intent to submit a permit application for a chemical mine, therefore time is of the essence. This rule also adds to rules on Chemical Mining that were adopted in September 1992 following extensive public input and debate. An extensive list of potentially interested parties was developed in the earlier rulemaking process and is available for purposes of informing and soliciting input from potentially interested persons.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
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Fiscal and Economic Impact Statement

Introduction and Assumptions

Proposals for large scale chemical mining operations are new to Oregon. In an effort to clearly establish environmental quality protection expectations in advance of any permit applications for such operations, the EQC adopted rules for Chemical Mining in September 1992. Concern remains, however, relative to the assurances that a permittee will be able to meet long term obligations for a mining operation.

Experience in other states demonstrates that, at least in some instances, chemical process mines have produced extraordinary environmental harm, and the permittees have escaped responsibility for such harm. The Summitville mine in Colorado is an example of a relatively recent operation where problems developed, the financial assurance provided by the permittee was inadequate, the permittee declared bankruptcy, and the EPA is now initiating cleanup with costs estimated to approach or exceed $60 million.

It is inherent in the nature of chemical process mining that income from the mining activity will likely cease before the obligations and costs of the permittee, thereby creating a serious risk that pollution will not be abated unless adequate financial safeguards are required.

It is common practice for corporations to establish subsidiary corporations for discrete portions of their operation. While there may be many reasons for this practice, one potential result is that the parent corporation may be shielded from liability for actions of the subsidiary. Such shielding could have the effect of reducing the incentive for the subsidiary to do the best possible job in day to day operations to assure prevention of pollution and other problems.

The EQC has determined that it is appropriate to pursue reasonable and additional steps to assure continuing responsibility and accountability from those who profit from chemical mining activities.

Pursuant to Oregon Law, the Environmental Quality Commission has the authority and responsibility to take reasonable and necessary steps to prevent pollution and assure protection of the environment and public health. This authority is independent of and in

addition to the authorities for regulation of a chemical mine that are administered by the Department of Geology and Mineral Industries pursuant to ORS Chapter 517.

The Reclamation Bond or alternative security required by ORS 517.987 and OAR 632-37-135 for a chemical mining facility can assist in providing the desired continuing responsibility and accountability, but is not sufficient by itself. The bond is intended to provide adequate resources to cover the costs of reclamation and a credible accident. The amount of security required is to be determined at the time permits are issued and adjusted as necessary during site operations. The effectiveness of this requirement for security is only as good as the ability of the agencies to assess the nature of potential problems and the costs of reclamation and restoration. Lack of long term experience with chemical mining activities makes it difficult to confidently estimate the full range of problems that could develop after chemical mining activities have ceased. This bond may not be adequate to address the full range of costs for protection and restoration of the environment if the permittee defaults. It will not cover the full costs to the state if scarce resources must be diverted to oversight of reclamation activities at a failed site. If the amount of the bond were established based upon the worst conceivable scenario rather than the planned or expected costs of reclamation and closure (with consideration of the environmental protection costs based on the credible accident analysis), bond costs would likely be prohibitive.

Therefore, a way to strike a balance is to require the parent corporation to stand behind the extraordinary risk rather than rely solely on a bond. Such a requirement would also tend to cause the permittee to exert greater diligence in the operation to minimize liability.

The proposed rule provides that unless an exception is granted by the EQC pursuant to provisions of the rule, 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** the 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.

The rule also defines **control** to mean the possession, directly or indirectly, of the power to direct the management or policies of an entity, whether such power is exercised through one or more intermediary companies or pursuant to a written or oral agreement, and whether such power is established through ownership or voting of securities, or common directors, officers or stockholders, or voting trusts, holding trusts, or debt holdings, or contracts, or any other direct or indirect means.

Fiscal and Economic Impacts

General Public

The proposed rule will reduce the potential that the public may have to fund cleanup, closure, and restoration costs for a permitted chemical mining facility.

Large Business

The rule would clarify expectations regarding financial liability, and thus facilitate planning by an applicant.

It is expected that most applicants for a permit for a chemical mine would be classified as a large business. If the applicant is unable or unwilling to comply with the rule, the Department could not issue a permit. The applicant would effectively be blocked from establishing the business.

The rule may have the effect of deterring potential investors in corporations or business ventures associated with the applicant for a chemical mine permit.

Additional costs may be incurred if a permit applicant elects to demonstrate that an alternate form of security is equivalent.

Small Business

It is assumed that the applicant for a permit to operate a chemical mine would most likely not be a small business. However, establishment of a large scale chemical mining facility would be expected to increase business opportunities for small businesses in the area. Anything that would make it more difficult for the chemical mine to open could be viewed as a negative impact on small businesses. Similarly, anything that would work to assure the economic stability of the chemical mine could protect small businesses from potential losses that could occur if the chemical mine got into economic difficulty.

Local Governments

Local governments often have goals for increasing job opportunities through economic development. They may view a proposed chemical mine as an asset because of the potential to create jobs and increased business for local firms. Thus, they may view the proposed rule as a potential deterrent to achieving their goals.

Failure of a chemical mining operation, once established, would have a negative effect on the local economy. Thus, a rule which helps assure long term financial integrity may be viewed as a plus.

State Agencies

Under current law, state agencies are able to recover the costs of permit issuance and regulation from the permittee of a chemical mine. The proposed rule would not affect this. However, it could reduce the costs to an agency that would be experienced if the company operating the mine were to default or go bankrupt. The extent of such cost reductions are impossible to estimate.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for a
New Rule to Require Persons or Entities who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

Proposals for large scale chemical mining operations are new to Oregon. In an effort to clearly establish environmental expectations in advance of any permit applications for such operations, the EQC adopted rules in September 1992. Concern remains, however, relative to the assurance that a permittee will be able to meet long term obligations for a mining operation.

The EQC has determined that it is appropriate to take reasonable and additional steps to assure continuing accountability from those who profit from chemical mining activities.

Experience in other states demonstrates that, at least in some instances, chemical process mines have produced extraordinary environmental harm, and the permittees have escaped responsibility for such harm. The Summitville mine in Colorado is an example of a relatively recent operation where problems developed, the financial assurance provided by the permittee was inadequate, the permittee declared bankruptcy, and the EPA is now initiating cleanup with costs estimated to exceed $60 million.

It is inherent in the nature of chemical process mining that income from the mining activity will likely cease before the obligations and costs of the permittee, thereby creating a serious risk that pollution will not be abated unless adequate financial safeguards are required.

It is common practice for corporations to establish subsidiary corporations for discrete portions of their operation. While there may be many reasons for this practice, one potential result is that the parent corporation may be shielded from liability for actions of the subsidiary. Such shielding could have the effect of reducing the incentive for the subsidiary to do the best possible job in day to day operations to assure prevention of pollution and other problems.

The EQC has determined that it is appropriate to pursue reasonable and additional steps to assure continuing responsibility and accountability from those who profit from chemical mining activities.

Pursuant to Oregon Law, the Environmental Quality Commission has the authority and responsibility to take reasonable and necessary steps to prevent pollution and assure protection of the environment and public health. This authority is independent of and in addition to the authorities for regulation of a chemical mine that are administered by the Department of Geology and Mineral Industries pursuant to ORS Chapter 517.

The Reclamation Bond or alternative security required by ORS 517.987 and OAR 632-37-135 for a chemical mining facility can assist in providing the desired continuing responsibility and accountability, but is not sufficient by itself. The bond is intended to provide adequate resources to cover the costs of reclamation and a credible accident. The amount of security required is to be determined at the time permits are issued and adjusted as necessary during site operations. The effectiveness of this requirement for security is only as good as the ability of the agencies to assess the nature of potential problems and the costs of reclamation and restoration. Lack of long term experience with chemical mining activities makes it difficult to confidently estimate the full range of problems that could develop after chemical mining activities have ceased. This bond may not be adequate to address the full range of costs for protection and restoration of the environment if the permittee defaults. It will not cover the full costs to the state if scarce resources must be diverted to oversight of reclamation activities at a failed site. If the amount of the bond were established based upon the worst conceivable scenario rather than the planned or expected costs of reclamation and closure (with consideration of the environmental protection costs based on the credible accident analysis), bond costs would likely be prohibitive.

Therefore, a way to strike a balance is to require the parent corporation to stand behind the extraordinary risk rather than rely solely on a bond. Such a requirement would also tend to cause the permittee to exert greater diligence in the operation to minimize 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.

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?**

Yes XX No____

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

These rules do not directly affect land use but do apply to air and water permit activities that have been determined land use programs under DEQ's State Agency Coordination Program.

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

Yes XX No____ (if no, explain):

Existing procedures for permit activities require that applicants obtain approval of a land use compatibility statement from local government which is submitted as part of a permit application.

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.

Not Applicable

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not Applicable

Division	Intergovernmental Coord.	Date

State of Oregon
Department of Environmental Quality Memorandum

Date: March 4, 1994

To: Environmental Quality Commission

From: Peter Dalke

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: March 3, 1994, beginning at 10:00 a.m.

Hearing Location: Conference Room 3a
Department of Environmental Quality
811 S. W. 6th Avenue
Portland, Oregon

Title of Proposal: Rulemaking Proposal for a New Rule to Require Persons or Entities who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

The rulemaking hearing on the above titled proposal was convened at approximately 10:05 a.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed. People were also advised that March 10, 1994 was the deadline for submittal of written testimony.

Four people were in attendance, 2 people signed up to give testimony.

People were then called to testify in the order of receipt of witness registration forms and presented testimony as noted below.

Larry Tuttle, Executive Director of the Oregon Natural Resources Council, 522 S. W. 5th Avenue, #1050, Portland, OR 97201, indicated he may also submit written information for the record. He indicated that Concerned Citizens for Responsible Mining would be submitting a written statement for the record.

He stated his support for the rule as written, noting that it is an important and logical next step. He stated that the taxpayers of the state are the likely end holders of a lot of the

financial responsibility if mining is not conducted in a way that protects the environment. He called attention to a current example of a parent corporation trying to avoid responsibility for water quality standards violations caused by its subsidiary mining operation in Montana -- Pegasus Gold Corporation and its wholly owned subsidiary Zortman Mining, Inc. He indicated that this is the type of situation that should be avoided in Oregon. Responsible parties should be identified up front, should assume financial responsibility up front, and should not be able to transfer ownership without full approval of all agencies or a new permitting process. He submitted copies of recent newspaper articles, a legal memorandum documenting the matter, and other related information for the record.

Mr. Tuttle also identified an additional area for potential rulemaking consideration. This had to do with the splitting of ownerships and the patenting of mining claims. As an example, he noted that the original mining claims at the proposed Grassy Mountain mine were accumulated by Atlas Mining Co. The claims were then sold or leased to Newmont Mining Corporation of Denver, Colorado, and now the mining operation will be conducted by a wholly owned subsidiary Newmont Grassy Mountain Corporation. In addition to these three entities involved at the site, records indicated that a forth corporation -- Sherry and Yates, Inc., a Montana Corporation -- is applying for the patent on the land for the area of the pit. This raises an issue regarding the change of land title that should be explored by the EQC. Mr. Tuttle submitted a copy of the notice of application for mining patents for inclusion in the record.

Mr. Tuttle also asked that the EQC consider as part of this process or a separate process rulemaking to provide for findings by the Department or Commission that a mining company, based on its past operating, regulatory and closure history, has a report card that is suitable for a company operating in Oregon. He indicated he would submit additional information on the issue if the Commission desires to pursue it.

The exhibits submitted by Mr. Tuttle are attached as exhibit 1.

Tom Barrows, 1945 High Street S.E., Salem, OR 97302, representing Northwest Mining Association, read a statement into the record. The statement is attached as exhibit 11. In summary, his statement urged rejection of the proposed rule in its entirety. Oregon citizens are already protected from problems such as those that occurred at Summitville in Colorado by stringent safeguards and standards. He indicated that the proposed rule is contrary to

corporate law and is potentially unconstitutional. It is coercive in tone. He further indicated that the concept of "piercing the corporate veil" was considered by the legislature in 1991 and rejected.

Mr. Barrows identified changes that should be made if the Commission pursues the rule. These included the ability to grant an exception to the rule requirements if the normal bonding is found to be adequate or for other good cause, and that the sweeping scope of the definition of "control" be narrowed and clarified considerably.

There was no further testimony and the hearing was closed.

Attachments: (Copies are available upon request.)

Exhibit 1 -- Documents Submitted by Mr. Tuttle

Exhibit 11 -- Statement Submitted by Mr. Barrows

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

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for a
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Index of Written Testimony

No.	Page	Date Received	Document Description
1.	1	February 2, 1994	Letter dated January 31, 1994, from Orval R. Layton, P.O.Box 478, Lakeview, OR 97630-0029, supporting rule adoption.
2.	2	February 3, 1994	Letter (undated) from Randy Hinke, President Josephine County Sourdoughs, P.O.Box 1495, Grants Pass, OR 97526, stating that the proposed rule attaches liability unfairly and fails to assume that the consumer profits as well as the producer. Also, Mr. Hinke requested that a hearing be held in Grants Pass to cover Southern Oregon.
3.	3	February 3, 1994	Letter dated January 31, 1994, from Mike Quigley, 2009 Red Rock Lane, Bend, OR 97701, supporting the proposed rule.
4.	4	February 18, 1994	Letter dated February 18, 1994, from Beverly Stone, HC60 Box 1954, Quartz Mountain, Lakeview, OR 97630, stating that no exceptions to the proposed rule requirements should be considered, that a high up front bond should be required, that a tax should be imposed on each ounce of mineral recovered to cover the cost to the state of monitoring mining and groundwater.
5.	6	February 24, 1994	Letter dated February 22, 1994, and Statement from U.S. Dept. of the Interior, Bureau of Mines, Western Field Operations Center, East 360 3rd Avenue, Spokane, Washington 99202-1413. The statement questions the basis for statements in the rule.
6.	9	March 4, 1994	Letter dated 2/19/94 from Geoffrey Garcia, Consulting Geologist, 123 Galice Road, Merlin,

			OR 97532, urging passage of the proposed rule (because it is time that the state who controls companies through permits and regulations should be held responsible for the expenses they incur on the companies).
7.	10	March 4, 1994	Letter dated March 1, 1994, from Richard H. Wheeler, Forest Hydrologist, Forest Hydrology Northwest, 5013 SE 22nd St., Gresham, OR 97080-9125, strongly opposing the rule. Using Summitville as an example of need fails to recognize harsh environmental conditions or changes in technology. The state has authority for bonding, and 4 agencies regulate mining. The rule is not needed if agencies enforce the regulatory powers they already have. The rule also fails to recognize that others besides the company and its shareholders profit (medical/dental industry, aerospace industry, electronics industry, jewelry industry, etc.). Regulatory agencies are not held accountable for their failure to regulate. Holding a company responsible for "any" environmental injury will have a chilling effect on mining and does not recognize the ability of natural resources to recover from stress.
8.	12	March 9, 1994	FAX letter dated March 9, 1994, from Alan Glaser, Malheur Mining Corporation, HCR 60 Box 19, Huntington, OR 97907, stating that the rule as written will stop mining. If DEQ wishes to protect the environment and allow a diversified economic base, the term "control" on page 5 of the rule will have to be revised to make it less encompassing and apply only to the parent corporation and not stockholders. A "fact sheet" was included with the letter.
9.	15	March 9, 1994	Letter dated March 4, 1994, from Bhagwati Poddar, Ph.D., Rt. 4, Box 342, Astoria, OR 97103, supporting adoption of the rule but without the authority for the EQC to grant an exception.
10.	16	March 9, 1994	Letter dated March 9, 1994 from Larry Tuttle, Executive Director, Oregon Natural Resources Council, 522 S.W. 5th Avenue, Suite 1050,

			Portland, OR 97204, submitting an additional newspaper article to supplement his oral testimony regarding the Pegasus Gold Corporation and the Zortman-Landusky mine. Also included was a newspaper article regarding the New World Mine near Yellowstone National Park and the attempts by Noranda, Inc. to escape risk.
11.	19	March 9, 1994	Letter dated March 1, 1994 from Gary W. Brown, Concerned Citizens for Responsible Mining, P.O. Box 957, Ontario, Oregon 97914, supporting the proposed rule and transmitting various newspaper articles and documents. The letter cites three examples of attempts by corporations escape liability or their reluctance to be accountable for environmental damage. He cites an example of an acid generation problem at Newmont's "showcase" Rain Mine in Nevada. Mr. Brown notes that the proposed rule should provide for public review of exemptions and permit transfers.
12.	44	March 10, 1994	Letter dated March 8, 1994, from Jay Eric Jones, 17426 S.E. Powell, Portland, OR 97236, expressing general support for the proposed rule. Exceptions should be granted only in rare cases; an examination of the permittee's operations in other states should be conducted.
13.	45	March 10, 1994	FAX copy of letter dated March 10, 1994, from Northwest Mining Association, 10 N. Post St., Ste. 414, Spokane, WA 99201-0772. Original Copy received March 14, 1994. Letter expresses the view that the proposed rule is unjustified because of Oregon's very stringent regulatory scheme, and would appear to be illegal because it would contradict the Oregon constitution and related law pertaining to corporations. The letter identifies changes that should be made to the rule if adoption is pursued. These include authority for the EQC to grant an exception to the requirements if the normal bond is found to be adequate, and revision of the definition of "control" to narrow and clarify the scope. The letter expresses the view that the current definition would probably fail to survive judicial

			challenge. In summary, the letter states that the proposed rule is unreasonable, unjustified, and unacceptable in its current form.
14.	48	March 10, 1994	Letter dated March 10, 1994, from Jay T. Waldron, Schwabe, Williamson & Wyatt, Pacwest Center, Suites 1600-1950, 1211 S.W. Fifth Avenue, Portland, OR 97204-3795, on behalf of Newmont Mining Corporation. The letter states that Oregon's comprehensive chemical process mining laws and regulations adequately address concerns expressed in the explanation and summary of the proposed rule. ORS Chapter 468 may not provide a proper basis for the EQC to adopt the proposed rule. If the EQC decides to adopt a rule, detailed revisions are suggested which provide assumption of liability requirements for persons or entities with the power to direct the management or policies of the permittee. The definition of "control" focuses primarily on ownership with a presumption that those who won over 50% of the permittee "control" the permittee. This approach is consistent with requiring a significant owner to assume the liability and eliminates problems created by the proposed rule's possible incidental application to operators, managers, employees, lenders, and investors who do not in fact have the power to control a permittee.
15.	60	March 11, 1994	Letter dated March 4, 1994 and postmarked March 8, 1994, from Dwight and Lynn Mims, P.O. Box 308, Burns, OR 97720, supporting the proposed rule. The letter states that they oppose cyanide heap leach mining, but believe it cannot be stopped, therefore it must be closely watched.

Department of Environmental Quality

Rulemaking Proposal for a
New Rule to Require Persons or Entities who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

Response to Comments

Two people offered oral and written testimony at the public hearing on the rule proposal. Written comments were received from fifteen people, including supplemental information offered by the two who submitted oral testimony. Nine persons expressed support for the proposed rule. Three persons stated clear opposition to the rule, three persons implied opposition to the rule or questioned the need. Suggestions for modification of the rule proposal were submitted by two persons.

The comments received are grouped into six (6) categories for response.

1. Need

Two persons cited Oregon's existing stringent law, rules, and bonding requirements for Chemical Mining as evidence that the proposed rule is not needed. [13,14] Four persons implied or stated that environmental problems would not occur at chemical mining facilities if the state properly enforces current mining laws and regulations. [5,7,12,13] Two suggested that state regulatory agencies caused the problems encountered at the Summitville Mine in Colorado by their failure to act. [7,13] Two suggested that regulatory agencies should be held responsible. [6,7] One person cited the development of an acid generation problem at Newmont's showcase Rain Mine in Nevada as an example of need for a rule. [11]

Response

Clearly, the intent of Oregon's laws and rules governing chemical mining is to **prevent** environmental problems from occurring in the first place and to minimize the potential need for later cleanup or remediation. The intent of the laws and rules is that regulatory agencies should not permit a mining operation without reasonable assurance that the operation can and will be conducted in a manner that will protect the environment, public health and safety. The further intent is that mining permittees be held fully responsible and liable for the consequences and any environmental damage caused by their operation -- without regard to regulatory actions that may be taken by the state. Once permits are issued, the permittee is the only one that can prevent problems from developing. Regulatory agencies can

do little to prevent problems; they can only react to the failure of the permittee to prevent them and require the permittee to correct them.

In the case of the Colorado Summitville mine, whether the state regulatory agencies acted or not, the Company should have ceased operations until problems were corrected. They did not. In hindsight, one can question whether the persons or entities in control of the operation had any belief or understanding that they or the permittee could be held responsible or liable for their actions. One purpose of the proposed rule is to make it very clear "up front" that the permittee, and those who control the permittee, are accountable and liable for their actions. Therefore, to minimize risks, continuous prudent actions must be taken to prevent problems and correct problems.

Another issue that prompts the proposed rule is providing reasonable assurance that the permittee, or those controlling the permittee, will be around and able to respond when and if an "unanticipated" problem occurs, particularly after the mining operation is terminated. The example of the acid generation problem that has developed at the Newmont Rain Mine in Nevada is a case in point. No one expected such a problem to occur -- neither the mining company experts nor the regulators. Once it became evident (during active mining operations), the company took action to capture the acid drainage and prevent downstream damage, and to reduce water infiltration into the waste rock pile so as to minimize acid generation. They also revised their operation to encapsulate newly placed waste rock that was deemed to have the potential to produce acid. The Company's response appears to have been prompt and appropriate. The long term effectiveness of their corrective actions, however, will be revealed over time.

The question is, what would have occurred if the acid generation problem had not become visible until one, two or three decades after mining operations had ceased? Since the experts did not believe such a problem was possible, would the post-closure bond have been established at a level adequate to cover response costs? Would the permittee still be around to take corrective action? Or would the taxpayers of the state or nation be expected to pick up the cost?

The proposed rule is intended to add a small measure of additional security to that provided by the current stringent regulatory requirements included in the permitting process and bond. Under the proposed rule, a permit will not be issued by DEQ unless the persons or entities who control the permittee and profit from the mining operation are willing to provide reasonable assurance to the public that they assume full responsibility and liability for the operation and any adverse long term effects it may cause.

Two persons stated that the justification statements included in Section (1) of the proposed rule are unsubstantiated or faulty. [5,14] As evidence of justification for the rule, two persons submitted documentation of current situations where parent corporations are attempting to distance themselves from responsibility for environmental problems at facilities operated by subsidiaries in which they have a significant or controlling interest. [10,11]

Response

The newspaper articles and other documents submitted regarding the Zortman mine in Montana clearly indicate that there is validity to the general concern that entities in "control" of the permittee for a chemical mining operation accept responsibility and liability. Assuming the newspaper articles and other documents are reasonably accurate, the parent corporation (Pegasus) is disavowing any responsibility for water quality standards violations caused by its wholly owned subsidiary (Zortman). Articles state that the two corporations share the same officers, communications to the regulatory agency regarding the mine come from both corporations, profits are passed through to the parent corporation, and the parent corporation is the one that posted a bond increase for the subsidiary. The articles clearly raise a question regarding who is really in control of the Zortman mine. At a minimum, the efforts of the parent to secure a legal ruling that is has no responsibility for its wholly owned subsidiary should be expected to cause the public (and regulatory agencies) to be concerned about who is in control, responsible, and liable.

The department believes the statements in section (1)(e) through (i) of the proposed rule are reasonably supported by experience documented in other states in news reports and literature and serve the purpose of documenting the rationale for seeking additional assurance that those who control the permittee will assume responsibility and liability for the permitted operation.

2. Legal Basis

One person suggested that ORS Chapter 468 may not provide proper basis for adopting the proposed rule. [14] Two people questioned the legal basis for the rule and suggested that it may contradict the Oregon constitution and laws pertaining to corporations or that existing corporate law addresses concerns cited as need for the rule. [13,14] One person suggested that the rule is inappropriate because during debate on the chemical mining law in 1991, the legislature considered the concept and need to 'pierce the corporate veil' and rejected the idea for good cause. [13]

Response

The department does not agree with the expressed concern that ORS Chapter 468 may not provide a proper basis for adopting the proposed rule. The rulemaking authority of the Commission as set forth in ORS Chapters 468 and 468B is broad enough to support adoption of the proposed rule. Legal counsel has reviewed the proposed rule and has not expressed concern about the authority for such a rule.

Similarly, legal counsel has not advised of any constitutional concern regarding the proposed rule. The rule was carefully drafted to require persons in control to **assume** liability and provide satisfactory evidence of that assumption as a prerequisite and condition for obtaining a permit from the Department. (Potential legal issues related to the definition of the term "control" will be discussed later in section 5.)

Whether a legislative committee considered and rejected the concept and need to "pierce the corporate veil" in 1991 may not be important in and of itself. One can question whether the legislative committee would reach the same conclusion today in light of new information regarding current experiences such as the dispute in Montana regarding Pegasus and its subsidiary Zortman. In any event, discussion and rejection of a concept in the legislative process is not an expression of legislative policy. It would take explicit legislative action to preclude use of a concept as a means of implementing established legislative policy direction.

The EQC has repeatedly expressed a desire to establish the requirements and expectations for chemical mining operations prior to receiving a permit application so that all parties understand what is necessary to protect the public interest and assure appropriate short and long range environmental protection. The proposed rule addresses an issue that was raised repeatedly during the rulemaking process in 1992 but deferred for later consideration.

3. Fairness

One person suggested that other types of mining pose risks as great as chemical process mining, but are not targeted by the rule. [5] Two people suggested that the rule is unfair because it assigns liability to the mining company and does not stretch to the people who profit from use of the metal (dentists, electronics industry, jewelers, etc.) [2,7]

Response

It is true that other types of mining operations are not targeted by the proposed rule. In 1991, the legislature adopted special legislation relating

to chemical process mines -- operations which use chemicals to dissolve metals from metal bearing ore. This legislation established special procedures and requirements for this class of mining operations that are not applicable to other types of mining operations. For a variety of reasons, the legislature deemed it reasonable and appropriate to regulate this type of mining operation in a more rigorous manner consistent with the assumption that such operations pose a greater risk to the public and the environment than other types of mining. The proposed rule is a further step in assuring that the intent of the 1991 legislation is carried out.

The department does not agree with the opinion that the rule is unfair because it does not assign liability to the ultimate consumers of the recovered metal. One would expect the mining company to pass the full costs of meeting its environmental protection and financial responsibility requirements on to consumers through the price of its product.

4. Process

One person noted that the proposed rule does not provide for public involvement on exceptions or public review of permit transfers. [11] One person stated that hearings should be held on permit applications. [12]

Response

The proposed rule adds to a comprehensive set of Chemical Mining Rules adopted by the EQC in September 1992. The 1992 rules refer to established permit application review and issuance procedures in OAR Chapter 340, Divisions 14 and 45. In addition, the 1991 Chemical Mining Law requires a consolidated permit application and a coordinated and consolidated process for public notice, public hearings, and public input on all state agency issued permits. Thus, if the proposed rule is adopted, any proposed determination on an exception will be subject to public scrutiny and input before the determination would become final and a permit issued.

Permit transfer requirements are addressed under two different existing rules, depending on whether the permit is an NPDES permit for discharge to public waters, or a WPCF permit for operation of facilities and disposal of waste without discharge to public waters. The NPDES rules provide that the director may transfer a permit where the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all terms and conditions of the NPDES permit and the rules of the Commission. The rules applicable to WPCF permits state that permits are issued to the official applicant of record for the activities, operations, emissions, or discharges of record and shall be automatically terminated within 60 days after sale or exchange of the activity or facility which

requires a permit. The requirement is clear that the purchaser must apply for a new permit in such instance.

The proposed rule contains a section on permit transfers that extracts language from the NPDES permit transfer rule. The proposed language does not fit well with the WPCF process. In addition, the WPCF permit transfer process is difficult to administer because 60 days is not adequate for issuance of a new permit. This aspect of the WPCF rules is a likely candidate for revision in the future.

In order to assure consistency with existing rules governing permit transfer, additional wording will be proposed to point to permit transfer rules. With such a revision, the rule would require the transferred to agree to accept liability, will require written approval of the Department, and will require compliance with existing permit transfer procedures.

5. Wording

Several people questioned wording of portions of the proposed rule, or suggested modification of wording. Following are the significant suggestions and responses.

One person suggested that the title for the proposed rule be revised to emphasize that the person or entity is required to assume liability, rather than be subject to it as a matter of law. [14]

Response

The suggested amendment is as follows:

> Permit Conditions on Assumption of Liability ~~[for Substantial Environmental Harm]~~

The proposed change appears reasonable, and the Department supports its adoption.

Since the proposed rule imposes a condition that must be met in order for a permit to be issued, renumber the proposed rule from 340-43-190 to 340-43-025 so that it appears in a more logical location in the exiting rules. [14]

Response

The Department agrees that the suggested renumbering is appropriate. This would place the rule in a more logical position after a rule titled "Permit Required" and before the rule titled "Permit Application".

In Section (1) of the proposed rule, the justification statements in subsections (a) through (d) are unnecessary and duplicative; The statements in subsections (e) through (i) express unsubstantiated, yet common misperceptions of Chemical Process Mines. It was suggested that the findings of Section (1) be deleted, in its entirety. If findings are necessary, they should be added to OAR 340-43-000 Purpose and Policies. Wording for such an addition was suggested. [14]

Response

Section (1) of the proposed rule was intended to leave a clear record of the rationale for the requirements imposed by the remainder of the rule and provide assistance in interpretation and application of the rule. While some of the statements may be viewed as duplicative of existing law and policy, the citations are considered appropriate to add clarity. The Department does not agree with the statement that the justification statements are either unsubstantiated or misperceptions. The Department believes the statements in section (1)(e) through (i) of the proposed rule are reasonably supported by experience documented in other states in news reports and literature and serve the purpose of documenting the rationale for seeking additional assurance that those who control the permittee will assume responsibility and liability for the permitted operation.

The Department does not agree with the suggestion that the section be deleted entirely, or that a partial replacement be located elsewhere in the Purpose and Policies section of the existing rules. Such a separation detracts from the purpose of clarifying the rationale for this particular rule.

Wording of Section (2) should be amended as follows:

(2) Unless an exemption ~~[exception]~~ is granted by the EQC pursuant to section (3) of this rule, the Department shall require, prior to issuing a permit under this rule and as a condition of the permit, that those persons or entities who control the permittee ~~[also]~~ assume liability for ~~[any]~~post-closure environmental ~~[injury]~~injuries, remediation expenses, and penalties~~[which result as a consequence of activities that are associated with the permit]~~.

The word exemption is preferred because it would take an entity to whom the rule would otherwise apply out of the rule's reach. Addition of "post-closure" makes the rule consistent with expressed concern for the period after a mine closes. The last phrase is unnecessary and can be deleted. [14]

Response

The Department agrees that the last phrase of this section can be deleted. The Department does not agree with the suggested addition of the word

"post-closure". The proposed rule requires those persons or entities who control the permittee to assume liability for environmental injury, remediation expenses, and penalties -- before a permit will be issued. While the Department's concerns are perhaps greater in the post-closure period, the Department did not intend, and does not support limiting the applicability of this rule to the post-closure period.

The Department does not support the proposal to change the word exception to exemption. The word exemption has direct or indirect implications that the Department clearly does not intend. If an "exemption" was granted under the rule and the persons or entities in control were not required to assume liability under the rule, the word "exemption" could be mistakenly interpreted to imply that the persons or entities in control of the permittee would be exempted from actual responsibility and liability for any problems that later occurred. The Department does not wish to leave any possible room for such an interpretation.

Two people strongly stated that the exceptions provided for in sections (2) and (3) of the rule should not be allowed. [4,9] One person stated that exceptions should be granted only in rare cases, after careful study. [12] One person stated that the current exception language is so narrow as to be meaningless and suggested that an exception should be granted if the normal bond is found to be adequate or for "other good cause as determined by the EQC". [13] One person also suggested that the word "may" should be changed to "shall". [14]

Response

Section (2) of the proposed rule requires the persons or entities that control the permittee to assume liability for environmental injury, remediation expenses and penalties before the Department can issue a permit -- unless an exception is granted pursuant to Section (3) of the rule. Section (3) provides that the EQC may grant an exception upon entering a finding that a particular chemical process mine does not pose a risk of substantial environmental harm (emphasis added). Factors to consider in making a finding are included in Section (3). The rule would allow, but not require the EQC to grant an exception. The finding that would be required before an exception could be granted is an environmental finding, not a financial capacity finding.

The Department does not agree with the suggestion to change may to shall. The intent is to authorize but not mandate an exception. The Department believes that the current wording properly focuses on environmental factors and strikes an appropriate balance between the opposing views expressed in the testimony. The Department does not support either broadening the grounds for an exception, or totally prohibiting an exception all together.

The term "control" is too broad, and should be redefined and limited. [8,13,14] It should be redefined to make clear that shareholders and employees are not included. [8,14] One person commented that the rule as written will stop mining because compliance is impossible. [8]

Response

The breadth of the term "control" in the proposed rule prompted the most comments. One person proposed specific amendments as follows:

(4) As used in section (2) of this rule, "control" means ~~[the possession, directly or indirectly, of]~~ the power to direct the management or policies of ~~[an entity, whether such power is exercised through one or more intermediary companies or pursuant to a written or oral agreement, and whether such power is established through ownership or voting of securities, or common directors, officers or stockholders, or voting trusts, holding trusts, or debt holdings, or contracts, or any other direct or indirect means. A rebuttable]~~ the permittee. The power to direct arises principally from ownership, directly, indirectly or through intermediary entities, in the permittee. A presumption that control exists arises from the ownership of more than fifty percent (50%) of the voting securities of the permittee or the intermediary entities. ~~[or the power to vote, directly or indirectly, ten percent (10%) or more of the securities of such entity.]~~

The Department agrees that the original proposal was extremely broad, difficult to interpret, may be difficult to comply with, may preclude the ability of a permittee to obtain financing, and may stretch the traditional corporate law interpretation of the term "control". The Department agrees that simplification is appropriate, but believes the proposal above defines control too narrowly and would too easily allow persons or entities with the power to direct or significantly control the permittee to escape liability. Therefore, the Department proposes to revise the definition of control as follows:

As used in section (2) of this rule, "control" means ~~[the possession, directly or indirectly, of]~~ the power to direct or exercise significant control over the management or policies of the permittee.

(a) The power to direct or exercise significant control arises principally from ownership, directly, indirectly or through intermediary entities, of the permittee. ~~[an entity, whether such power is exercised through one or more intermediary companies or pursuant to a written or oral agreement, and whether such power is established through ownership or~~

~~voting of securities, or common directors, officers or stockholders, or voting trusts, holding trusts, or debt holdings, or contracts, or any other direct or indirect means. A rebuttable presumption that control exists]~~

(b) An important indicator of significant control arises from the ownership of or the power to vote~~[, directly or indirectly,]~~ ten percent (10%) or more of the securities of the permittee. ~~[such entity.]~~ Such ownership or voting rights may be either direct or indirect through intermediary entities.

(c) An important indicator that significant control exists arises if the entities share a significant number of common directors or officers.

(d) Individuals who hold status as officers, directors, employees, or agents of the permittee or intermediary entities shall not be deemed to fall under the definition of "control" for purposes of this rule solely as a result of such status.

(e) Commercial lending institutions operating within the scope of their normal business activities shall not be deemed to fall under the definition of "control" for purposes of this rule.

The added sections are intended to clarify situations that may or may not constitute control. The Department proposed to retain the 10% figure as an indicator of control. This number was selected to minimize the opportunity to divide ownership as a means of avoiding falling under the definition of control. For example, if the control was defined to include ownership of more than 50% of the securities as proposed in the comments, all the owners would have to do to avoid the rule is to divide the ownership equally between 3 people.

One person suggested that a separate section be added to provide as follows: "Status as an officer, director, employee, agent or lender of an entity does not constitute control." [14]

The Department understands that individuals should not be held liable solely as a result of their status as officers, directors, employees, and agents of the permittee. However, if such individuals may be properly deemed to be in control based on other criteria. Such a clarification is proposed to be added to the rule.

The Department also proposes to include a statement to clarify that lending institutions operating within the scope of their normal business activities do not fall under the definition of control.

One person proposed addition of a section which provides that investors should not be liable if the company is publicly traded. A definition of publicly traded was also suggested. [14]

Response

The apparent rationale for this suggestion was that the organizations listed in the definition of "publicly traded" have had to demonstrate that they meet rigorous financial and management criteria to become listed and that listing should be accepted as evidence of an appropriately responsible entity. The Department has obtained summary criteria for listing (see Attachment G) and supports this addition.

One person suggested adding a section to the rule which would read as follows:

This condition may be waived in whole or in part, if the EQC determines that it is not necessary for the protection of the quality of the environment and public health in Oregon. [14]

Response

It is unclear what the word "condition" refers to. Whether it is intended to allow waiver of the requirements of the entire rule, or just some portion of the rule, the Department opposes its inclusion.

6. Miscellaneous Comments

One person questioned the basis for the economic analysis and noted that it should state that small business cannot afford costs to become permitted. Also, it should note that small business would benefit from public remediation of a mine site. [5]

Response

The fiscal and economic impact statement clearly notes the applicant for a permit to operate a chemical process mine would likely **not** be a small business. While it is possible that small businesses could be involved in remediation at a mine site, it is difficult to see any net public benefit to be derived from the creation of a problem that requires remediation.

One person commented that the proposal fails to recognize dramatic improvements in technology by the mining industry. Also, the rule fails to recognize ability of natural resources to recover from environmental stress. [7]

Response

The Department understands that technology in the mining industry is evolving, as are regulatory requirements. There is no evidence that today's mining technology eliminates environmental problems. Similarly, there is no evidence that natural processes will noticeably ease the environmental problems resulting from mining operations.

One persons suggested that the statement in the descriptive materials that "bond costs would likely be prohibitive" has been viewed by some as an attempt to discourage legitimate legal challenged of a potentially unconstitutional rule. [13]

Response

The statement in the staff report refers to the potential cost of providing a reclamation bond or alternative security that is large enough to cover every potentially conceivable problem that could become apparent at a permitted facility after closure. The Department does not understand how this statement has any relationship to any potential challenge of the proposed rule.

One person suggested that a tax be imposed on each ounce of metal recovered to pay the state for monitoring of the site and that a high up-front bond should be required because company names change and are hard to track. [4]

Response

The issue raised in this comment is one that would have to be addressed through legislation.

In oral testimony, one person urged that the matter of ownership, sale, leasing and patenting of claims be addressed in the rule. It was noted that in a case in Oregon, claims have been accumulated by one company, sold or leased to another company, may be mined by a third company, and that yet another company has applied for the patent on the area of the mining pit. [Oral 1]

Response

The comment did not suggest how such a matter should be addressed in the rule. Perhaps the intent was that the owner of the claims be included with persons or entities in control of an operation. If it is appropriate to address this issue in the rules, it should be through a new rulemaking proceeding with appropriate notice regarding the specific proposal.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
New Rule to Require Persons or Entities who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

Rule Implementation Plan

Summary of the Proposed Rule

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.

Proposed Effective Date of the Rule

The rule will become effective upon filing with the Secretary of State.

Proposal for Notification of Affected Persons

A copy of the final rule will be mailed to all known persons known to be considering applying for a permit for a chemical process mine. Notification will also be sent to the Northwest Mining Association and the appropriate Oregon Natural Resource Agencies.

Proposed Implementing Actions

All permit applicants that are subject to the rule will have to address the requirements of the rule in their permit application.

The Department, with assistance of the Attorney General's Office, will evaluate information submitted for compliance with the rule.

Proposed Training/Assistance Actions

No specific training or assistance actions are planned.

SCHWABE, WILLIAMSON & WYATT

MEMORANDUM

TO: Harold Sawyer

FROM: Carmen Calzacorta

DATE: April 1, 1994

SUBJECT: Proposed Rule OAR 340-43-190

Enclosed are the listing standards for the following "blue chip" exchanges and market systems:

1. New York Stock Exchange;
2. American Stock Exchange; and
3. National Association of Securities Dealers Automated Quotations System, Inc. National Market System.

Because of their qualitative listing criteria, securities which are listed or quoted on these three self-regulatory agencies (SRO's) are generally exempt from state securities laws. See ORS 59.025(4)(a) and (b).

Please note that there are other regional or foreign exchanges, such as the Midwest Stock Exchange, Pacific Stock Exchange, Philadelphia Stock Exchange and the Vancouver Stock Exchange and other systems, such as the NASDAQ Market System which are not included in the list, as their listing standards are not on a parity with the "blue chip" SROs.

(SWW2/63246/83299/CMC/565305.1)

NEW YORK STOCK EXCHANGE

LISTING STANDARDS AND PROCEDURES

FOR DOMESTIC CORPORATIONS

New York Stock Exchange Original Listing Standards

Corporations may qualify for listing on the New York Stock Exchange by meeting the following original listing standards.

Minimum Quantitative Standards			
Round-lot Holders[1] (100 shares or more)	2,000	*or* **Total Shareholders**[1]	2,200
		and	
		Average Monthly Trading Volume (most recent 6 months)	100,000
Public Shares	1,100,000		
Public Market Value[2]	$18,000,000		
Net Tangible Assets[3]	$18,000,000		
Pre-tax Income[4]:		*or* **Pre-tax Income**[4]:	
Most recent year	$ 2,500,000	Aggregate for last 3 years*	$6,500,000
and		*and*	
Each of 2 preceding years	$ 2,000,000	Most recent year minimum	$4,500,000
		*All 3 years must be profitable	

[1] The number of beneficial holders of stock held in the name of nominees or depositories will be considered in addition to holders of record. The Exchange will make any necessary check of such holdings.

[2] Value is subject to bi-annual adjustment based upon the value of the NYSE Composite Stock Index as compared with the Index in 1971, the base year. Adjustment is limited to a maximum reduction of 50% to $9,000,000.

[3] While greater emphasis is placed on market value, an additional measure of size is $18,000,000 in net tangible assets.

[4] Demonstrated earnings power before federal income taxes and under competitive conditions.

New York Stock Exchange Corporate Governance

Aside from the minimum NYSE quantitative standards, other factors are taken into consideration when determining eligibility for listing. The New York Stock Exchange requires certain criteria be met with respect to outside directors, audit committee composition, voting rights and related party transactions. The following is a summary of these policies:

Outside Directors:
New York Stock Exchange companies must have a minimum of two outside directors. For those companies which do not have outside directors at the time their eligibility for listing has been approved, the Exchange will normally require one outside director to be appointed prior to listing, and a second within one year after listing.

As a guideline, an outside director is a directer who is not an employee, officer or former officer of the corporation or a subsidiary or division thereof, or a relative of a principal executive officer, or who is not an individual or member of an organization acting as an advisor, consultant, legal counsel, etc. receiving compensation on a continuing basis from the company in addition to director's fees. The NYSE encourages discussion with an Exchange representative to clarify any uncertainty with regard to qualification of Outside Directors.

Audit Committee:
Each domestic company seeking to list on the New York Stock Exchange must have an Audit Committee comprised solely of directors independent of management and free from any relationship that would interfere with the exercise of independent judgment as a committee member.

Voting Rights:
The New York Stock Exchange adheres to SEC Rule 19c-4 with respect to shareholder voting rights. The rule states that the New York and American Stock Exchanges, and the NASD, may not permit the listing, or the continuance of listing of a company that issues any security, or takes other corporate action, that has the effect of nullifying, restricting or disparately reducing the per share voting rights of an outstanding class of common stock. The SEC has provided for a number of exemptions under the Rule including companies that had taken such action prior to July 7, 1988, and companies issuing shares in connection with an initial public offering. In its review of a company's eligibility for listing, the Exchange will evaluate any unusual voting provisions associated with a company's securities in light of SEC Rule 19c-4.

Related Party Transactions:
The New York Stock Exchange believes that the review and oversight of transactions between a company and its officers and directors that might be perceived as conflicts of interest, are best left to the discretion of the corporation. However, the Exchange expects companies to discharge their responsibility in this area in an appropriate fashion. For this reason, companies applying to list on the Exchange will be required to confirm that they will appropriately review and oversee related party transactions on an ongoing basis. Though no particular method of oversight is dictated, the Audit Committee or a comparable body could be considered an appropriate forum.

New York Stock Exchange Listing Procedures

For companies that meet the quantitative listing standards, the first step toward listing on the New York Stock Exchange is the confidential review of eligibility performed at the request of the listing candidate. This review is without cost and does not reflect a commitment to list. Upon completion of the review, the NYSE will provide the company with both verbal and written communications relating its official listing status and itemizing any conditions that would need to be satisfied in order to list.

A listing candidate should submit the following items in order to begin the eligibility review process:

- **Corporate Charter** and **By-Laws**
- Sample of **Stock Certificate**
- **Annual Reports** to Stockholders (Last 3 years)
- Latest available **Prospectus** covering a public offering, latest **Form 10-K** and **Interim 10-Q** filed with the SEC
- **Proxy Statement** for the most recent annual meeting
- A **Stock Distribution Schedule**
  - Identification of the number of holders by size of holding, the 10 largest holders of record, including beneficial owners (if known) of holdings of record nominees (note the relationship, if any, to the company of each of these holders) and the geographic distribution of holders. A sample Stock Distribution Schedule has been provided on page 12 of this brochure.
- **Supplemental Information**
  - Summary, by principal groups, of stock owned or controlled by officers, directors and their immediate families, other concentrated holdings of 10% or more and shares held under investment letters. (Proxy or Prospectus may be referenced if current.)
  - Estimate of number of non officer employees owning stock and the total shares held.
  - Company shares held in profit-sharing, savings, pension, or other similar funds or trusts established for benefit of officers, employees, etc. Indicate basis on which employees' participation is allocated or vested, circumstances under which employees may receive company shares, and provision for "pass through" of voting rights to employees or other methods of voting shares.

Listing an Initial Public Offering on the New York Stock Exchange

In 1983, the NYSE developed special listing procedures which enable companies to list concurrently with their initial public offerings. During the next five years, 1983 through 1988, over 250 companies raised over $46 billion going public on the NYSE. While not all companies are in a position to meet NYSE listing standards, of those that do, most list with the New York Stock Exchange.

A New York Stock Exchange listing increases the number of prospective investors in the offering and provides the immediate liquidity and trading visibility that are critical to the post offering aftermarket. In addition, companies listing an IPO on the NYSE are afforded an exemption from most states blue-sky registration requirements, resulting in considerable saving of both time and expense.

Companies wishing to list in conjunction with their initial public offering, must meet all the listing standards of the NYSE. Nevertheless, the NYSE will accept an undertaking from the underwriter that the offering will meet or exceed the NYSE's standards with respect to the number of shares, the market value of shares, and the number of shareholders.

Companies that wish to list in conjunction with their initial public offering should submit the following to facilitate a confidential review of eligibility:

- **Corporate Charter** and **By-Laws**
- Draft **Prospectus** or **Registration Statement**, including financial statements

The NYSE recognizes the timing requirements of IPO's and will work closely with the listing candidate to meet their needs.

New York Stock Exchange Listing Timetable

The following serves as an outline of steps to be taken and a guideline for determining the time involved in effecting an original listing on the New York Stock Exchange. The NYSE will work closely with the company throughout the process to ensure the listing is accomplished in a timely and efficient fashion.

Timing of Domestic Listing Procedure		
Step 1	Confidential eligibility review is requested by listing candidate. The process begins upon receipt of a complete eligibility package.	—
Step 2	A verbal and written communication from the Exchange on eligibility clearance and conditions of listing, should they exist, is given to the company.	*2 weeks*
Step 3	The listing candidate files an original listing application at any time within the six month period following eligibility clearance. Acknowledgement of such will appear in the NYSE Weekly Bulletin the first Friday following receipt of the application.	—
Step 4	Exchange authorization of listing and certification to the SEC of such authorization takes place.	*2 weeks*
Step 5	The Company's securities are admitted to trading. The original listing date is established at the Company's convenience and can be set for a day any time after effectiveness of registration under the Securities Exchange Act of 1934.	*2 weeks*

Listing Guidelines on the American Stock Exchange

Financial Guidelines

	Regular	Alternate
Pre-Tax Income	$750,000 latest fiscal year or 2 of most recent 3 years	—
Market Value of Public Float	$3,000,000	$15,000,000
Price	$3	—
Operating History	—	3 Years
Stockholders' Equity	$4,000,000	$4,000,000

Distribution Guidelines (applies to regular and alternate guidelines)

	Alternative 1	Alternative 2	Alternative 3
Public Float	500,000	1,000,000	500,000
Stockholders	800	400	400
Average Daily Volume	—	—	2,000

Regarding Alternate Listing Guidelines
It is recognized that certain financially sound companies are unable to meet fully the Exchange's regular listing criteria because, for example, of the nature of their business, or because of continuing large expenditures of funds for research and development. Such companies may, however, qualify for listing provided they meet the numerical criteria outlined above, have sufficient financial resources to continue operations over an extended period of time, and are otherwise regarded as suitable for Exchange listing.

Initial Public Offerings
In certain circumstances, the Amex may approve an issue for listing "subject to official notice of issuance" immediately prior to effectiveness of the company's initial public offering.

While the Exchange has not adopted special criteria for IPO's, added emphasis is placed on the company's financial strength and its demonstrated earnings history and/or outlook.

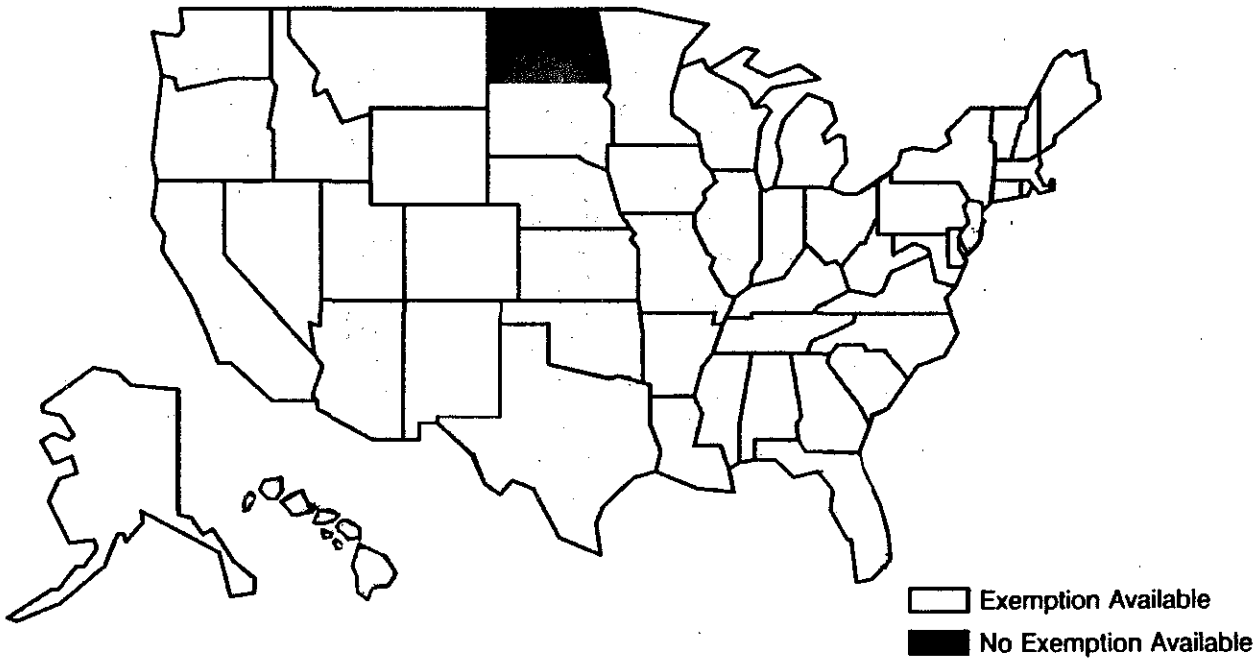
American
Stock Exchange

AMEX

Blue Sky Exemptions

In recognition of the high standards which must be satisfied to list on the American Stock Exchange, nearly every state exempts the securities offerings of Amex-listed issuers from their securities registration requirements. The process of otherwise having to register an issue so that shares can be bought and sold anywhere in the country is both time-consuming and expensive. An unlisted company may pay anywhere from $30,000 to $50,000 in filing fees and legal expenses. Listed issuers thus have a definite advantage over their unlisted counterparts in this regard.

Status of Blue Sky Registration Requirements, Amex Issuers



American
Stock Exchange

AMEX

Summary of Financial Requirements for Initial Listing

Nasdaq Market

Total Assets	$4 million
Total Stockholders Equity	$2 million
Registration under Section 12(g) of the Securities Exchange Act of 1934 or equivalent[1]	Yes
Public Float (Shares)[2]	100,000
Market Value of Public Float	$1 million
Shareholders	300
Minimum Bid Price	$3
Number of Market Makers	2

[1]A temporary, automatic exemption exists for initial public offerings.
[2]Public float is defined as shares that are not "held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding . . ."

Nasdaq National Market

	Alternative 1	Alternative 2
Registration under Section 12(g) of the Securities Exchange Act of 1934 or equivalent	Yes	Yes
Net Tangible Assets[1]	$4 million	$12 million
Net income (in latest fiscal year or 2 of last 3 fiscal years)	$400,000	N/A
Pretax Income (in latest fiscal year or 2 of last 3 fiscal years)	$750,000	N/A
Public Float (Shares)[2]	500,000	1 million
Operating History	N/A	3 years
Market Value of Float	$3 million	$15 million
Minimum Bid	$5	$3
Shareholders		
— if between 0.5 and 1 million shares publicly held	800	N/A
— if more than 1 million shares publicly held	400	N/A
— if more than 0.5 million shares held and average daily volume in excess of 2,000 shares	400	N/A
Number of Market Makers	2	2

[1]Net Tangible Assets means total assets (excluding goodwill) minus total liabilities.
[2]Public float is defined as shares that are not "held directly or indirectly by any officer or director of the issuer and by any person who is the beneficial owner of more than 10 percent of the total shares outstanding . . ."

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for a
New Rule to Require Persons who Control a Chemical Mine Permittee to Assume Liability for Environmental Injury, Remediation Expenses, and Penalties

Additional Background Information

A recent example of a "failed" chemical mining activity in Colorado has been reported in the press, and is documented in at least two reports as follows:

> "Chronologic Site History, Summitville Mine, Rio Grande County, Colorado", Volume I, May 25, 1993; prepared for the Summitville Study Group by Knight Piésold and Co., Consulting Engineers and Environmental Scientists.
>
> "The Summitville Mine: What Went Wrong", by Luke Danielson and Alix McNamara for the Colorado Department of Natural Resources, March 25, 1993.
>
> "The Summitville Saga", by Luke Danielson, vice chairman of Colorado's Mined Land Reclamation Board, and Alix McNamara; an article in the Winter 1994 issue of Clementine published by the Mineral Policy Center, Washington, D.C.

Following is a brief summary of information extracted from these reports:

Site Operator: **Summitville Consolidated Mining Company, Inc.** (SCMCI); A subsidiary of **Galactic Resources Inc.** which is a subsidiary of **Galactic Resources, Ltd.** of British Columbia, Canada.

Galactic Resources, Inc. obtained the Summitville lease in 1984. The Summitville site is located in an historic mining district in south-central Colorado at an elevation of about 11,500 feet. The Summitville site has been intermittently mined since the late 1800's, first by underground methods and more recently by open pit techniques.

Galactic Resources, Inc. conducted pilot-scale cyanide heap leach tests in early 1984 for the extraction of Gold. In late 1984, Summitville Consolidated Mining Company, Inc. (SCMCI) constructed an open pit mine and heap leach pad. The leach pad was a valley

fill design. A french drain network, consisting of gravely rock and drain pipes, was constructed beneath the basin liner. to establish a preferential pathway for subsurface flows that may occur beneath the pad. The french drain system was overlain by a 16 inch thick low-permeability clay liner in the basin. In ascending order above the clay was a leachate collection and recovery system, a synthetic liner, a friction sand layer, a geotextile, and 18-inch layer of crushed, screened ore, and a final coarse layer of ore.

Open pit mining began in 1986, after the initial phase of leach pad construction was completed. Application of leach solution began on June 5, 1986. On June 10, 1986, cyanide solution was detected by the operator in the leak detection system beneath the primary liner. On June 18, a state inspection found cyanide in the french drain solution beneath the secondary liner. SCMCI first identified cyanide in the french drain solution on July 11, 1986. (Note: leaks were not corrected; collected leakage was simply pumped back on to the heap.) Ore production and pad loading continued until October of 1991. Active leaching continued until March 31, 1992.

With the cessation of mining in October of 1991, certain aspects of the site reclamation were undertaken. That same year, the South Cropsy waste area was regraded, topsoiled and seeded. In the summer of 1992, SCMCI began the detoxification of cyanide in the heap. Additional work on the mine and waste disposal areas was also in progress during that summer. Of the 631 disturbed acres on the SCMCI site, 144 acres had been reclaimed and seeded by the end of 1992.

SCMCI filed for Chapter 7 liquidation in the U.S. Bankruptcy Court on December 4, 1992 and announced that it would cease all site operations at Summitville on December 15, 1992. On or about December 4, SCMCI released its lease holdings to the Summitville property. On December 4, 1992, the Colorado Department of Health requested emergency response action from EPA to maintain the Summitville Site. The Colorado Water Quality Control Division (WQCD) and Mined Lands Reclamation Division (MLRD) filed for and received a temporary restraining order on December 11, 1992 ordering SCMCI not to abandon the site. As announced, SCMCI abandoned the site as of midnight on December 15, 1992.

Galactic Resources, Ltd. filed for bankruptcy in Canada on January 26, 1993.

Financial assurances (bond) required of SCMCI was adjusted over the life of the operation. By the fall of 1992, the surety balance was reported to be $4,718,310.

The $4.7 million surety balance consisted approximately of the following components:

- Total Par value of bond based on Bank of America Statement in December 1992 of $1,306,500

- Cash amount remaining in the "Special Reclamation Fund" of $2,500,000. (This amount was forfeited to the State on January 27, 1993, and is currently on deposit with the State Treasurer.)

- Salvage Credit Bond approved by the Board in the amount of $913,801. (This appears to include various Summitville facilities, such as the pumphouse, generator building, and waste water treatment plant.

Since EPA assumed control of the site in December 1992, costs to just maintain the site have run to more than $10 million, at an average cost of $30,000 a day. According to Jim Hanley, EPA remedial Project Manager for Summitville, the ultimate cost of Summitville cleanup is still indefinite. Currently the EPA is considering 30 different cleanup alternatives. The costs for these alternatives run from $20 to $50 million. The choice is expected to be narrowed down by June 1993. The 1994 article by Danielson states that cleanup costs could now reach or exceed $120 million.

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item E
April 22, 1994 Meeting

Title:

Federal Operating Permit Program Fee Rules and Asbestos Survey Rules

Summary:

This rule proposal meets the 1990 Clean Air Act requirements for states to have funding mechanisms to fully fund the direct and indirect costs of permitting major industrial air pollution sources under the Federal Operating Permit Program. It also adds requirements to the Department's asbestos rules in order to gain the Environmental Protection Agency's approval of the Federal Operating Permit Program. Adoption of this permanent rule proposal will ensure the Department has the federally required rules in place to receive approval by November 15, 1994.

Department Recommendation:

The Department recommends that the Commission adopt the rules and related rule amendments regarding the fee structure and procedures for funding the Federal Operating Permit Program; minor housekeeping amendments (including enforcement rules); and the asbestos survey requirements as presented in Attachment A of the Department Staff Report.

Gregg E. Fande — Report Author
John Kowalczyk — Division Administrator
Fred Hansen — Director

April 5, 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: April 5, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item E, April 22, 1994 EQC Meeting

Federal Operating Permit Program Fee Rules and Asbestos Survey Rules

Background

On October 29, 1993 the Commission adopted temporary rules and authorized the Air Quality Division to proceed to permanent rule making on proposed rules which would: 1) establish fees to support the work required to carry out the Federal Operating Permit Program in Oregon; and 2) amend existing asbestos rules to require pre-demolition surveys.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on January 1, 1994. 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 on January 12, 1994.

Public Hearings were held:

February 15, 1994	1:00 p.m.	Bend
February 15, 1994	7:00 p.m.	Medford
February 16, 1994	10:00 a.m.	Springfield
February 16, 1994	10:00 a.m.	Pendleton
February 18, 1994	1:00 p.m.	Portland

with Terri Sylvester and John Kinney serving as Presiding Officers. The Presiding Officers' Report (Attachment C) summarizes the oral testimony presented at the hearing.

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

Written comments were accepted through February 25, 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, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment F.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

A. Fee Rules

Issue this Proposed Rulemaking Action is Intended to Address

The proposed fee rules are a required element of the Federal Operating Permit Program. Major industrial facilities must obtain operating permits in order to release regulated pollutants to the air.

Relationship to Federal and Adjacent State Rules

Federal requirements in the Clean Air Act Amendments of 1990 and EPA promulgated regulations [57 FR 32295, June 29 1992], provide the framework for these rules. EPA requires states to develop funding mechanisms to fully fund the direct and indirect costs of the Federal Operating Permit Program. The federal requirements also include a provision for businesses subject to the program to fund the program. The proposed rules contain a fee structure that meets these federal requirements.

Authority to Address the Issue

Oregon Revised Statutes 468A.315 require the Commission to adopt such rules.

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

Department staff based these rules on the Interim Emission Fee Rules, adopted by the Commission in January, 1992. Department staff worked with the Air Quality Industrial Source Advisory Committee in developing these rules. The Department considered developing entirely new rules. However, the Interim Emission Fee Rules have worked well and staff decided to use the two year's of experience gained in implementing those rules to develop the proposed fee rules.

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

The proposed rules are a required element of the Federal Operating Permit Program submittal package which was due to EPA before November 15, 1993. In order to meet this federal deadline, the Department recommended that the Commission adopt these rules at their October 29, 1993 meeting. The Department then took the rules out to public hearing and is now returning to the Commission to propose permanent rule adoption.

Summary of Significant Public Comment and Changes Proposed in Response

Numerous comments were provided during the Public Comment period. For the most part these comments reflected earlier discussions of the issues by the Advisory Committee. Where clarifications or corrections were identified, the Air Quality Division has amended the proposed rules in response to those comments.

One significant comment related to assessing emissions fees for hazardous air pollutants (not assessed as VOC or PM) since there is a general lack of both testing methods and accepted emissions factors currently available for determining these emissions. It was suggested that other Department approved methods for determining actual emissions be allowed, such as the use of other sources of emissions factors.

This point had been discussed with the Advisory Committee, was provided for in the proposed OAR 340-28-2670(5), and the public was requested specifically to comment on this proposed rule. In discussions with the Committee the Department agreed that its determination of "appropriate methods to demonstrate actual emissions" would be based on several factors. After receiving public comment, and further consideration of the issue by the Air Quality Division, the Department is making its position clear for the record. Where there are no formally recognized methods, or there are technical or cost factors that make testing or direct measurement impractical, an owner/operator may propose, and the Department may approve, use of the best representative data available.

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

The following four categories of fee rules are proposed.

Supplemental Interim Emission Fees

The 1991 Legislature authorized the collection of Interim Emission Fees for 1991 and 1992 calendar year emissions. Rules adopted by the Commission in January 1992 provided the framework for calculating the Interim Emission Fees.

The 1993 Legislature authorized collection of supplemental emission fees of $10.50 per ton based on 1992 calendar year emissions. When combined with the already established Interim Emission Fee, the total fee will be $23.50 per ton. The proposed rules contain procedures for the Department to use to assess and collect this fee. Sources subject to the Interim Emission Fee Program have already reported emissions for 1992 and the Department will use these reports as the basis for assessing this supplemental fee. The Department will send invoices for the Supplemental Interim Emission Fee in December of 1993 with payment due in early 1994.

Permanent Emission Fee

ORS 468A.315 authorizes an emission fee of $25 (in 1989 dollars) per ton. In addition to the $25 per ton, the statute also authorizes the Commission to annually increase the $25 per ton fee by the Consumer Price Index (CPI), if necessary. Based on the Consumer Price Indexes issued since 1989, including the CPI issued on September 1, 1993, the emission fee is

$29.26. Based on the Federal Operating Permit Program Budget, prepared by the Department and approved by the 1993 Legislature, an emission fee of $29.26 is necessary to cover all reasonable direct and indirect costs of implementing the Federal Operating Permit Program. In accordance with ORS 468A.315, this fee becomes effective one year from the date the Department submits the Federal Operating Permit Program to the Environmental Protection Agency. The Department submitted the program on November 15, 1993.

The proposed rules allow sources to elect to pay emission fees on either permitted levels (Plant Site Emission Limit (PSEL)) or on actual emissions. If a source elects to report actual emissions as the basis for fees, the rules provide criteria to determine actual emissions.

Annual Base Fee

In accordance with the statute, all businesses subject to the Federal Operating Permit Program will be assessed an annual base fee of $2,500 (in 1993 dollars). This fee is also subject to the CPI and the Department may return to the Commission in future years if additional fees are necessary to support the program. This fee is also effective one year from the date the Department submits the Federal Operating Permit Program to the Environmental Protection Agency.

User Based Activity Fees

The proposed rules also provide a schedule of fees for major sources subject to the Federal Operating Permit Program and for sources subject to the Air Contaminant Discharge Permit Program (ACDP). The User Based Activity Fees are for the following:

1. New Source Review and Issuance;
2. Source Impact Modeling;
3. Permit modifications;
4. Elective permits and annual compliance fees for synthetic minor sources; and
5. Ambient air monitoring.

The above Activity Fees apply to two types of sources; sources with criteria pollutant emissions and sources with hazardous air pollutant

emissions. The Department proposed the above fees become effective for major sources with criteria pollutant emissions upon filing the proposed rules with the Secretary of State. The Department also proposed the New Source MACT determinations and Hazardous Air Pollutant permit modifications fees become effective for major sources with Hazardous Air Pollutant emissions one year from the date the Department submits the Federal Operating Permit Program to EPA. Where there is more than one fee level for a specific activity, the Department will determine the appropriate fee level.

Amendments to Enforcement Rules

Minor amendments are proposed to the Department's enforcement rules. The proposed changes to OAR 340-12-050, Enforcement Procedures and Civil Penalties for Air, extend the enforcement violations from "interim" emission fee violations to include both violations of the Interim Emission Fee Rules and violations of all the proposed fee rules.

Amendment to Federal Operating Permit Program Rules

In preparing the federally required Attorney General's Opinion certifying that Oregon has full authority to implement the Federal Operating Permit Program, the Attorney General's office identified additional rule language needed to provide full authority. The proposed rules include an amendment to OAR 340-28-2000(2)(b). This amendment covers situations where the Department fails to take a final permit action. It allows an applicant to file a petition for judicial review any time before the Department denies the permit or issues the final permit. It is modeled after the federal rule 40 CFR Part 70.4(b)(3)(xii) (July 21, 1992).

Major Industrial Air Pollution Sources

The operating permit program, as required by federal law, will apply to major industrial sources, as follows:

1. Sources with the potential to emit 10 tons per year (tpy), or more, of any hazardous air pollutant; 25 tpy, or more, of any combination of hazardous air pollutants.

2. Sources with the potential to emit 100 tpy, or more, of any air pollutant.

3. Smaller sources in serious, severe, or extreme non-attainment areas (no currently applicable areas in Oregon).

4. Affected sources under the acid rain provisions.

5. Any source required to have a preconstruction review permit pursuant to the requirements of the Prevention of Significant Deterioration (PSD) program or the non-attainment area, New Source Review (NSR) program.

6. Any other stationary source in a category the Department proposes, in whole or in part. (no other categories proposed currently)

A major source is defined in terms of all emissions units under common control at the same plant site (i.e., within a contiguous area in the same major group, two-digit, industrial classification or supporting the major group industrial classification).

B. Asbestos Inspection Rules

Issue this Proposed Rulemaking Action is Intended to Address

In order to have a fully approvable Federal Operating Permit Program submittal, the Department must have the authority to include all federally applicable requirements in permits. One of these requirements is the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos. While the Commission's existing asbestos rules meet or exceed the federal requirements in most respects, the rules do not include one provision of the federal Asbestos NESHAP relating to asbestos surveys prior to demolition.

Relationship to Federal and Adjacent State Rules

The proposed rule is equivalent to the federal requirements. To receive delegation of a NESHAP program, states must adopt rules which are at least as stringent as the federal rules.

Authority to Address the Issue

ORS 468A.300 through 468A.330 provide authority to adopt the Federal Operating Permit Program, including emission standards and requirements which are necessary for approval of the program.

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

The Department based the proposal on the federal Asbestos NESHAP in response to comments from the Environmental Protection Agency. The proposed survey requirements would apply only to sources subject to the Federal Operating Permit Program. The federal Asbestos NESHAP, however, requires pre-demolition surveys for all public and commercial buildings, including sources which are deferred from Title V permitting. The Department considered extending the survey requirements to all sources subject to the federal Asbestos NESHAP, but rejected that alternative because the lack of legislative authority to require surveys from sources which are not subject to Title V.

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

The proposal requires asbestos surveys prior to any demolition or renovation at a Title V source. If asbestos is found during the survey, the proposal requires sources to follow existing asbestos abatement requirements. If no asbestos is found, the proposal requires sources to submit a notification of demolition to the Department at least 10 days prior to demolition. This requirement is equal to the federal provision. No fee is proposed for the notification of demolition.

Summary of Significant Public Comment and Changes Proposed in Response

In addition to the general public notice an informational packet was sent to the thirteen members of what was the Asbestos Advisory Board, which is now an informal advisory group. The packet included an explanation of the need for rule making and a copy of the draft rule. Several comments were received and where clarifications or corrections were identified the Division has amended the proposed rules.

One commenter pointed out that the Department only has statutory authority to reference the asbestos regulations found in the National Emission Standard for Hazardous Air Pollutants (NESHAP) and not more stringent federal regulations. The Department agrees and will stay within the asbestos regulations found in the NESHAP. The definition for asbestos survey has been removed from the proposed rule. The word survey in the title of the rule was changed to inspection. Section 1 of the temporary rule has been rewritten to more closely resemble applicability language found in the NESHAP. As a result, section 2 of the temporary rule became redundant so it was deleted and the remaining sections renumbered.

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

The proposed rule specifies requirements for the survey and the contents of the notification. The requirements will be specified in Title V permits and implemented through the Title V permit program.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding Federal Operating Permit Program Fees, Enforcement, Federal Operating Permits, and Asbestos Survey Requirements 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

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)

Approved:

Section:

Division:

Report Prepared By: Gregg Lande

Phone: 229-6411

Date Prepared: March 23, 1994

ATTACHMENT A

AMENDMENTS TO DIVISION 28

Definitions

340-28-110 As used in this Division and unless otherwise required by context:

(1) "Act" or "FCAA" means the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(2) "Actual emissions" means the mass rate of emissions of a pollutant from an emissions source during a specified time period. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the selected time period.

(a) For purposes of determining actual emissions as of the baseline period:

(A) Except as provided in paragraph (B) of this subsection, actual emissions shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation;

(B) The Department may presume the source-specific mass emissions limit included in the permit for a source that was effective on September 8, 1981 is equivalent to the actual emissions of the source during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A) of this subsection.

(b) For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source.

(c) For purposes of determining actual emissions for Emission Statements under OAR 340-28-1500 through 340-28-1520, ~~[and]~~ Major Source Interim Emission Fees under OAR 340-28-2400 through 340-28-2550, **and Federal Operating Permit Fees under OAR 340-28-2560 through 340-28-2720,** actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.

(3) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(4) "Affected States" mean all States:

(a) Whose air quality may be affected by a proposed permit, permit modification or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(5) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant as defined in OAR 340-28-110, for any federal operating permit major source, including the usage of exempt mixtures, up to the lowest of the following applicable level:

(a) One ton for each criteria pollutant;

(b) 500 pounds for PM_{10} in a PM_{10} nonattainment area;

(c) The lesser of the amount established in OAR 340-32-4500, Table 3, or 1,000 pounds for each Hazardous Air Pollutant;

(d) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.

(6) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(7) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340-28-1700 through 340-28-1790 and includes the application review report.

(8) "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.

(9) "Applicable requirement" means all of the following as they apply to emissions units in a federal operating permit program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52;

(b) Any standard or other requirement adopted under OAR 340-20-047 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340-28-1700 through 340-28-1790, issued before a federal operating permit application is submitted for the source including any term or condition of any preconstruction permits issued pursuant to OAR 340-28-1900 through 340-28-2000 (New Source Review);

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-28-800 through 340-28-820, issued before a federal operating permit application is submitted for the source;

(e) Any standard or other requirement under section 111 of the Act, including section 111(d);

(f) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act;

(g) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(h) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(i) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(j) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(k) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(l) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(m) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a federal operating permit; and

(n) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(10) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-28-

2420 **or OAR 340-28-2610** from one emission point and from an area within a major source. For routine process emissions, emissions of each pollutant in OAR 340-28-2420 **or OAR 340-28-2610** from each emission point included in an ACDP **or federal operating program permit** shall be an assessable emission.

(11) "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.

(12) "Baseline Period" means either calendar years 1977 or 1978. The Department shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(13) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the 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 Pollutant. 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.

(14) "Calculated Emissions" as used in OAR 340-28-2400 through 340-28-2550 means procedures used to estimate emissions for the 1991 calendar year.

(15) "Categorically insignificant activity" means any of the following pollutant emitting activities principally supporting the source:

(a) exempt insignificant mixture usage;
(b) evaporative and tail pipe emissions from on-site motor vehicle operation;
(c) natural gas, propane, and distillate oil space heating rated at less than 0.4 million British Thermal Units/hour;
(d) office activities;
(e) food service activities;
(f) janitorial activities;
(g) personal care activities;
(h) grounds keeping activities;
(i) on-site laundry activities;
(j) on-site recreation activities
(k) instrument calibration;
(l) maintenance and repair shop;
(m) automotive repair shops or storage garages;
(n) air conditioning or ventilating equipment not designed to remove air contaminants generated by, or released from, associated equipment;
(o) refrigeration systems, including pressure tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems;
(p) bench-scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices, but excluding research and development facilities;

(q) construction activities excluding fugitive dust;
(r) warehouse activities;
(s) accidental fires;
(t) electric air compressors;
(u) air purification systems;
(v) continuous emissions monitoring vent lines;
(w) demineralized water tanks;
(x) demineralizer vents;
(y) cafeteria or office waste dumpsters;
(z) electrical charging stations;
(aa) fire brigade training;
(bb) instrument air dryers and distribution;
(cc) process raw water filtration systems;
(dd) process sewer floor drains or open trenches;
(ee) pharmaceutical packaging;
(ff) fire suppression; and
(gg) blueprint making.

(16) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(17) "CFR" means Code of Federal Regulations.

(18) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-31-120.

(19) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(20) "Commission" means Environmental Quality Commission.

(21) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(22) "Construction" as used in OAR 340-28-1900 through 340-28-2000 and this rule means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(23) "Continuous Monitoring Systems", means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emissions monitoring systems and continuous parameter monitoring systems.

(24) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM_{10}, sulfur dioxide, carbon monoxide, or lead.

(25) "Department"

(a) as used in OAR 340-28-100 through 340-28-2000 and OAR 340-28-2400 through 340-28-2550 means Department of Environmental Quality;

(b) as used in OAR 340-28-2100 through 340-28-2320 **and OAR 340-28-2560 through 340-28-2720** means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Pollution Authority.

(26) "Director" means the Director of the Department or the Director's

designee.

(27) "Draft permit" means the version of a federal operating permit for which the Department or Lane Regional Air Pollution Authority offers public participation under OAR 340-28-2290 or the EPA and affected State review under OAR 340-28-2310.

(28) "Effective date of the program" means the date that the EPA approves the federal operating permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(29) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(30) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(31) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

(32) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Sources shall use an EPA or Department approved emission factor.

(33) "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the Administrator of the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(34) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of these provisions, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(35) "Emission Reporting Form" means a paper or electronic form developed by the Department that shall be completed by the permittee to report calculated emissions, actual emissions or permitted emissions for interim emission fee assessment purposes.

(36) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a stationary source is any machine, equipment, raw material, product, or byproduct which produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in section (d) of this definition, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:

(A) the group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply, and

(B) the emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant

basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-28-1930 or OAR 340-28-1940 or for purposes of determining the applicability of any New Source Performance Standard (NSPS).

(37) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(38) "Eqivalent method" means any method of sampling and analysis for an air pollutant which has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.

(39) "Event" means excess emissions which arise from the same condition and which occur during a single calendar day or continue into subsequent calendar days.

(40) "Excess emissions" means emissions which are in excess of a permit limit or any applicable air quality rule.

(41) "Exempt Insignificant Mixture Usage" means use, consumption, or generation of insignificant mixtures which the Department does not consider integral to the primary business activity, excluding fuels, raw materials, and end products.

(42) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(43) "Federal operating permit" means any permit covering a federal operating permit program source that is issued, renewed, amended, or revised pursuant to OAR 340-28-2100 through 340-28-2320. (44) "Federal operating permit program" means a program approved by the Administrator under 40 CFR Part 70 (last amended by 57 FR 32295, July 21, 1992).

(45) "Federal operating permit program source" means any source subject to the permitting requirements, OAR 340-28-2100 through 340-28-2320, as provided in OAR 340-28-2110.

(46) "Final permit" or "permit" means the version of a federal operating permit issued by the Department or Lane Regional Air Pollution Authority that has completed all review procedures required by OAR 340-28-2200 through 340-28-2320.

(47) "Fugitive Emissions":

(a) except as used in subsection (b) of this section, mean emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) as used to define a major federal operating permit program source, mean those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(48) "General permit" means a federal operating permit that meets the requirements of OAR 340-28-2170.

(49) "Growth Increment" means an allocation of some part of an airshed's capacity to accommodate future new major sources and major modifications of sources.

(50) "Immediately" means as soon as possible but in no case more than one hour after the beginning of the excess emission period.

(51) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant,

insignificant mixture usage, or aggregately insignificant.

(52) "Insignificant Change" means an off-permit change defined under OAR 340-28-2220(2)(a) to either a significant or an insignificant activity which:

(a) does not result in a redesignation from an insignificant to a significant activity;

(b) does not invoke an applicable requirement not included in the permit; and

(c) does not result in emission of regulated air pollutants not regulated by the source's permit.

(53) "Insignificant Mixture" means a chemical mixture containing not more than 1% by weight of any chemical or compound regulated under Division 20 through 32 of this chapter, and not greater than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens.

(54) "Interim Emission Fee" means $13 per ton for each assessable emission subject to emission fees under OAR 340-28-2420 for calculated, actual or permitted emissions released during calendar years 1991 and 1992.

(55) "Large Source" as used in OAR 340-28-1400 through 340-28-1450 means any stationary source whose actual emissions or potential controlled emissions while operating full-time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL shall be used to determine actual emissions.

(56) "Late Payment" means a fee payment which is postmarked after the due date.

(57) "Lowest Achievable Emission Rate" or LAER" means that rate of emissions which reflects: 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 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 (NSPS) or standards for hazardous air pollutants.

(58) "Major Modification" as used in this Division means any physical change or change of operation of a source that would result in a net significant emission rate increase (as defined in OAR 340-28-110) for any pollutant subject to regulation under the Act. This criteria also applies to any pollutants not previously emitted by the source. Calculations of net emission increases shall take into account all accumulated increases and decreases in actual emissions occurring at the source since January 1, 1978, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations 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 New Source Review requirements, including the retrofit of required controls.

(59) "Major Source":

(a) except as provided in subsections (b) and (c) of this section, means a source which emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate, as defined in this rule. Emissions from insignificant activities shall be included in determining if a source is a major source.

(b) as used in OAR 340-28-2100 through 340-28-2320, Rules

Applicable to Sources Required to Have Federal Operating Permits, **OAR 340-28-2560 through 340-28-2720, Federal Operating Permit Fees, and OAR 340-28-1740, Synthetic Minor Sources,** means any stationary source, or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control), belonging to a single major industrial grouping or are supporting the major industrial group and that are described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which is defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants which has been listed pursuant to OAR 340-32-130, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;

(C) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(iii) For carbon monoxide nonattainment areas

(I) that are classified as "serious," and

(II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide;

(iv) For particulate matter (PM_{10}) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM_{10}.

(c) as used in OAR 340-28-2400 through 340-28-2550, Major Source Interim Emission Fees, means a permitted stationary source or group of stationary sources located within a contiguous area and under common control or any stationary facility or source of air pollutants which directly emits, or is permitted to emit:

(A) One hundred tons per year or more of any regulated pollutant, or

(B) Fifty tons per year or more of a VOC and is located in a serious ozone nonattainment area.

(60) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(61) "Nitrogen Oxides"or "NO_x" means all oxides of nitrogen except

nitrous oxide.

(62) "Nonattainment Area" means a geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Environmental Quality Commission or the EPA.

(63) "Non-exempt Insignificant Mixture Usage" means use, consumption, or generation of insignificant mixtures which the Department considers integral to the primary business activity, including fuels, raw materials, and end products.

(64) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(65) "Offset" means an equivalent or greater emission reduction which is required prior to allowing an emission increase from a new major source or major modification of a source.

(66) "Ozone Season" means the contiguous 3 month period of the year during which ozone exceedances typically occur (i.e., June, July, and August).

(67) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual, (January, 1992).

(68) "Permit" means an Air Contaminant Discharge Permit or a federal operating permit issued pursuant to this Division.

(69) "Permit modification" means a revision to a permit that meets the applicable requirements of OAR 340-28-1700 through 340-28-1790, OAR 340-28-1900 through 340-28-2000, or OAR 340-28-2240 through 340-28-2260.

(70) "Permit revision" means any permit modification or administrative permit amendment.

(71) "Permitted Emissions" as used in OAR 340-28-2400 through 340-28-2550**, and OAR 340-28-2560 through 340-28-2720** means each assessable emission portion of the PSEL.

(72) "Permittee" means the owner or operator of the facility, in whose name the operation of the source is authorized by the ACDP or the federal operating permit.

(73) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(74) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one assessable emission.

(75) "PM_{10}"

(a) when used in the context of emissions, means finely divided solid or liquid material, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);

(b) when used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J (July, 1992).

(76) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation

or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This definition does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(77) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(78) "Proposed permit" means the version of a federal operating permit that the Department or Lane Regional Air Pollution Authority proposes to issue and forwards to the Administrator for review in compliance with OAR 340-28-2310.

(79) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in **40 CFR Part 60, 61, or 63** (July 1, 1993).

(80) "Regional Authority" means Lane Regional Air Pollution Authority.

(81) "Regulated air pollutant" or "Regulated Pollutant":

(a) as used in OAR 340-28-100 through 340-28-2320 means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(E) Any pollutant listed under OAR 340-32-130 or OAR 340-32-5400.

(b) as used in OAR 340-28-2400 through 340-28-2550 means PM_{10}, Sulfur Dioxide (SO_2), Oxides of Nitrogen (NO_X), Lead (Pb), VOC, and Carbon Monoxide (CO); and any other pollutant subject to a New Source Performance Standard (NSPS) such as Total Reduced Sulfur (TRS) from kraft pulp mills and Fluoride (F) from aluminum mills.

(c) as used in OAR 340-28-2560 through 340-28-2720 means any regulated air pollutant as defined in 340-28-110(81) except the following:

(A) Carbon monoxide;

(B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

(82) "Renewal" means the process by which a permit is reissued at the end of its term.

(83) "Responsible official" means one of the following:

(a) 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 a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(B) the delegation of authority to such representative is approved in advance by the Department or Lane Regional Air

Pollution Authority;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(B) The designated representative for any other purposes under the federal operating permit program.

(84) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(85) "Section 111" means that section of the FCAA that includes Standards of Performance for New Stationary Sources (NSPS).

(86) "Section 111(d)" means that subsection of the FCAA that requires states to submit plans to the EPA which establish standards of performance for existing sources and provides for the implementation and enforcement of such standards.

(87) "Section 112" means that section of the FCAA that contains regulations for Hazardous Air Pollutants (HAP).

(88) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.

(89) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(90) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(91) "Section 112(r)(7)" means that subsection of the FCAA that requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(92) "Section 114(a)(3)" means that subsection of the FCAA that requires enhanced monitoring and submission of compliance certifications for major sources.

(93) "Section 129" means that section of the FCAA that requires the EPA to establish emission standards and other requirements for solid waste incineration units.

(94) "Section 129(e)" means that subsection of the FCAA that requires solid waste incineration units to obtain federal operating permits.

(95) "Section 182(f)" means that subsection of the FCAA that requires states to include plan provisions in the State Implementation Plan for NO_x in ozone nonattainment areas.

(96) "Section 182(f)(1)" means that subsection of the FCAA that requires states to apply those plan provisions developed for major VOC sources and major NO_x sources in ozone nonattainment areas.

(97) "Section 183(e)" means that subsection of the FCAA that requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(98) "Section 183(f)" means that subsection of the FCAA that requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(99) "Section 184" means that section of the FCAA that contains regulations for the control of interstate ozone air pollution.

(100) "Section 302" means that section of the FCAA that contains definitions for general and administrative purposes in the Act.

(101) "Section 302(j)" means that subsection of the FCAA that contains definitions of "major stationary source" and "major emitting facility."

(102) "Section 328" means that section of the FCAA that contains regulations for air pollution from outer continental shelf activities.

(103) "Section 408(a)" means that subsection of the FCAA that contains regulations for the Title IV permit program.

(104) "Section 502(b)(10) change" means a change that contravenes an express permit term but is not a change that:

(a) would violate applicable requirements;

(b) would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) is a Title I modification.

(105) "Section 504(b)" means that subsection of the FCAA that states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(106) "Section 504(e)" means that subsection of the FCAA that contains regulations for permit requirements for temporary sources.

(107) "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than those set out in Table 1. For sources of VOC, a major source or major modification will be deemed to have a significant impact if it is located within 30 kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

Table 1
OAR 340-28-110

Significant Ambient Air Quality Impact
Which is Equal to or Greater Than:

Pollutant	Averaging Time: Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO_2	1.0 ug/m³	5 ug/m³		25 ug/m³	
TSP or PM_{10}	.2 ug/m³	1.0 ug/m³			
NO_2	1.0 ug/m³				
CO				0.5 mg/m³	2 mg/m³

(108) "Significant emission rate" means:

(a) Emission rates equal to or greater than the following for air pollutants regulated under the Clean Air Act:

Table 2
Significant Emission Rates for Pollutants Regulated Under the Clean Air Act

Significant Pollutant	Emission Rate
(A) Carbon Monoxide	100 tons/year
(B) Nitrogen Oxides	40 tons/year
(C) Particulate Matter*	25 tons/year
(D) PM_{10}	15 tons/year
(E) Sulfur Dioxide	40 tons/year
(F) VOCs 40 tons/year	
(G) Lead	0.6 ton/year
(H) Mercury	0.1 ton/year
(I) Beryllium	0.0004 ton/year
(J) Asbestos	0.007 ton/year
(K) Vinyl Chloride	1 ton/year
(L) Fluorides	3 tons/year
(M) Sulfuric Acid Mist	7 tons/year
(N) Hydrogen Sulfide	10 tons/year
(O) Total reduced sulfur (including hydrogen sulfide)	10 tons/year
(P) Reduced sulfur compounds (including hydrogen sulfide)	10 tons/year

NOTE: *For the Medford-Ashland Air Quality Maintenance Area, and the Klamath Falls Urban Growth Area, the Significant Emission Rate for particulate matter is defined in **Table 3**.

(b) For pollutants not listed above, the Department shall determine the rate that constitutes a significant emission rate;

(c) Any emissions increase less than these rates associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m^3 (24 hour average) shall be deemed to be emitting at a significant emission rate (see **Table 1**).

Table 3
OAR 340-28-110

Significant Emission Rates for the Nonattainment Portions of the Medford-Ashland Air Quality Maintenance Area and the Klamath Falls Urban Growth Area

Emission Rate

	Annual		Day		Hour	
Air Contaminant	Kilograms	(tons)	Kilogram	(lbs)	kilogram	(lbs)
Particulate Matter or PM_{10}*	4,500	(5.0)	23	(50.0)	4.6	(10.0)

Note: * For the Klamath Falls Urban Growth Area, the Significant Emission Rates for particulate matter apply to all new or modified sources for which permit applications have not been submitted prior to June 2, 1989; particulate emission increases of 5.0 or more tons per year shall be fully offset, but the application of LAER is not required unless the emission increase is 15 or more tons per year. At the option of owners or operators of sources with particulate emissions of 5.0 or more but, less than 15 tons per year, LAER control technology may be applied in lieu of offsets.

(109) "Significant Impairment" occurs when visibility impairment in the judgment of the Department interferes with the management, protection, preservation, or enjoyment of the visual experience of visitors within a Class I area. The determination shall be made on a case-by-case basis considering the recommendations of the Federal Land Manager; the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered with respect to visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(110) "Small Source" means any stationary source with a regular ACDP (not a letter permit or a minimal source permit) or a federal operating permit which is not classified as a large source.

(111) "Source" means any building, structure, facility, installation 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.

(112) "Source category":

(a) except as used in OAR 340-28-2400 through 340-28-2550, means all the pollutant emitting activities which belong to the same industrial grouping (i.e., which have the same two-digit code) as described in the **Standard Industrial Classification Manual**, (U.S. Office of Management and Budget, 1987).

(b) as used in OAR 340-28-2400 through 340-28-2550, Major Source Interim Emission Fees, **and OAR 340-28-2560 through 340-28-2720, Federal Operating Permit Fees,** means a group of major sources determined by the Department to be using similar raw materials and having equivalent process controls and pollution control equipment.

(113) "Source Test" means the average of at least three test runs during operating conditions representative of the period for which emissions are to be determined, conducted in accordance with the Department's Source Sampling Manual or other Department approved methods.

(114) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(115) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant.

(116) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(117) "Synthetic minor source" means a source which would be classified as a major source under OAR 340-28-110, but for physical or operational limits on its potential to emit air pollutants contained in an ACDP issued by the Department under OAR 340-28-1700 through 340-28-1790.

(118) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:

(a) a major modification subject to OAR 340-28-1930, Requirements for Sources in Nonattainment Areas;

(b) a major modification subject to OAR 340-28-1940, Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration);

(c) a change which is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(d) a modification under Section 112 of the FCAA.

(119) "Total Suspended Particulate" or "TSP" means particulate matter as measured by the reference method described in **40 CFR Part 50, Appendix B (July 1993)**.

(120) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H_2S).

(121) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-28-630. For existing sources, the emissions limit established shall be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established shall be typical of the emission level achieved by well-controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations shall be based on information known to the Department considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required.

(122) "Unavoidable" or "could not be avoided" means events which are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(123) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment which may cause an excess emission.

(124) "Verified Emission Factor" means an emission factor approved by the Department and developed for a specific major source or source category and approved for application to that major source by the Department.

(125) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(126) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(a) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane 2(HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-

difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds, as listed in subsection (a), may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.

(c) As a precondition to excluding these compounds, as listed in subsection (a), as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from OAR 340-20-033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; AQ 14, f. & ef. 1-23-92; AQ 23, f. & ef. 11-12-92; Renumbered from OAR 340-20-145; Renumbered from OAR 340-20-225; Renumbered from OAR 340-20-305; Renumbered from OAR 340-20-355; Renumbered from OAR 340-20-460; Renumbered from OAR 340-20-520

Fees and Permit Duration
340-28-1750

(1) All persons required to obtain a permit shall be subject to a three part fee consisting of a uniform non-refundable filing fee of $75, an application processing fee, and an annual compliance determination fee which are determined by applying **Table 4, Part II**. The amount equal to the filing fee, application processing fee, and the annual compliance determination fee shall be submitted as a required part of any application for a new permit. The amount equal to the filing fee and the application processing fee shall be submitted with any application for modification of a permit. The amount equal to the filing fee, application processing fee, and the annual compliance determination fee shall be submitted with any application for a renewed permit.

(2) The fee schedule contained in the listing of air contaminant sources in **Table 4** shall be applied to determine the ~~[permit]~~fees~~[,]~~ **for ACDP user fees (Table 4, Part I.) and ACDP fees (Table 4, Part II.)** on a Standard Industrial Classification (SIC) plant site basis.

(3) Modifications of existing, unexpired permits which are instituted by the Department or Regional Authority due to changing conditions or standards, receipts or additional information, or any other reason pursuant to applicable statutes and do not require refiling or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.

(4) Applications for multiple-source permits received pursuant to OAR 340-28-1730 shall be subject to a single $75 filing fee. The application processing fee and annual compliance determination fee for multiple-source permits shall be equal to the total amounts required by the individual sources involved, as listed in **Table 4**.

(5) The annual compliance determination fee shall be paid at least 30 days prior to the start of each subsequent permit year. Failure to timely remit the annual compliance determination fee in accordance with the above shall be considered grounds for not issuing a permit or revoking an existing permit.

(6) If a permit is issued for a period less than one (1) year, the applicable annual compliance determination fee shall be equal to the full annual fee. If a permit is issued for a period greater than 12 months, the applicable annual compliance determination fee shall be prorated by multiplying the annual compliance determination fee by the number of months covered by the permit and dividing by twelve (12).

(7) In no case shall a permit be issued for more than ten (10) years, except for synthetic minor source permits which shall not be issued for more than five (5) years.

(8) Upon accepting an application for filing, the filing fee shall be non-refundable.

(9) When an air contaminant source which is in compliance with the rules of a permit issuing agency relocates or proposes to relocate its operation to a site in the jurisdiction of another permit issuing agency having comparable control requirements, application may be made and approval may be given for an exemption of the application processing fee. The permit application and the request for such fee reduction shall be accompanied by:

(a) A copy of the permit issued for the previous location; and

(b) Certification that the permittee proposes to operate with the same equipment, at the same production rate, and under similar conditions at the new or proposed location.

Certification by the agency previously having jurisdiction that the source was operated in compliance with all rules and regulations will be acceptable should the previous permit not indicate such compliance.

(10) If a temporary or conditional permit is issued in accordance with adopted procedures, fees submitted with the application for an ACDP shall be retained and be applicable to the regular permit when it is granted or denied.

(11) All fees shall be made payable to the permit issuing agency.

(12) Pursuant to ORS 468A.135, a regional authority may adopt fees in different amounts than set forth in **Table 4** provided such fees are adopted by rule and after hearing and in accordance with ORS 468.065(2).

(13) Sources which are temporarily not conducting permitted activities, for reasons other than regular maintenance or seasonal limitations, may apply for use of a modified annual compliance determination fee in lieu of an annual compliance determination fee determined by applying **Table 4**. A request for use of the modified annual compliance determination fee shall be submitted to the Department in writing along with the modified annual compliance determination fees on or before the due date of the annual compliance determination fee. The modified annual compliance determination fee shall be $250.]

(14) Owners or operators who have received Department approval for payment of a modified annual compliance determination fee shall obtain authorization from the Department prior to resuming permitted activities. Owners or operators shall submit written notification to the Department at least thirty (30) days before startup specifying the earliest anticipated startup date, and accompanied by:

(a) Payment of the full annual compliance determination fee determined from **Table 4** if greater than six (6) months would remain in the billing cycle for the source, or

(b) Payment of 50% of the annual compliance determination fee determined from **Table 4** if six (6) months or less would remain in the billing cycle.

[**NOTE:** This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-20-047.]
Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-20-033.12; DEQ 125, f. & ef. 12-16-76; DEQ 20-1979, f. & ef. 6-29-79; DEQ 11-1983, f. & ef. 5-31-83; DEQ 6-1986, f. & ef. 3-26-86; DEQ 12-1987, f. & ef. 6-15-87; DEQ 17-1990, f. & cert. ef. 5-25-90; AQ 4-1992, f. & ef. 12-2-91; AQ 1-1993, f. & ef. 3-9-93; Renumbered from OAR 340-20-165; AQ 9-1993, f & ef. 9-24-93; AQ 11-1993 Temp., f. & ef. 11-2-93

OREGON ADMINISTRATIVE RULES
CHAPTER 340, DIVISION 28 - DEPARTMENT OF ENVIRONMENTAL QUALITY

TABLE 4
AIR CONTAMINANT SOURCES AND
ASSOCIATED FEE SCHEDULE
(340-28-1750)

PART I.

NOTE: Fees in A-~~[F]~~G are in addition to any other applicable fees

A. Late Payment
   a) 8-30 days $200
   b) > 30 days $400

~~[B. BACT/LAER Determination $12,500 each]~~

B. Ambient Monitoring Network Review - $900

C. Modeling Review - **$2000**
   ~~[a) Screening methodology $ 500]~~
   ~~[b) Refined Methodology $1,000]~~

D. Alternative Emission Control Review - $1500

E. Non-technical Permit Modification
   (name change, ownership transfer, and similar) - $50

F. **Initial Permitting and Construction**

a) Complex	**$22,000**
b) Moderately Complex	**$10,000**
c) Simple	**$2,000**

G. Elective Permits - Synthetic Minor Sources

a) Permit application or modification	**$1,900**
b) Annual compliance assurance	**$1,000**

NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fee for other applicable category.

PART II.

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	Filing Fee	Application Processing Fee	Annual Compliance Determination Fee
1. Seed cleaning located in special control areas, commercial operations only (not elsewhere included)	0723	75	400	610
2. Reserved				
3. Flour and other grain mill products in special control areas	2041			
a) 10,000 or more tons/yr		75	1300	1200
b) Less than 10,000 tons/yr		75	1000	515
4. Cereal preparations in special control areas	2043	75	1300	865
5. Blended and prepared flour in special control areas	2045			
a) 10,000 or more tons/yr		75	1300	865
b) Less than 10,000 tons/yr		75	1000	500
6. Prepared feeds for animals and fowl in special control areas	2048			
a) 10,000 or more tons/yr		75	1300	1200
b) Less than 10,000 tons/yr		75	800	945
7. Beet sugar manufacturing	2063	75	1700	5955

Permit Issuance

340-28-2200

(1) Action on application.

(a) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(A) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under OAR 340-28-2170;

(B) Except for modifications qualifying for minor permit modification procedures under OAR 340-28-2250, the Department has complied with the requirements for public participation under OAR 340-28-2290;

(C) The Department has complied with the requirements for notifying and responding to affected States under OAR 340-28-2310(2);

(D) The conditions of the permit provide for compliance with all applicable requirements and the requirements of OAR 340-28-2100 through 340-28-2320; and

(E) The EPA has received a copy of the proposed permit and any notices required under OAR 340-28-2310(1) and (2), and has not objected to issuance of the permit under OAR 340-28-2310(3) within the time period specified therein or such earlier time as agreed to with the Department if no changes were made to the draft permit.

(b) When a multiple-source permit includes air contaminant sources subject to the jurisdiction of the Department and the Regional Authority, the Department may require that it shall be the permit issuing agency. In such cases, the Department and the Regional Authority shall otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee.

(c) Denial of a Permit. If the Department proposes to deny issuance of a permit, permit renewal, permit modification, or permit amendment, it shall notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial shall become effective 60 days from the date of mailing of such notice unless within that time the applicant requests a hearing. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the applicable provisions of ORS Chapter 183.

(d) The Department or Lane Regional Air Pollution Authority is the permitting authority for purposes of the 18 month requirement contained in 42 USC § 7661b(c) and this subsection. Except as provided under the initial transition plan or under regulations promulgated under Title IV of the FCAA or under OAR 340-28-2100 through 340-28-2320 for the permitting of affected sources under the national acid rain program, the Department shall take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application.

(e) The Department shall promptly provide notice to the applicant of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, OAR 340-28-2250(2), the Department shall not require a completeness determination.

(f) The Department shall provide a review report that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this report to the EPA and to any other person who requests it.

(g) The submittal of a complete application shall not affect the requirement that any source have a Notice of Approval in accordance with OAR 340-28-2270 or a preconstruction permit in accordance with OAR 340-28-1700 through 340-28-1790 or OAR 340-28-1900 through 340-28-2000.

(h) Failure of the Department to take final action on a complete

application or failure of the Department to take final action on an EPA objection to a proposed permit within the appropriate time shall be considered to be a final order for purposes of ORS Chapter 183.

(i) **If the final permit action being challenged is the Department's failure to take final action, a petition for judicial review may be filed any time before the Department denies the permit or issues the final permit.**

(2) Requirement for a permit.

(a) Except as provided in OAR 340-28-2200(2)(b), OAR 340-28-2220(3), and OAR 340-28-2250(2)(d), no federal operating permit program source may operate after the time that it is required to submit a timely and complete application after the effective date of the program, except in compliance with a permit issued under a federal operating permit program.

(b) If a federal operating permit program source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a federal operating permit is not a violation of OAR 340-28-2100 through 340-28-2320 until the Department takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to OAR 340-28-2200(1)(e), and as required by OAR 340-28-2120(1)(b), the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Federal Operating Permit Fees

Purpose, Scope And Applicability
340-28-2560

(1) The purpose of OAR 340-28-2560 through 340-28-2740 is to provide owners and operators of major sources and the Department with the criteria and procedures to determine emissions and fees based on air emissions and specific activities.

(2) OAR 340-28-2560 through 340-28-2740 apply to major sources as defined in OAR 340-28-110.

(3) The owner or operator may elect to pay emission fees for each assessable emission on:

(a) actual emissions, or

(b) permitted emissions.

(4) If the assessable emission is of a regulated air pollutant listed in OAR 340-32-130 and there are no applicable methods to demonstrate actual emissions, the owner or operator may propose that the Department approve an emission factor based on the best representative data to demonstrate actual emissions for fee purposes.

(5) Major sources subject to the federal operating permit program defined in 340-28-110, are subject to the following fees:

(a) Emission fees, (OAR 340-28-2610), and

(b) Annual base fee of $2,500 per source (OAR 340-28-2580).

(6) Major sources subject to the federal operating permit program may also be subject to user fees (OAR 340-28-2600 and 340-28-1750).

(7) The Department shall credit owners and operators of major sources subject to the first year of the Federal Operating Permit Fees for Annual Compliance Determination Fees paid for any period after October 1, 1994.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Supplemental Interim Emission Fee Assessment

340-28-2570 The Department shall assess supplemental interim emission fees based on 1992 calendar emission reports subject to the procedures in the Interim Emission Fee Rules, OAR 340-28-2400 through 340-28-2550. The owner or operator shall submit supplemental emission fees payable to the Department by the later of January 31, 1994 or 30 days after the Department mails the fee invoice.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Annual Base Fee

340-28-2580 The Department shall assess an annual base fee of $2,500 for each major source subject to the federal operating permit program.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Emission Fee

340-28-2590 Based on the Federal Operating Permit Program Budget, prepared by the Department and approved by the 1993 Oregon Legislature, the Commission determines that an emission fee of $29.26 per ton is necessary to cover all reasonable direct and indirect costs of implementing the federal operating permit program.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Specific Activity Fees
340-28-2600
Specific activity fees shall be assessed by the Department for a major source with any one of the following activities:

Specific Activity		Fee
1. Existing source permit modifications	a. Simple	$1,000
	b. Complex	$15,000
2. Hazardous Air Pollutant permit modifications	a. Simple	$3,000
	b. Complex	$10,000
3. Ambient air monitoring review	a.	$2,000

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Pollutants Subject to Emission Fees
340-28-2610
(1) The Department shall assess emission fees on assessable emissions up to and including 4,000 tons per year for each regulated pollutant for fee purposes.
(2) If the emission fee on PM_{10} emissions is based on the PSEL for a major source that does not have a PSEL for PM_{10}, the Department shall assess the emission fee on the PSEL for TSP.
(3) The owner or operator shall determine each assessable emission separately.
(4) The owner or operator shall pay emission fees on all assessable emissions from each emission source included in the permit or application review report.
(5) The owner or operation shall not pay emission fees on Hazardous Air Pollutants already covered by a Criteria Pollutant.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Exclusions
340-28-2620
(1) The Department shall not assess emission fees on newly permitted major sources that have not begun initial operation.
(2) The Department shall not assess emission fees on carbon monoxide. However, sources that emit or are permitted to emit 100 tons or more per year of carbon monoxide are subject to the emission fees on all other regulated air pollutants pursuant to OAR 340-28-2560.
(3) The Department shall not assess emission fees, OAR 340-28-2610, if there are no emissions of a regulated pollutant from an emission unit for the entire calendar year.
(4) If an owner or operator of a major source operates an assessable emission point/unit for less than 5% of the permitted operating schedule, the owner or operator may elect to report emissions based on a proration of the PSEL for the actual operating time.
(5) The Department shall not assess emission fees on emissions categorized as credits or unassigned PSELs within a federal operating permit. However, credits and unassigned PSELs shall be included in determining whether a source is a federal operating permit program source, as defined in OAR 340-28-110(41).
(6) The Department shall not assess emission fees on categorically insignificant emissions as defined in OAR 340-28-110(15).

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

References

340-28-2630 Reference documents used in OAR 340-28-2560 through 340-28-2740 include the Department Source Sampling Manual and the Department Continuous Monitoring Manual.

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Election For Each Assessable Emission

340-28-2640

(1) The owner or operator shall make an election to pay emission fees on either actual emissions or permitted emissions for each year for each assessable emission and notify the Department in accordance with OAR 340-28-2660.

(2) The owner or operator may elect to pay emission fees on permitted emissions for hazardous air pollutants. An owner or operator may elect a Hazardous Air Pollutant PSEL in accordance with OAR 340-28-1050. The HAP PSEL shall only be used for fee purposes.

(3) If an owner or operator fails to notify the Department of the election for an assessable emission, the Department shall assess emission fees for the assessable emission based on permitted emissions. If the permit does not identify a PSEL for an assessable emission, the Department shall develop a PSEL.

(4) An owner or operator may elect to pay emission fees on the aggregate limit for insignificant emissions that are not categorically exempt insignificant emissions.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Emission Reporting

340-28-2650

(1) For the purpose of assessing emission fees the owner or operator shall submit the following information on a form(s) developed by the Department for each assessable emission in tons per year, reported as follows:

(a) Particulate Matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as defined in OAR 340-28-110(71), as PM_{10} or if permit specifies Total Suspended Particulate (TSP) then as TSP,

(b) Sulfur Dioxide as SO_2,

(c) Oxides of Nitrogen (NO_X) as Nitrogen Dioxide (NO_2),

(d) Total Reduced Sulfur (TRS) as H_2S in accordance with OAR 340-25-150(15),

(e) Volatile Organic Compounds as:

(A) VOC for material balance emission reporting, or

(B) Propane (C_3H_8), unless otherwise specified by permit, or OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.

(f) Fluoride as F.

(g) Lead as Pb.

(h) Hydrogen Chloride as HCl.

(i) Estimate of Hazardous Air Pollutants as specified in a Department approved test method.

(2) The owner or operator electing to pay emission fees on actual emissions shall report emissions as follows:

(a) Round up to the nearest whole ton for emission values 0.5 and greater, and

(b) Round down to the nearest whole ton for emission values less than 0.5.

(3) The owner or operator electing to pay emission fees on actual emissions

shall:

(a) Submit complete information on the forms including all assessable emissions, emission points and sources, and

(b) Submit documentation necessary to support emission calculations.

(4) The owner or operator electing to pay on actual emissions for an assessable emission shall report total emissions including those emissions in excess of 4,000 tons for each assessable emission.

(5) The owner or operator electing to pay on permitted emissions for an assessable emission shall submit a statement to the Department that they shall pay on the PSEL in effect for the calendar year for which they are paying, in accordance with OAR 340-28-2640 and 340-28-2650.

(6) If more than one permit is in effect for a calendar year for a major source, the owner or operator electing to pay on permitted emissions shall pay on the PSEL(s) in effect for each day of that calendar year.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Emission Reporting And Fee Procedures
340-28-2660

(1) The owner or operator shall submit the form(s), including the owner's or operator's election for each assessable emission, to the Department with the annual permit report in accordance with annual reporting procedures.

(2) The owner or operator may request that information, other than emission information, submitted pursuant to OAR 340-28-2560 through 340-28-2740 be exempt from disclosure in accordance with OAR 340-28-400.

(3) Records developed in accordance with these rules are subject to inspection and entry requirements in OAR 340-28-2160. The owner or operator shall retain records for a period of at least 5 years in accordance with OAR 340-28-2130(3)(b)(B).

(4) The Department may accept information submitted or request additional information from the owner or operator. The owner or operator shall submit additional actual emission information requested by the Department within thirty (30) days of receiving a request from the Department. The Department may approve a request from an owner or operator for an extension of time of up to thirty days to submit additional information under extenuating circumstances.

(5) If the Department determines the actual emission information submitted for any assessable emission does not meet the criteria in OAR 340-28-2560 through 340-28-2740, the Department shall assess the emission fee on the permitted emission for that assessable emission.

(6) The owner or operator shall submit emission fees payable to the Department by the later of:

(a) August 1 for emission fees from the previous calendar year, or

(b) Thirty (30) days after the Department mails the fee invoice.

(7) Department acceptance of emission fees shall not indicate approval of data collection methods, calculation methods, or information reported on Emission Reporting Forms. If the Department determines initial emission fee assessments were inaccurate or inconsistent with OAR 340-28-2560 through 340-28-2740, the Department may assess or refund emission fees up to two years after emission fees are received by the Department.

(8) The Department shall not revise a PSEL solely due to an emission fee payment.

(9) Owners or operators operating major sources pursuant to OAR 340-28-2100 through OAR 340-28-2320 shall submit the emission reporting information with the annual permit report.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Actual Emissions

340-28-2670 An owner or operator electing to pay on actual emissions shall obtain emission data and determine emissions using one of the following methods:

(1) Continuous monitoring systems used in accordance with OAR 340-28-2680,

(2) Verified emission factors developed for that particular source in accordance with OAR 340-28-2720 for:

(a) Each assessable emission, or

(b) A combination of assessable emissions if there are multiple sources venting to the atmosphere through one common emission point (eg. stack). The owner or operator shall have a verified emission factor plan approved by the Department prior to conducting the source testing in accordance with OAR 340-28-2720,

(3) Material balances determined in accordance with OAR 340-28-2690, OAR 340-28-2700, or OAR 340-28-2710, or

(4) Verified emission factors for source categories developed in accordance with OAR 340-28-2720(11).

(5) For specific assessable emissions of regulated air pollutants listed under OAR 340-32-130 and not subject by permit to a Plant Site Emission Limit, where the Department determines there are not applicable methods to demonstrate actual emissions, the owner or operator shall use the best representative data to develop an emission factor, subject to Department approval.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Determining Emissions From Continuous Monitoring Systems

340-28-2680

(1) The owner or operator shall use data collected in accordance with federal operating permit conditions, applicable rules in OAR Chapter 340, or the Department's Continuous Monitoring Manual.

(2) If the owner or operator has continuous monitoring data that comprises less than ninety percent (90%) of the plant operating time, the actual emissions during the period when the continuous monitoring system was not operating shall be determined from 90 percentile continuous monitoring data.

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Determining Emissions Using Material Balance

340-28-2690 The owner or operator may elect to use material balance to determine actual emissions:

(1) If the amount of material added to a process less the amount consumed and/or recovered from a process can be documented in accordance with Department approved permit conditions and in accordance with OAR 340-28-2560 through 340-28-2740.

(2) The owner or operator shall only apply material balance calculations to VOC or sulfur dioxide emissions in accordance with OAR 340-28-2700 and OAR 340-28-2710 respectively.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Determining VOC Emissions Using Material Balance

340-28-2700 The owner or operator may determine the amount of VOC emissions for an assessable emission by using material balance.

(1) The owner or operator using material balance to calculate VOC emissions

shall determine the amount of VOC added to the process, the amount of VOC consumed in the process and/or the amount of VOC recovered in the process by testing in accordance with 40 Code of Federal Regulations (CFR) Part 60 EPA Method 18, 24, 25, a material balance method, or an equivalent plant specific method specified in the federal operating permit using the following equation:

$VOC_{tot} = VOC_{add} - VOC_{cons}$

Where:

VOC_{tot} = Total VOC emissions, tons

VOC_{add} = VOC added to the process, tons

VOC_{cons} = VOC consumed and/or recovered from the process, tons

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Determining Sulfur Dioxide Emissions Using Material Balance
340-28-2710

(1) Sulfur dioxide emissions for major sources may be determined by measuring the sulfur content of fuels and assuming that all of the sulfur in the fuel is oxidized to sulfur dioxide.

(2) The owner or operator shall ensure that ASTM methods were used to measure the sulfur content in fuel for each quantity of fuel burned.

(3) The owner or operator shall determine sulfur dioxide emissions for each quantity of fuel burned, determining quantity by a method that is reliable for the source, by performing the following calculation:

$SO_2 = \%S/100 \times F \times 2$

Where:

SO_2 = Sulfur dioxide emissions for each quantity of fuel, tons

%S = Percent sulfur in the fuel being burned, % (w/w).

F = Amount of fuel burned, based on a quantity measurement, tons

2 = Pounds of sulfur dioxide per pound of sulfur

(4) For coal-fired steam generating units the following equation shall be used by owners or operators of major sources to account for sulfur retention:

$SO_{2adj} = SO_2 \times 0.97$

Where:

SO_{2adj} = Sulfur dioxide adjusted for sulfur retention (40 CFR Part 60, Appendix A, Method 19, Section 5.2)

SO_2 = Sulfur dioxide emissions from each quantity burned (OAR 340-28-2690(3))

(5) Total sulfur dioxide emissions for the year shall be the sum total of each

quantity burned calculated in accordance with OAR 340-28-2710(3) divided by 2000 pounds per ton.

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

Verified Emission Factors Using Source Testing

340-28-2720

(1) To verify emission factors used to determine assessable emissions the owner or operator shall either perform source testing in accordance with the Department's Source Sampling Manual or other methods approved by the Department for source tests. Source tests shall be conducted in accordance with testing procedures on file at the Department and the pretest plan submitted at least fifteen (15) days in advance and approved by the Department. All test data and results shall be submitted for review to the Department within thirty (30) days after testing.

NOTE: It is recommended that the owner or operator notify the Department and obtain pre-approval of the Emission Factor source testing program prior to or as part of the submittal of the first source test notification.

(2) The owner or operator shall conduct or have conducted at least three compliance source tests, each consisting of at least three individual test runs for a total of at least nine test runs.

(3) The owner or operator shall monitor and record or have monitored and recorded applicable process and control device operating data.

(4) The owner or operator shall perform or have performed a source test either:

(a) In each of three quarters of the year with no two successive source tests performed any closer than thirty (30) days apart, or

(b) At equal intervals over the operating period if the owner or operator demonstrates and the Department approves that:

(A) The process operates or has operated for part of the year, or

(B) The process is or was not subject to seasonal variations.

(5) The owner or operator shall conduct or have conducted the source tests to test the entire range of operating levels. At least one test shall be conducted at minimum operating conditions, one test at normal or average operating levels, and one test at anticipated maximum operating levels. If the process rate is constant, all tests shall be conducted at that rate. The owner or operator shall submit documentation to the Department demonstrating a constant process rate.

(6) The owner or operator shall determine or have determined an emission factor for each source test by dividing each test run emissions, in pounds per hour, by the applicable process rate during the source test run. At least nine emission factors shall be plotted against the respective process rates and a regression analysis performed to determine the best fit equation and the correlation coefficient (R^2). If the correlation coefficient is less than 0.50, which would indicate that there is a relatively weak relationship between emissions and process rates, the arithmetic average and standard deviation of at least nine emission factors shall be determined.

(7) The owner or operator shall determine the Emissions Estimate Adjustment Factor (EEAF) as follows:

(a) If the correlation coefficient (R^2) of the regression analysis is greater than 0.50, the EEAF shall be $1+(1-R^2)$.

(b) If the correlation coefficient (R^2) is less than 0.50, the EEAF shall be:

$$EEAF = 1 + SD/EF_{avg}$$

Where:

SD = Standard Deviation

EF_{avg} = Average of the Emission Factors

(8) The owner or operator shall determine actual emissions for emission fee purposes using one of the following methods:

(a) If the regression analysis correlation coefficient is less than 0.50, the actual emissions shall be the average emission factor determined from at least nine test runs multiplied by the EEAF multiplied by the total production for the entire year, or

$AE = EF_{avg} \times EEAF \times P$

Where:

AE = Actual Emissions

EF_{avg} = Average of the Emission Factors

EEAF = Estimated Emissions Adjustment Factor

P = Total production for the year

(b) If the regression analysis correlation coefficient is greater than 0.50 the following calculations shall be performed:

(A) Determine the average emission factor (EF) for each production rate category (maximum = EF_{max}, normal = EF_{norm}, and minimum = EF_{min}).

(B) Determine the total annual production and operating hours, production time (PT_{tot}), for the calendar year.

(C) Determine the total hours operating within the maximum production rate category (PT_{max}). The maximum production rate category is any operation rate greater than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2).

(D) Determine the total hours while operating within the normal production rate category (PT_{norm}). The normal production rate category is defined as any operating rate less than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2) and any operating rate greater than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2).

(E) Determine the total hours while operating within the minimum production rate category (PT_{min}). The minimum production rate category is defined as any operating rate less than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2).

(F) Actual emissions equals EEAF x $[(PT_{max}/PT_{tot}) \times EF_{max} + (PT_{norm}/PT_{tot}) \times EF_{norm} + (PT_{min}/PT_{tot}) \times EF_{min}]$.

(9) The owner or operator shall determine emissions during startup and shutdown, and for emissions greater than normal, during conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions. The owner or operator shall apply 340-28-2720(9)(a) or 340-28-2720(9)(b)(c) and (d) in developing emission factors. The owner or operator shall apply the emission factor obtained to the total time the assessable emission point operated in these conditions.

(a) All emissions during startup and shutdown, and emissions greater than normal shall be assumed equivalent to operation without an air pollution control device, unless accurately demonstrated by the owner or operator and approved by the Department in accordance with OAR 340-28-2720(9)(b), (9)(c), (9)(d), and (9)(e). The emission factor plus the EEAF shall be adjusted by the air pollution control device collection efficiency as follows:

Actual emission factor =
(EF x EEAF)/(1 - PCDE)

Where:

EF = Emission Factor

EEAF = Emission Estimate Adjustment Factor

PCDE = Pollution Control Device Collection Efficiency Unless otherwise approved by the Department, the pollution control device collection efficiencies used in this calculation shall be:

Particulate Matter:

ESP or baghouse	0.90
High energy wet scrubber	0.80
Low energy wet scrubber	0.70
Cyclonic separator	0.50

Acid gases:

Wet or dry scrubber	0.90

VOCs:

Incinerator	0.98
Carbon absorber	0.95

(b) During process startups a Department approved source test shall be performed to determine an average startup factor. The average of at least three tests runs plus the standard deviation shall be used to determine actual emissions during startups.

(c) During process shutdowns a Department approved source test shall be performed to determine an emission factor for shutdowns. The average of at least three test runs plus the standard deviation shall be used to determine actual emissions during shutdowns.

(d) During routine maintenance activity the owner or operator shall:

(A) Perform routine maintenance activity during source testing for verified emission factors, or

(B) Determine emissions in accordance with Section (a) of this rule.

(e) The emission factor need not be adjusted if the owner or operator demonstrates to the Department that the pollutant emissions do not increase during startup and shutdown, and for conditions that are not accounted for the in procedure(s) otherwise used to document actual emissions (eg. NO_x emissions during an ESP failure).

(10) A verified emission factor developed pursuant to OAR 340-28-2560 through 340-28-2740 and approved by the Department can not be used if a process change occurs that would affect the accuracy of the verified emission factor.

(11) The owner or operator may elect to use verified emission factors for source categories if the Department determines the following criteria are met:

(a) The verified emission factor for a source category shall be based on verified emission factors from at least three individual sources within the source category,

(b) Verified emission factors from sources within a source category shall

be developed in accordance with OAR 340-28-2720,

(c) The verified emission factors from the sources shall not differ from the mean by more than twenty percent, and

(d) The source category verified emission factor shall be the mean of the source verified emission factors plus the average of the source emission estimate adjustment factors.

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

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Late And Underpayment of Fees

340-28-2730

(1) Notwithstanding any enforcement action, the owner or operator shall be subject to a late payment fee of:

(a) Two hundred dollars ($200) for payments postmarked more than seven (7) or less than thirty (30) days late, and

(b) Four hundred dollars ($400) for payments postmarked on or over thirty (30) days late.

(2) Notwithstanding any enforcement action, the Department may assess an additional fee of the greater of four hundred ($400) or twenty percent (20%) of the amount underpaid for substantial underpayment.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Failure to Pay Fees

340-28-2740 Any owner or operator that fails to pay fees imposed by the Department under these rules shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: AQ 9-1993, f. & ef. 9-24-93; AQ 11-1993, Temp. f. & ef. 11-2-93

Asbestos Inspection Requirements for Federal Operating Permit Program Sources.
340-32-5610 ~~[Reserved]~~This rule applies to renovation and demolition activities at major sources subject to the federal operating permit program as defined in OAR 340-28-110(59)(b).

(1) To determine applicability of the Department's asbestos regulations, the owner or operator of a renovation or demolition project shall thoroughly inspect the affected area for the presence of asbestos.

(2) For demolition projects where no asbestos-containing material is present, written notification shall be submitted to the Department on an approved form. The notification shall be submitted by the owner or operator or by the demolition contractor as follows:

(a) Submit the notification, as specified in section (3) of this rule, to the Department at least ten days before beginning any demolition project.

(b) The Department shall be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification of demolition will be void.

(3) The following information shall be provided for each notification of demolition:

(a) Name, address, and telephone number of the person conducting the demolition.

(b) Contractor's Oregon demolition license number, if applicable.

(c) Certification that no asbestos was found during the predemolition asbestos inspection and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-32-5620 through OAR 340-32-5650 will be followed.

(d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:

(A) The age, present and prior use of the facility;

(B) Address or location where the demolition project is to be accomplished.

(e) Major source owner's or operator's name, address and phone number.

(f) Scheduled starting and completion dates of demolition work.

(g) Any other information requested on the Department form.

AMENDMENTS TO DIVISION 12

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 permit;

(c) Modifying a source with an Air 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;

(n) Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;

(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;

(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;

(q) Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(r) Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor;

(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;

(t) Advertising to sell, offering to sell or selling a non-certified wood stove;

(u) Illegal open burning in violation of OAR 340-23-042(2);

(v) Causing or allowing open field burning without first obtaining a valid open field burning permit;

(w) Causing or allowing open field burning or stack burning where prohibited by OAR 340-26-010(7) or OAR 340-26-055(4);

(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);

(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);

(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;

(aa) Stack or pile burning grass seed or cereal grain crop residue without first obtaining a valid stack or pile burning permit;
(bb) Open field burning, 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);
(dd) Failure to install vapor recovery piping in accordance with standards set forth in OAR Chapter 340, Division 150;
(ee) Installing vapor recovery piping without first obtaining a service provider license in accordance with requirements set forth in OAR Chapter 340, Division 160;
(ff) Submitting falsified actual or calculated [~~interim~~] emission fee data;
(gg) Failure to provide access to premises or records when required by law, rule, permit or order;
(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;
(g) Failing to comply with notification and reporting requirements in a permit;
(h) Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;
(i) Failure to provide notification of an asbestos abatement project;
(j) Failure to display permanent labels on a certified woodstove;
(k) Alteration of a permanent label for a certified woodstove;
(l) Failure to use Department-approved vapor control equipment when transferring fuel;
(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;
(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;
(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;
(p) Causing or allowing a propane flaming operation to be conducted in a manner which causes or allows an open flame to be sustained;
(q) Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;
(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;
(s) Selling any chlorofluorocarbon or halon containing product prohibited under ORS 468A.635;
(t) Failure to pay an emission fee;

(u) Substantial underpayment of an emission fee;
(v) Submitting inaccurate emission fee data;
(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.

ATTACHMENT B

SUPPORTING PROCEDURAL DOCUMENTATION

- Secretary of State's Bulletin Notice
- Public Notices of Hearing - Department and Lane Regional Air Pollution Authority
- Rulemaking Statements (Statement of Need)
- Fiscal and Economic Impact Statement
- Land Use Evaluation Statement

Since the rule prohibits the discharge of any further waste into these three basins, the Commission will also consider the broader issue of whether to allow discharges other than industrial process waste water and sanitary waste water into these basins. When originally adopted, the rule was meant to prevent new discharge of industrial process waste water and sanitary waste water into these basins. However, the rule language is broad and effectively prevents the issuance of permits for any new facilities (including storm water permits). The Department is proposing to amend the rule to exclude discharges other than industrial process waste water and sanitary waste water from OAR 340-41-470(1). In addition, the Department is proposing to include language which would allow industrial process waste water and sanitary waste water discharges into these basins provided the discharges comply with the Department's High Quality Waters Policy (OAR 340-41-026(1)(a)(A)).

The amendments proposed by the Department, which deal with the broader issue of whether to allow new discharges into these basins, would be effective for a one year period. During this period, Department would form an advisory committee to assist in developing a final rulemaking proposal.

LAST DATE FOR COMMENT: 1-24-94
DATE PROPOSED TO BE EFFECTIVE: Upon adoption of the Environmental Quality Commission and subsequent filing with the Secretary of State.
CONTACT PERSON: Harold Sawyer (503) 229-5776
AGENCY CONTACT FOR THIS PROPOSAL: Raj Kapur
ADDRESS: DEQ Water Quality Division, 811 SW 6th Avenue, Portland, OR 97204
TELEPHONE: (503) 229-5185 or Toll Free 1-800-452-4011
*Auxiliary aids for persons with disabilities are available upon advance request.

* * * *

DATE:	TIME:	LOCATION:
2-15-94	1 PM	City of Bend Public Works Department - Training Room NE Forbes Bend, OR
2-15-94	7 PM	Justice Building - Courthouse Auditorium 10 South Oakdale Medford, OR
2-16-94	10 AM	Springfield City Hall - Library Meeting Room 225 North 5th Springfield, OR
2-16-94	10 AM	Vert Little Theater, Lower Level SW 4th and Dorion Streets Pendleton, OR
2-18-94	1 PM	DEQ Headquarters Office Executive Building - Room 3A 811 SW 6th Avenue Portland, OR

HEARINGS OFFICER: Gregg Lande - Bend Hearing and Pendleton Hearing; Terri Sylvester -Medford Hearing; Don Arkell and Terri Sylvester - Springfield Hearing; Terri Sylvester- Portland Hearing
STATUTORY AUTH: ORS 468.020 and Senate Bill 86, 1993 Legislature
ADOPT: OARs 340-28-2560 through 28-2740 and 340-32-5610
AMEND: OARs 340-12-050, 28-110, 28-1750, 28-2200 and 32-5590
SUMMARY: Adopt rules for emission fees for Title V sources; changes to Table 4 affecting fees for Title V sources wanting to become synthetic minors, and sources subject to the Air Contaminant Discharge Permit Program; asbestos inspection requirements for Title V sources; amend violation classification for failure to pay emission fees to include all emission fees.
LAST DATE FOR COMMENT: 2-18-94
DATE PROPOSED TO BE EFFECTIVE: Upon adoption of the Environmental Quality Commission and subsequent filing with the Secretary of State.
CONTACT PERSON: Harold Sawyer (503) 229-5776
AGENCY CONTACT FOR THIS PROPOSAL: Terri Sylvester
ADDRESS: DEQ Air Quality Division, 811 SW 6th Avenue, Portland, OR 97204
TELEPHONE: (503) 229-5181 or Toll Free 1-800-452-4011
*Auxiliary aids for persons with disabilities are available upon advance request.

* * * *

Fire Marshal
Chapter 837

DATE:	TIME:	LOCATION:
1-18-94	1:30 PM	State Fire Marshal 4760 Portland Road NE Salem, OR

HEARINGS OFFICER: Roger Severson
STATUTORY AUTH: ORS 455.150, Senate Bill 498, 1993 Legislature
ADOPT: OAR 837-39-110
SUMMARY: OAR 837-39-110 will establish standards enabling fire officials the opportunity to provide input into the review of plans. The program requires certification of fire officials and allows input from a Uniform Fire Code.
LAST DATE FOR COMMENT: 1-25-94
DATE PROPOSED TO BE EFFECTIVE: 3-1-94
CONTACT PERSON: Roger Severson
ADDRESS: Fire Marshal, 4760 Portland Rd. NE, Salem, OR 97305
TELEPHONE: (503) 373-1540 - ext 208

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Federal Operating Permit Program Fee Rules

Date Issued:	January 12, 1994
Public Hearings:	February 15, 16, 18, 1994
Comments Due:	February 18, 1994

WHO IS AFFECTED: Major sources of regulated air pollutants; and all Air Contaminant Discharge Permit sources.

WHAT IS PROPOSED: The Department proposes permanent adoption of fee rules for the Federal Operating Permit Program. Temporary rules were approved by the Environmental Quality Commission on October 29, 1993. The Department proposes that the following rules be adopted and amended: OAR 340-28-2560 through 340-28-2720 (Federal Operating Permit Program Fee Rules, adopted as temporary rules by the Commission); OAR 340-28-110 (Definitions, amended as temporary rules by the Commission); OAR 340-28-1750 (Air Contaminant Discharge Permit Fees, amended as temporary rules by the Commission); and OAR 340-12-050 (amendments to enforcement rules, amended as temporary rules by the Commission).

The Department also proposes permanent adoption of asbestos inspection requirements for sources subject to the Federal Operating Permit Program. Temporary rules were approved by the Environmental Quality Commission on October 29, 1993. The Department proposes that the following rules be adopted and amended: OAR 340-32-5590 (Definitions, amended as temporary rules by the Commissions) and OAR 340-32-5610 (Asbestos Inspection Requirements for Federal Operating Permit Program Sources).

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

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

11/1/86

WHAT ARE THE HIGHLIGHTS:

As required by the federal Clean Air Act Amendments of 1990, the rules will establish procedures, criteria and a fee schedule for the Department to assess fees on major air pollution sources subject to the Federal Operating Permit Program. Proposed rules provide the authority for the Department to assess emission and annual base fees on major sources. In addition, the proposed rules also amend the user based activity fees for Air Contaminant Discharge Permits.

The user based activity fees include fees for the following: all new permits, permit modifications involving construction, new source MACT determinations, and hazardous air pollutant modifications; source impact modeling; elective permits for synthetic minor sources including annual fees; and ambient air monitoring fees.

The federal Clean Air Act Amendments of 1990 also require that Federal Operating Permits include all federal requirements applicable to a source. This proposal would add asbestos survey provisions of the federal asbestos rules to the Oregon program. The requirement, which will apply only to plants required to have a Federal Operating Permit, is equivalent to the corresponding federal provision.

HOW TO COMMENT:

Public Hearings to provide information and receive public comment are scheduled as follows:

February 15, 1994, 7:00 p.m., Justice Building, Courthouse Auditorium, 10 South Oakdale, Medford, Oregon

February 15, 1994, 1:00 p.m., City of Bend, Public Works Department, Training Room, 1375 NE Forbes, Bend, Oregon

February 16, 1994, 10:00 a.m., Springfield City Hall, Library Meeting Room, 225 North 5th, Springfield, Oregon

February 16, 1994, 10:00 a.m., The Vert Little Theater, Lower Level, SW 4th and Dorion Streets, Pendleton, Oregon

WHAT ARE THE HIGHLIGHTS:

As required by the federal Clean Air Act Amendments of 1990, the rules will establish procedures, criteria and a fee schedule for the Department to assess fees on major air pollution sources subject to the Federal Operating Permit Program. Proposed rules provide the authority for the Department to assess emission and annual base fees on major sources. In addition, the proposed rules also amend the user based activity fees for Air Contaminant Discharge Permits.

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February 16, 1994, 10:00 a.m., The Vert Little Theater, Lower Level, SW 4th and Dorion Streets, Pendleton, Oregon

February 18, 1994, 1:00 p.m., DEQ Headquarters Office, Executive Building, 811 SW 6th Avenue, Room 3A, Portland, Oregon

Written comments must be received by 5:00 p.m. on February 18, 1994 at the following address:

Department of Environmental Quality
Terri Sylvester
Air Quality 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 Air Quality Division at 229-5359 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.

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LANE REGIONAL

AIR POLLUTION AUTHORITY

(503) 726-2514 • FAX (503) 726-1205
225 North 5th, Suite 501
Springfield, OR 97477-4671

Donald R. Arkell, Director

NOTICE

On October 29, 1993, the Oregon Environmental Quality Commission approved temporary rules to implement the Federal Operating Permit Program. On February 15, 16, and 18, 1994, the Oregon Department of Environmental Quality (DEQ) will be holding public hearings to hear comments on the proposed permanent adoption of the following rules:

- Federal Operating Permit Program Fee Rules
- Definitions
- Air Contaminant Discharge Permit Fees
- Enforcement Rules
- Asbestos Inspections Requirements for Federal Operating Permit Program Sources

The complete text of the proposed rules is attached.

Lane Regional Air Pollution Authority (LRAPA) will be implementing state rules which apply to federal operating permits, including associated fees, and asbestos inspections requirements for major sources until such time as LRAPA adopts corresponding rules. LRAPA will be revising its existing regulations and adopting new ones where needed in order to comply with requirements of the Federal Operating Permit Program. This stepwise approach is necessary to receive timely authority to implement and enforce the federal operating permit program in Lane County while retaining the existing LRAPA regulatory program for sources not in the federal program. We anticipate that the rule revisions and adoptions eventually proposed by LRAPA will be almost identical to those proposed by the DEQ.

LRAPA is sending out this notice along with the DEQ's proposed rules to those sources in Lane County likely to be affected by the Federal Operating Permit Program to allow you to read them and comment.

The times and locations of the Public Hearings are listed in the attachment. You need not be present at the hearings to comment. Written comments can be submitted to the DEQ at the address contained in the attachment. All written comments must be received by the DEQ by 5:00 p.m. of February 18, 1994.

LANE REGIONAL AIR POLLUTION AUTHORITY

(503) 726-2514 • FAX (503) 726-1205
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The times and locations of the Public Hearings are listed in the attachment. You need not be present at the hearings to comment. Written comments can be submitted to the DEQ at the address contained in the attachment. All written comments must be received by the DEQ by 5:00 p.m. of February 18, 1994.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Federal Operating Permit Program Fee 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 is to adopt temporary Oregon Administrative Rules to provide funding for the federal operating permit program as required by the Clean Air Act Amendments of 1990. It is proposed under the authority if ORS 468.020 and SB 86, enacted by the 1993 Legislature.

2. Need for the Rule

   The Clean Air Act Amendments of 1990 require states to develop a comprehensive permitting program funded by the sources subject to the program. SB 86 specifically directs the adoption of fee rules by the Environmental Quality Commission. These rules are part of Oregon's Federal Operating Permit Program Submittal to EPA and due to EPA by November 15, 1994.

3. Principal Documents Relied Upon in this Rulemaking

   - Enrolled Senate Bill 86, 67th Oregon Legislative Assembly-1993 Regular Session.
   - Final EPA Rules, 57 Federal Register 32,250 (July 21, 1992), codified at 40 CFR Part 70.
   - Federal Clean Air Act Amendments of 1990, 42 USC Sections 7661 et seq.
   - EPA Guidance Memorandum, "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permit Programs Under Title V", John S. Seitz, Director, EPA Office of Air Quality Planning and Standards, August 4, 1993.

   The document references may inspected at the Department of Environmental Quality, Air Quality Division, 811 S.W. 6th Avenue, Portland, OR, during normal business hours.

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed New Rules for The Federal Operating Permit Program Fee Rules
and Asbestos Survey Requirements

Fiscal and Economic Impact Statement

Introduction

A. Fee Rules:

Title V of the Clean Air Act, Public Law 101-549, enacted on November 15, 1990, specifies the minimum elements of state operating permit programs. One of the elements is that the sources subject to the program are responsible for funding all the direct and indirect costs of the program. The Oregon Department of Environmental Quality proposes revisions to existing rules at OAR Divisions 12 and 28, and new rules in OAR Division 28, pursuant to Senate Bill 86. As required by the Clean Air Act, these proposed fee rules will fund the federal operating permit program in Oregon. The proposed rules provide air quality stationary sources and the Department of Environmental Quality with criteria and procedures to calculate air emissions and fees.

Summary of Proposed Fees

Federal Operating Permit Program Fee	Fee Level	Anticipated Annual Fee Revenue
Supplemental Interim Emission Fee	A ramp up in the Interim Emission Fee of $10.50 per ton, based on 1992 calendar year emissions reported in 1993. Rules propose collection in early 1994. Anticipated revenue from this fee is $840,000. When combined with the already established Interim Emission Fee it will be $23.50 per ton.	Not applicable
Emission Fee	Assessed on major sources subject to Oregon's Federal Operating Permit Program. Fee starts once EPA approves the program (anticipated date of approval, November, 1994). Emission fee basis $25 per ton plus an adjustment based on the Consumer Price Index (CPI). $25 is based on 1989 dollars and as of September 1, 1993 emission fee plus CPI is $29.26. Based on 2 year's of interim emission fee reporting, the Department estimates 80,000 tons of emissions.	$2,340,800

Federal Operating Permit Program Fee	Fee Level	Anticipated Annual Fee Revenue
Annual Base Fee	Each major source subject to the Federal Operating Permit Program is subject to an annual fee of $2,500. The Department estimates 300 sources will be subject to this new program.	$750,000
User Based Fees	The proposed rules contain user based fees for activities such as permit modifications, new permit applications, and synthetic minor permits. Fees are proposed for each of these activities and the revenue anticipated is based on the frequency of these activities. The following chart describes the user based fees.	$1,000,000
TOTAL		$4,090,800.00

Summary of User Based Fees

Activity (and description of frequency)	Proposed Federal Operating Permit Program Assessment ($/per activity)	Estimated Total Revenue from Federal Operating Permit Program Assessments ($/per activity x actions/year)
New Source Review and Issuance, PSD/NSR (5 permits/year)	$22,000	$110,000
Modeling, Source Impact Modeling (5 PSD permit models/year and 30 permit modification models/year)	$2,000	$70,000
New Source Review and Issuance (MACT Construction, 10 permits/year)	$22,000	$220,000
New Source Review and Issuance (Other major source construction permits, 18 permits/year - 3 @ $15,000 and 15 @ $2,000)	$2,000	$30,000
	$15,000	$45,000
Existing Source Review and Issuance (Permit modifications, 17 permit mods/year, 5 @ $1,500 and 12 @ $10,000)	$1,500	$7,500
	$10,000	$120,000
Elective permits for synthetic minors (225 permit mods/charged at permit application)	$1,900	$85,500[1]

[1] The synthetic minor permit modification fee is charged at the time of permit application and renewal, once every 5 years.

Federal Operating Permit Program Fee	Fee Level	Anticipated Annual Fee Revenue
Annual Base Fee	Each major source subject to the Federal Operating Permit Program is subject to an annual fee of $2,500. The Department estimates 300 sources will be subject to this new program.	$750,000
User Based Fees	The proposed rules contain user based fees for activities such as permit modifications, new permit applications, and synthetic minor permits. Fees are proposed for each of these activities and the revenue anticipated is based on the frequency of these activities. The following chart describes the user based fees.	$1,000,000
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[1] The synthetic minor permit modification fee is charged at the time of permit application and renewal, once every 5 years.

Activity (and description of frequency)	Proposed Federal Operating Permit Program Assessment ($/per activity)	Estimated Total Revenue from Federal Operating Permit Program Assessments ($/per activity x actions/year)
Toxic permit modifications (12 permits/year, 5 @ $3,000 and 7 @ $10,000)	$3,000	$15,000
	$10,000	$70,000
Compliance assurance (synthetic minors) (225 source compliance assurance activities/year)	$1,000	$225,000
Ambient air monitoring (1/year)	$2,000	$2,000
TOTAL		$1,000,000

B. Asbestos Survey Requirements:

Title V of the Clean Air Act also requires that state permit agencies have the authority to include all federally applicable requirements in permits. One of these requirements is the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos. This proposal would update the Commission's existing asbestos rules to include one provision of the federal Asbestos NESHAP which requires asbestos surveys prior to demolition and renovation. If asbestos is found during the survey, the proposal requires sources to follow existing asbestos abatement requirements. If no asbestos is found, the proposal requires sources to submit a notification of demolition to the Department at least 10 days prior to demolition. No fee is proposed for the notification of demolition

General Public

There would be no direct economic impact to the general public as a result of these proposed rules. The only known costs to the general public would be possible pass-through costs to customers, but the impact is assessed to be negligible.

Small Business

Pursuant to the Regulatory Flexibility Act, the EPA has quantified and described the expected impact of Title V on small entities, (i.e. small businesses, organizations, and governmental jurisdictions). Pursuant to this analysis, EPA has certified that the Title V rules as promulgated will not have a significant economic impact on a substantial number of small business entities.

Accommodations to the small business community include the provisions in rules adopted by the EQC on September 10, 1993. The rule provisions defer the applicability of these rules to non-major sources. Additionally, the Department has established a Small Business

Assistance program to accommodate the particular regulatory and technical air quality control needs of Oregon's small business community.

Large Business

The primary types of companies affected in the private sector include, but are not limited to: electronics, electric utility generators, metals, pulp and paper, and wood products. The Department estimates that a total of approximately 300 permittees would be impacted by these rules.

The proposed asbestos survey requirements are already existing federal requirements under the NESHAP program. The proposal does not add any new requirements for sources, but would allow the Department to enforce the federal requirements through the Title V permit program. It is estimated that the cost per square foot surveyed is in the range of $0.05 to $0.10. Costs will vary with complexity of the project.

Local Governments

In the public sector, only those local and state government agencies that are major sources with respect to the Title V program would be affected. Agencies that operate permitted fuel burning equipment, for example, Oregon Health Sciences University and Oregon State University, would be subject to these rules. The Port of Portland, a ship coating and repair facility, would also be impacted.

State Agencies

The economic impacts to the Department of Environmental Quality will be an increase in revenues and staffing. A 28.50 full time equivalent (FTE) position increase is associated with the continuing development, implementation, and enforcement of the Federal Operating Permit Program and all associated indirect activities. A total of 59.92 positions will be responsible for implementation of this program. The Department does not expect that the processing of demolition notifications to require additional staff. As required by the federal Clean Air Act, the costs of the Title V program must be covered by the sources subject to the program. Therefore, total expenses will be equivalent to revenue. The Department estimates expenses/revenue during the 1993-1995 biennium to be $8,181,600.

Lane Regional Air Pollution Authority (LRAPA) will administer the program in Lane County.

Assumptions

This fiscal analysis assumes 300 major sources will be permitted by the Department of Environmental Quality. The number of sources was derived in part from sources currently holding Air Contaminant Discharge Permits. The additional sources were identified through the Department's Hazardous Air Pollutant (HAP) Source Identification Survey, since HAP sources will be regulated for the first time under this program.

Assistance program to accommodate the particular regulatory and technical air quality control needs of Oregon's small business community.

Large Business

The primary types of companies affected in the private sector include, but are not limited to: electronics, electric utility generators, metals, pulp and paper, and wood products. The Department estimates that a total of approximately 300 permittees would be impacted by these rules.

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It is assumed that these sources will report 80,000 tons of emissions yearly. This number is based on emission reported from two years of interim emission fee data and estimates derived from the Department's Hazardous Air Pollutant (HAP) Source Identification Survey.

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December 14, 1993

Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Federal Operating Permit Program Fee Rules

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.**

   Oregon Revised Statutes (ORS) 468A.310(1) and Senate Bill 86 enacted by the 1993 Oregon Legislature direct the Department to prepare and submit to EPA an approval federal operating permit program as required to implement Title V of the Federal Clean Air Act Amendments of 1990. The proposed rules contain the fee rules necessary for program submittal. In addition, the proposed rules update the existing asbestos regulations to include federal asbestos survey requirements applicable to Federal Operating Permit Program sources.

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:**

      The proposed rules affect the Air Contaminant Discharge Permit Program and the Federal Operating Permit Program.

   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):

   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 are for the assessment and collection of fees for major sources of air pollutants. Therefore, the rules are not expected to impact 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

Laura L Lawrence
Division

Intergovernmental Coord.

10-6-93
Date

sil\e:\wp51\fee.rul\landuse.jfm
October 5, 1993

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

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   a. resources, objectives or areas identified in the statewide planning goals, or
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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 are for the assessment and collection of fees for major sources of air pollutants. Therefore, the rules are not expected to impact land use.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable

Division | Intergovernmental Coord. | Date 10-6-93

sll\e:\wp51\fee.rul\landuse.jfm
October 5, 1993

ATTACHMENT C

State of Oregon
Department of Environmental Quality Memorandum

Date: March 3, 1994

To: Environmental Quality Commission

From: Terri Sylvester and John Kinney, Air Quality Division

Subject: Presiding Officers' Reports For Rulemaking Hearings
February 15, 1994, 1:00 p.m., Bend
February 15, 1994, 7:00 p.m., Medford
February 16, 1994, 10:00 a.m., Springfield
February 16, 1994, 10:00 a.m., Pendleton
February 18, 1994, 1:00 p.m., Portland

Title of Proposal: Federal Operating Permit Program Fee Rules and Asbestos Survey Rules

Bend Hearing

The rulemaking hearing on the above titled proposal was convened at 1:00 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.

Two people were in attendance. No one signed up to give testimony.

John Kinney briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

No one handed in written comments.

The hearing was closed at 1:15 p.m.

Medford Hearing

The rulemaking hearing on the above titled proposal was convened at 7:00 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.

Seven people were in attendance. One person signed up to give testimony.

Prior to receiving testimony, Terri Sylvester briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

The one person was then called to testify and presented testimony as noted below.

Glen R. Patrick, Environmental Chemist, Boise Cascade Corporation

Boise Cascade would like to see provisions added to the rule to allow use of previous asbestos surveys conducted at affected facilities. In addition, the company requests that "renovation" be added to the definitions section and that the definition not include routine maintenance.

The company feels that the proposed fee rules for Federal Operating Permit sources determining actual emissions are too complex and prohibitively expensive and, therefore, the only option for fees is to pay on plant site emission limits.

No one handed in written comments.

There was no further testimony and the hearing was closed at 7:15 p.m.

Springfield Hearing

The rulemaking hearing on the above titled proposal was convened at 10:05 a.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Ten people were in attendance. One person signed up to give testimony.

Prior to receiving testimony, Don Arkell briefly explained the specific rulemaking proposal, the reason for the proposal, and Terri Sylvester was in attendance to respond to questions from the audience.

The one person was then called to testify and presented testimony as noted below.

David C. Smith, Willamette Industries, 50 N. Danebo Ave., Eugene

With a couple of exceptions, Willamette Industries is supportive of the rules as written. The first exception is the inclusion of insignificant activities in calculating net emission increases in the "Major Modification" definition. The company contends that quantification of emissions in baseline years are very suspect and would like the Commission to omit the requirement to calculate insignificant emissions.

The second exception the company has is with Table 4, category 18, hardboard which includes fiberboard. This is not representative of traditional industry definitions and fiberboard should, instead, be part of category 17, particleboard.

No one handed in written comments.

There was no further testimony and the hearing was closed at 10:15 a.m.

Pendleton Hearing

The rulemaking hearing on the above titled proposal was convened at 10:00 a.m. by John Kinney. No one was in attendance. The hearing was held open until 10:30 a.m., when it was closed, no one having arrived.

Portland Hearing

The rulemaking hearing on the above titled proposal was convened at 1:05 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.

Four people were in attendance. One person signed up to give testimony.

Prior to receiving testimony, Terri Sylvester briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

The one person was then called to testify and presented testimony as noted below.

Lowell H. Miles, President of Miles Fiberglass and Plastics

Mr. Miles was representing his own company as well as the Society of the Plastics Industry, Inc. The industry wishes to see an extension of the 5-year deferral for non-major sources if the EPA should determine that permitting of these sources is not necessary. The industry also strongly suggests that the Department use realistic data in determining potential to emit. In addition, the industry supports the inclusion of synthetic minor permits to the rules.

Regarding the fee rules, the industry is opposed to the supplemental interim emissions fee of $10.50 per ton because it puts an added monetary burden on sources when they are preparing to comply with both administrative and financial requirements of the operating permit program. The industry would like to see more details provided in the "Fiscal and Economic Impact Statement".

The industry believes that the money generated by the Federal Operating Permit program should be used solely for running the Federal Operating Permit program in Oregon and, finally, the industry supports the definition of "actual emissions" and the provision allowing sources to pay on either actual or permitted emissions.

No one handed in written comments.

There was no further testimony and the hearing was closed at 1:25 p.m.

Attachments:

Written Testimony Submitted for the Record.

TS\hearoff.rpt
March 3, 1994

ATTACHMENT D

LIST OF WRITTEN COMMENTS RECEIVED

WF 1 - Mark Slezak, Assistant General Manager,
Columbia Forest Products
P.O. Box 1780
Klamath Falls, OR 97601

WF 2 - Maureen A. Healey, Director,
Federal Environment and Transportation Issues,
The Society of the Plastics Industry, Inc.
1275 K Street, N.W., Suite 400
Washington, D.C. 20005-4006

WFA 3 - Richard D. Beckett, Environmental Manager
Kingsford Products Company
10400 Linn Station Road
P.O. Box 37340
Louisville, KT 40233

WFA 4 - Douglas S. Morrison, Environmental Counsel
Northwest Pulp & Paper Association
1300 114th Avenue Southeast, Suite 110
Bellevue, WA 98004

WF 5 - Marc A. Aprea, Director, Government Affairs,
Browning-Ferris Industries
915 L Street, Suite 1140
Sacramento, CA 95814

WF 6 - Dean C. DeLorey, Corporate Environmental Engineer,
The Amalgamated Sugar Company
P.O. Box 87
Nampa, ID 83653

WFA 7 - Bob Morris, Region Engineer
Boise Cascade
Western Oregon Area
P.O. Box 100
Medford, OR 97501

WFA 8 - Glen R. Patrick, Environmental Chemist
Environmental and Energy Services
Boise Cascade
P.O. Box 8328
Boise, ID 83707-2328

DEPARTMENT'S EVALUATION OF PUBLIC COMMENT

A. Fee Rules

Comment

Commenters WF 1, WFA 3, and WF 6, feel that the proposed fees for the Federal Operating Permit Program are excessive to meet the Department's revenue needs and that the fees add significant costs for sources that need to compete in the national and international marketplace. These fees, together with the increased administrative costs for monitoring, record-keeping and reporting reduce the competitiveness of companies located in Oregon.

Commenter WF 6 also believes that its fees should be lower because it is located in a rural area that is in attainment. It would like the rule to allow a source to negotiate a lump sum fee based on the actual costs for permitting the facility.

Department Response

Federal requirements of the 1990 Clean Air Act and EPA regulations promulgated on June 29, 1992 [57 FR 32295] provide the framework for these rules which require states to develop funding mechanisms to fully fund the direct and indirect costs of the Federal Operating Permit Program.

The 1993 Oregon Legislature closely analyzed the funding of this program: the revenue needs of the Department; the structure and type of fees to be used; applicability of the fees to various sizes and types of industry; as well as the amount of the fees. As a result of the Legislature's deliberation SB 86 authorized the Department to collect fees based on emissions, an annual base, and specific activities.

The Department's proposed rules are consistent with the fee amounts and structure which the Legislature authorized and believes that they are necessary and sufficient to implement the program required by the EPA.

Comment

Commenters WFA 4 and WF 5 recommend that the Department clarify the rule, OAR 340-28-2610(5), to ensure that no "double counting" of emissions occurs. Their concern is that hazardous air pollutant emissions are for the most part

already being accounted for as particulate or Volatile Organic Compound emissions.

Department Response

The majority of Hazardous Air Pollutants (HAP) are either emitted as Particulate Matter (PM) or as Volatile Organic Compounds (VOC), both of which are regulated as Criteria Pollutants. OAR 340-28-2610(5) recognizes this overlap and exempts "double-counting" those HAP already included as VOC or PM emissions from fee assessment as HAP. As examples, twenty tons per year of trichloroethylene will be counted and assessed as VOC but not as HAP, but twenty tons of chlorine emissions are assessed as HAP because they are neither VOC nor PM.

Comment

Commenter WFA 4 understood from Advisory Committee meetings that the user fee for a Complex construction permit, found in Table 4, Part 1 F(a), would be the only fee assessed for receiving that permit.

Department Response

As authorized by the Legislature, consistent with the revenue forecasts, the User Based Activity Fees included in Part 1 of Table 4 are additional assessments over and above the permit fees included in Part 2 of the Table. Since the fees listed in Part 2 of the Table may apply to sources which are neither constructing nor modifying, the Part 1 fees are necessary to cover the cost of the additional review required for new construction. However, the fees listed as "Note F" of Part 1 are intended to include the Ambient Monitoring and Modeling Reviews listed as "Notes B and C" respectively, since these would be part of a construction permit review.

Comment

Commenter WFA 4 would like criteria established in the rules for "Complex, Moderately Complex, and Simple" construction permit applications as these terms are used in Table 4, and also for "Complex and Simple" as used in 340-28-2600 for permit modifications.

Department Response

Criteria for determining the complexity of a construction permit, and for permit modifications, are contained in Department procedures and guidance for Permit Coordinators and the Department does not believe they appropriately belong in the rules.

Complex permits include those requiring: PSD/NSR review; a case-by-case HAP control review; source-specific RACT review; or sources with extreme public interest, such as nerve gas incineration. Simple permits are those which are used for minimal sources or for A2 sources where no special analysis is required and which are not controversial. All other permits are considered Moderately complex.

Comment

Commenter WFA 4 believes that the second sentence of OAR 340-28-2620(2) should be deleted because it maintains that this sentence is a misstatement.

Department Response

This rule refers to major sources of carbon monoxide (CO) having to pay fees on emissions of other regulated pollutants, although they are not required to pay on CO emissions. Since there has been considerable confusion within the regulated community on this point the Department feels it is essential to retain this sentence in the rule. However, the wording has been modified so that it is not in conflict with other rules which exclude certain emissions of regulated pollutants from emissions-based fees.

Comment

Commenter WFA 4, WF 6, WFA 7 and WFA 8 believe that the language in OAR 340-28-2670 relating to determining Actual Emissions should be modified or clarified in a number of respects. Some would like specific details for calculating actual emissions deleted from the rules and incorporated into a procedures manual, but others feel that the use of source tests to verify emission factors is impractical and unreasonable and that the rule should require only one Department approved source test. They also believe the proposed emission fee rules make the calculation of actual emissions so difficult that sources have no option but to pay on plant site emission limits and would like the rules to be made simpler.

It was suggested that other Department approved methods for determining actual emissions, such as the use of other sources of emissions factors, be allowed, especially in the case of HAP where reference factors or tests may not yet be available.

Department Response

The Advisory Committee focused considerable attention on acceptable methods of assessing fees. Oregon air quality permitting rules provide a unique option for sources to establish Plant Site Emissions Limits (PSEL) in each permit. These PSEL provide a facility-wide limit on emissions, which while protecting the airshed, give a source the flexibility to use different processes or equipment at different times. In most cases the PSEL represents a higher level of emissions than is actually being emitted.

During the course of its discussions the Committee recognized that a source could choose to have its emissions fees assessed on the PSEL, and thereby avoid the cost of extensive source testing or emissions factor verification. The Committee agreed that if a source chose not to use the PSEL then it should be obligated to provide valid and verifiable quantification of its emissions for fee assessment. Providing accurate information on emissions, to calculate per ton emissions fees, must be a basic tenet of the fee structure.

With respect to hazardous air pollutants (not assessed as VOC or PM), the Committee had to consider the general lack of both testing methods and accepted emissions factors currently available for determining emissions. This point is recognized in OAR 340-28-2670(5). In discussions with the Committee the Department agreed that its determination of "appropriate methods to demonstrate actual emissions" would be based on several factors. Where there are no formally recognized methods, or there are technical or cost factors that make testing or direct measurement impractical, an owner/operator may propose, and the Department may approve, use of the best representative data available.

B. Asbestos Inspection Rules

Comment

Commenter WFA 4 asserted that the Department only has statutory authority to reference the asbestos regulations found in the National Emission Standard for Hazardous Air Pollutants (NESHAP) and not more stringent federal regulations.

Department Response

The Department agrees and will stay within the asbestos regulations found in the NESHAP. The definition for asbestos survey has been removed from the proposed rule. The word survey in the title of the rule was changed to inspection. Section 1 of the temporary rule has been rewritten to more closely resemble applicability language found in the NESHAP. As a result, section 2 of the temporary rule became redundant so it was deleted and the remaining sections renumbered.

Comment

Commenter WFA 3 felt the ten day notification prior to demolition is burdensome and unnecessary for newer construction.

Department Response

The ten day notification of demolition is a requirement of the NESHAP even when the asbestos inspection shows that no asbestos is present. The Department must require compliance in accordance with EPA guidance.

Comment

Commenter WFA 3 asked who had responsibility for conducting the survey. Commenters WFA 7 and WFA 8 wanted previous surveys to satisfy current regulations.

Department Response

The federal and state regulations place responsibility for the asbestos inspection on the owner or operator of the demolition or renovation project. However, there are applicable federal regulations outside of NESHAP which require training for asbestos inspectors. Information on how to comply with all EPA inspection requirements will be discussed in guidance documents.

A thorough inspection will show the amount and location of asbestos-containing material, or the inspection will show that asbestos-containing materials are not present. Any previous inspection that meets these conditions will be acceptable to the Department but may not meet EPA requirements.

As a result of the Asbestos School Hazard Abatement Re-authorization Act (ASHARA), training requirements for asbestos inspectors were effective November 28, 1992. To meet federal inspection requirements, asbestos surveys done after November, 1992 must have been performed by an inspector meeting EPA training requirements at that time.

Inspections performed prior to November 28, 1992, or inspections performed by non-certified inspectors need to be reviewed by an EPA certified inspector.

Comment

Commenter WFA 7 and WFA 8 would like the definition of renovation to be revised so it clearly excludes routine maintenance activities from the inspection requirements.

Department Response

The NESHAP requirement for asbestos inspections include maintenance activities on facility equipment. The Department will need to be at least as stringent and require an asbestos inspection for routine maintenance activities. Therefore the definition for renovation will remain unchanged.

C. Additional Comments

Comment

The definition of "Major Modification" in 340-28-110(58) includes a requirement to quantify emissions from insignificant activities which should be omitted.

Department Response

The entire issue of insignificant activities is being examined as part of the implementation process now on-going. A "pilot group" of major sources is currently working with the Department to improve the permit application process. Additional categories of insignificant activities and clarifications of the requirements for quantifying emissions will be proposed as rule amendments later this year.

Comment

Categories 17 and 18 in Table 4 should be modified so that fiberboard manufacture is placed in category 17 with particleboard rather than in category 18 with hardboard.

Department Response

The Department will be considering changes to Table 4 as part of an upcoming review of the Air Contaminant Discharge Permit program rules.

Comment

The proposed addition of language regarding challenges to permit actions properly belongs in 340-28-2200(1) rather than in 340-28-2200(2).

Department Response

The Department agrees and will make the change.

ATTACHMENT F

CHANGES MADE TO PROPOSED RULE
BASED ON PUBLIC COMMENT

RULE CITATION	DETAILS OF CHANGES
340-12-050(ff)	Delete "interim".
340-12-045(1)	Change citation from 340-12-049(8) to 340-12-049(7).
340-28-110(10)	Change citation from 340-28-2590 to 340-28-2610.
340-28-110(81)(c)(C)	Change reference from 112(2) to 112(r).
340-28-1750(1)	After "Table 4" add Part II.
340-28-1750(2)	Replace "surcharges" with "user fee".
340-28-1750 Table 4	In Part I replace "F. Construction Permits" with "F. Initial Permitting Fee".
340-28-2200(2)(b)	Move originally proposed additional sentence to 340-28-2200(1)(i).
340-28-2620(2)	Replace "regardless of the amount of emissions" with "pursuant to 340-28-2560."
340-28-2650(1)(i)	Prior to "Hazardous Air Pollutants" add "Estimate of"
340-28-2710(2)	Replace "shall use ASTM methods" with "shall ensure that ASTM methods were used".
340-32-5610	Revise proposed language to reflect Department Response to Comment.

Oregon Department of Environmental Quality
Air Quality Industrial Source Control Advisory Committee
Members

Chair
Arno Denecke
Salem, OR

Ex Officio
Don Arkell
Lane Regional Air
Pollution Authority
Springfield, OR

Environmental
John Charles
Oregon Environmental Council
Portland, OR

Electronics
Bonnie Gariepy
Intel Corporation
Hillsboro, OR

Regulated Community
Candee Hatch
CH_2M Hill
Portland, OR

Air Toxics
Day Morgan
Tigard, OR

Environmental
Karyn Jones
Citizens for Environmental Quality
Hermiston, OR

Public-at-Large
Janet Neuman
Lewis and Clark College
Northwestern School of Law
Portland, OR

Pulp and Paper and Wood Products
Bob Prolman
Weyerhaeuser Company
Tacoma, WA

Public-at-Large
Joe Weller
Hillsboro, OR

Industry
Jim Whitty
Associated Oregon Industries
Salem, OR

Proxies

Annette Liebe, Oregon Environmental Council, Portland, OR, for John Charles

Bob Palzer, Sierra Club, Portland, OR, for Joe Weller

ATTACHMENT H

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Federal Operating Permit Program Fee Rules

Rule Implementation Plan

Summary of the Proposed Rule

The proposed rules will establish procedures and a fee schedule for assessment of fees from major air quality industrial sources subject to the federal operating permit program. The proposed rules will also update the existing asbestos regulations to include federal asbestos survey requirements applicable to Federal Operating Permit Program sources.

Proposed Effective Date of the Rule

The Department proposes that the following temporary rules and amendments to existing rules go into effect on the date the rules are adopted by the Commission. It is essential that these rules are effective prior to submittal of the Department's Federal Operating Permit Program to EPA. The submittal is due to EPA before November 15, 1993.

- OAR 340-28-110 (Amendments to Division 28, Stationary Source Air Pollution Control and Permitting Procedures, Definition Rules)
- OAR 340-28-1720, 340-28-1730, 340-28-1750 (Amendments to Air Contaminant Discharge Permit Fees)
- OAR 340-28-2570 (Supplemental Interim Emission Fee Assessment)
- OAR 340-14-050 (Amendments to Enforcement Procedures and Civil Penalties, Air Quality Classification of Violations Rule)
- OAR 340-32-5590 and 340-32-5610 (Asbestos Survey Requirements).

The Department proposes that the remaining rules related to the federal operating permit program (Emission fee rules and annual base fee rules, OAR 340-28-2560 through 340-28-2720) become effective one year from filing Oregon's Federal Operating Permit Program with EPA. The Department plans to submit this program to EPA by November 15, 1993 and therefore the emission and base fees will likely be effective in November 1994.

Proposal for Notification of Affected Persons

The Department will notify all major sources subject to these new fee rules shortly after the temporary rules are adopted. "Air Time", the Air Quality Division's quarterly newsletter, contains an article about the new fees in the fall edition. The new asbestos requirements will be included in the Air Quality Division's Asbestos Newsletter that is distributed to contractors, building owners and asbestos professionals.

Proposed Implementing Actions

There are a number of implementing actions planned related to the fee rules. A data system is under development by the Department to track fees and emissions, among other elements of the new Federal Operating Permit Program. The Air Quality Division staff will work with the Department's Business Office to develop invoicing forms and procedures. Forms and instructions will be developed for sources to use to determine which fees apply and how to report emissions.

The asbestos survey requirements will be implemented as applicable requirements under the Federal Operating Permit Program.

Proposed Training/Assistance Actions

DEQ will develop instruction materials and forms for the Permit Writer's Manual and Source Guidance Manual related to the requirements of this rule. The Department also intends to conduct training seminars for affected persons on these and other rules in 1994 and 1995.

In early 1994, Department staff will work with a pilot group of sources to test the fee forms and instructions. These materials will then be revised.

Environmental Quality Commission

☑ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item F
April 21, 1994 Meeting

Title:

Proposed Adoption of Amendments to Field Burning Rules (Willamette Valley)

Summary:

Proposed rules amend existing field burning rules (Division 26), specifically the open field burning, propane flaming, and stack burning portions of the rules. The rule amendments respond to legislation (House Bill 2211), and make clarifications intended to ease rule administration.

Department Recommendation:

Adopt the field burning rules as presented in Attachment A of the staff report.

Report Author	Division Administrator	Director

April 5, 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: April 5, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item F, April 21, 1994, EQC Meeting

Proposed Adoption of Amendments to Field Burning Rules (Willamette valley)

Background

On October 21, 1994, the Director authorized the Western Region to proceed to a rulemaking hearing on proposed rules which would amend Division 26 to conform with the provisions of Oregon Laws 1993, Chapter 414 (House Bill 2211) and clarify existing rules. The amendments and clarifications relate to open field burning, propane flaming, and stack and pile burning in the Willamette Valley.

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 the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on January 26, 1994.

A Public Hearing was held February 25, 1994 with Kevin Downing 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 PM, February 25, 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, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment F.

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

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

Division 26 was amended to conform with the provisions of Oregon Laws 1993, Chapter 414 (House Bill 2211) and to clarify existing rules which were difficult to administer.

Relationship to Federal and Adjacent State Rules

There are no related federal or adjacent state open field burning programs.

Authority to Address the Issue

Chapter 414, Oregon Laws 1993 (Enrolled House Bill 2211)

Oregon Revised Statutes OAR 468A.555 through 468A.620

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

In January 1993 the Department established an advisory committee consisting of grass seed growers and representatives from the Oregon Seed Council, the Office of the State Fire Marshal, and the Department of Agriculture. The committee was formed to review and discuss amending the Field Burning Rules to reduce administrative costs, modify the registration system, and address other field burning issues. The committee's proposals were jointly submitted to the legislature by the Oregon Seed Council and Department of Agriculture and were incorporated into House Bill 2211.

The committee has reviewed and approved the proposed amendments to Division 26. Committee members are listed in attachment G.

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

The rule amendments address administrative procedures which have proven to be burdensome and costly to both the regulated community and the Department. The proposed amendments repeal the requirement to register stack burning acreage resulting in an estimated savings of $87,000 per season. In addition, the rules change the field by field registration system for propane flaming and open field burning to an acreage system. This system should reduce the costs associated with re-registration and provide growers with the flexibility they need to make informed management decisions.

Currently, growers are responsible for the disposal of baled grass seed residue even though a custom baler, straw broker, or other party has control or custody of the material. The proposed rules will place the burden of disposal and payment of burn fees on the party in custody or control of the straw residue.

The rules also address the growing problem of collecting delinquent burn permit fees by providing the authority to prohibit growers from registering their fields and deny burn permits until the fees are paid.

Summary of Significant Public Comment and Changes Proposed in Response

Comments received are summarized in attachment D and the changes resulting from public comment are presented in attachment F.

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

Growers will register and pay the registration fee for only the acreage they intend to open field burn and propane flame. They do not have to identify specific fields at the time of registration. However, they are required to map all of the fields that are candidates for propane flaming and open field burning. They do not have to register for stack burning.

During the season and prior to open field burning, propane flaming, or stack burning any field, growers must contact the permit agent, identify the field to be burned, and obtain a

burn permit. The burn permit fee is due within ten days from the day the permit was issued. This includes all persons in custody or control of grass seed or cereal grain stacks or piles intending to dispose of the residue by burning.

Growers owing burn permit fees from previous seasons may be prohibited from registering their fields and may be denied burn permits until the delinquent fees are paid.

The Department of Agriculture has revised their administrative procedures, permit agent manuals, registration forms, and burn permits to conform with the proposed rules. They have also provided training for the contract permit agents and fire districts. The permit agents and the Department of Agriculture will assist the grower community with the new registration system and will provide training through regularly scheduled industry meetings. Copies of the final rules will also be mailed to the regulated community prior to the start of the season.

The Department has met with members of the Agricultural Fiber Association and plans to meet with other industry organizations and the State Fire Marshal to discuss the new rules and will provide assistance to the regulated community throughout the burn season.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding open field burning, propane flaming, and stack burning 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
I. (Other Attachments as appropriate)

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)
(Other Documents supporting rule development process or proposal)

Approved:

Section: Gary Messer

Division: Greenwood

Report Prepared By: Stephen Crane

Phone: (503) 378-8240, Ext. 254

Date Prepared: March 11, 1994

SDC:sdc
E:\wp51\EQCRULE.ADP
April 5, 1994

Attachment A

DIVISION 26

FIELD BURNING RULES (Willamette Valley)

Introduction

340-26-001

(1) This Division applies to the open field burning, propane flaming, and stack and pile burning of all perennial and annual grass seed and cereal grain crops, and associated residue within the Willamette Valley. The open burning of all other agricultural waste material, including sanitizing perennial and annual grass seed crops by open burning in counties outside the Willamette Valley, (referred to as "fourth priority agricultural burning") is governed by OAR Chapter 340, Division 23, Rules for Open Burning. Enforcement procedure and civil penalties for open field burning, propane flaming, and stack and pile burning are established in Oregon Administrative Rules Chapter 340 Division 12.

(2) Organization of rules:

(a) OAR 340-26-003 is the policy statement of the Environmental Quality Commission setting forth the goals of this Division;

(b) OAR 340-26-005 contains definitions of terms which have specialized meanings within the context of this Division;

(c) OAR 340-26-010 lists general provisions and requirements pertaining to all open field burning, propane flaming, and stack and pile burning with particular emphasis on the duties and responsibilities of the grower registrant;

(d) OAR 340-26-012 lists procedures and requirements for registration of acreage, issuance of permits, collection of fees, and keeping of records, with particular emphasis on the duties and responsibilities of the local permit issuing agencies;

(e) OAR 340-26-013 establishes acreage limits and methods of determining acreage allocations;

(f) OAR 340-26-015 establishes criteria for authorization of open field burning, propane flaming, and stack and pile burning pursuant to the administration of a daily smoke management control program;

(g) OAR 340-26-031 establishes special provisions pertaining to field burning by public agencies for official purposes, such as "training fires";

(h) OAR 340-26-033 establishes special provisions pertaining to "preparatory burning";

(i) OAR 340-26-035 establishes special provisions pertaining to open field burning for experimental purposes;

(j) OAR 340-26-040 establishes special provisions and

procedures pertaining to emergency cessation of burning;

(k) OAR 340-26-045 establishes provisions pertaining to propane flaming;

(l) OAR 340-26-055 establishes provisions pertaining to "stack and pile burning".

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 12-1984, f. & ef. 7-13-84; DEQ 11-1987, f. & ef. 6-15-87; AQ 17, f. & ef. 3-11-92

Policy

340-26-003 In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing **grass seed and cereal grain straw** ~~[crop]~~ residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack and pile burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Environmental Quality Commission:

(1) To provide for a maximum level of burning with a minimum level of smoke impact on the public, recognizing:
   (a) The importance of flexibility and judgment in the daily decision-making process, within established and necessary limits;
   (b) The need for operational efficiency within and between each organizational level;
   (c) The need for effective compliance with all regulations and restrictions.

(2) To study, develop and encourage the use of reasonable and economically feasible alternatives to the practice of open field burning.

(3) To increase the degree of public safety by preventing unwanted wild fires and smoke from open field burning, propane flaming, and stack burning near highways and freeways within the state of Oregon. The Environmental Quality Commission hereby adopts by reference, as rules of the Environmental Quality Commission, Oregon Administrative Rules 837-110-110 through 837-110-160 the Rules of the State Fire Marshal filed with the Secretary of State on February 7, 1994. These rules shall apply to that area west

of the Cascade Range and south to the Douglas/Lane County lines.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]
Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 5-1984, f. & ef. 3-7-84; AQ 17, f. & ef. 3-11-92

Definitions

340-26-005 As used in this Division:

(1) "Actively extinguish" means the direct application of water or other fire retardant to an open field fire.

(2) "Approved alternative method(s)" means any method approved by the Department to be a satisfactory alternative field sanitation method to open field burning.

(3) "Approved alternative facilities" means any land, structure, building, installation, excavation, machinery, equipment, or device approved by the Department for use in conjunction with an approved alternative method.

(4) "Candidate Fields" means all grass seed or cereal grain fields being considered for open field burning or propane flaming.

~~[(4)]~~ **(5)** "Commission" means the Environmental Quality Commission.

~~[(5)]~~ **(6)** "Cumulative hours of smoke intrusion in the Eugene-Springfield area" means the average of the totals of cumulative hours of smoke intrusion recorded for the Eugene site and the Springfield site. Provided the Department determines that field burning was a significant contributor to the smoke intrusion:

(a) The Department shall record one hour of intrusion for each hour the nephelometer hourly reading exceed a background level by 1.8 X 10^4 b-scat units or more but less than the applicable value in subsection (b) or (c) of this section;

(b) Between June 16 and September 14 of each year, two hours of smoke intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level of 5.0 X 10^4 b-scat units;

(c) Between September 15 and June 15 of each year two hours of intrusion shall be recorded for each hour the nephelometer hourly reading exceeds a background level by 4.0 X 10^4 b-scat units.

The background level shall be the average of the three

~~[(6)]~~ **(7)** "Department" means the Department of Environmental Quality. The Department may enter into contracts with the Oregon Department of Agriculture or other agencies to carryout the purposes set forth in these rules.

~~[(7)]~~ **(8)** "Director" means the Director of the Department or delegated employee representative pursuant to ORS 468.045(3).

~~[(8)]~~ **(9)** "District allocation" means the total amount of acreage sub-allocated annually to the fire district, based on the district's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued within the district, subject to daily authorization. District allocation is defined by the following identity:

District Allocation =

$$\frac{\text{Maximum annual acreage limit}}{\text{Total acreage registered in the Valley}} \times \text{Total acreage registered in the District}$$

~~[(9)]~~ **(10)** "Drying day" means a 24-hour period during which the relative humidity reached a minimum less than 50% and no rainfall was recorded at the nearest reliable measuring site.

~~[(10)]~~ **(11)** "Effective mixing height" means either the actual height of plume rise as determined by aircraft measurement or the calculated or estimated mixing height as determined by the Department, whichever is greater.

~~[(11)]~~ **(12)** "Field-by-field burning" means burning on a limited or restricted basis in which the amount, rate, and area authorized for burning is closely controlled and monitored. Included under this definition are "training fires" and experimental open field burning.

~~[(12)]~~ **(13)** "Field reference code" means a unique four-part code which identifies a particular registered field for mapping purposes. The first part of the code shall indicate the grower registration (form) number, the second part the line number of the field as listed on the registration form, the third part the crop type, and the fourth part the size (acreage) of the field (e.g., a 35 acre perennial (bluegrass) field registered on line 2 of registration form number 1953

(e.g., a 35 acre perennial (bluegrass) field registered on line 2 of registration form number 1953 would be 1953-2-P-BL-35).

~~[(13)]~~ **(14)** "Fire district" or "district" means a fire permit issuing agency.

~~[(14)]~~ **(15)** "Fire permit" means a permit issued by a local fire permit issuing agency pursuant to ORS 477.515, 477.530, 476.380, or 478.960.

~~[(15)]~~ **(16)** "Fires-out time" means the time announced by the Department when all flames and major smoke sources associated with open field burning should be out and prohibition conditions are scheduled to be imposed.

~~[(16)]~~ **(17)** "Fire safety buffer zone" shall have the same meaning as defined in the State Fire marshal rules.

~~[(17)]~~ **(18)** "Fluffing" means an approved mechanical method of stirring or tedding crop residues for enhanced aeration and drying of the full fuel load, thereby improving the field's combustion characteristics.

~~[(18)]~~ **(19)** "Grower allocation" means the amount of acreage sub-allocated annually to the grower registrant, based on the grower registrant's pro rata share of the maximum annual acreage limitation, representing the maximum amount for which burning permits may be issued, subject to daily authorization. Grower allocation is defined by the following identity:

Grower Allocation =

$$\frac{\text{Maximum annual acreage limit}}{\text{Total acreage registered in the Valley}}$$

x Total acreage registered by grower registrant

~~[(19)]~~ **(20)** "Grower registrant" means any person who registers acreage with the Department for purposes of open field burning, propane flaming or **receives a permit to** stack or pile burn~~[ing]~~.

~~[(20)]~~ **(21)** "Marginal conditions" means atmospheric conditions such that smoke and particulate matter escape into the upper atmosphere with some difficulty but not such that limited additional smoke and particulate matter would constitute a danger to the public health and safety.

~~[(21)]~~ **(22)** "Marginal day" means a day on which marginal conditions exist.

~~[(22)]~~ **(23)** "Nephelometer" means an instrument for measuring ambient smoke concentrations.

~~[(23)]~~ **(24)** "Northerly winds" means winds coming from directions from 290° to 90° in the north part of the compass, averaged through the effective mixing height.

~~[(24)]~~ **(25)** "Open field burning" means burning of any perennial or annual grass seed or cereal grain crop, or associated residue, in such manner that combustion air and combustion products are not effectively controlled.

~~[(25)]~~ **(26)** "Open burning" means the burning of agricultural, construction, demolition, domestic, or commercial waste or any other burning which occurs in such a manner that combustion air is not effectively controlled and combustion products are not effectively vented through a stack or chimney pursuant to OAR 340-23-030.

~~[(26)]~~ **(27)** "Open field burning permit" means a permit issued by the Department pursuant to ORS 468A.575.

~~[(27)]~~ **(28)** "Permit issuing agency" or "Permit agent" means the county court or board of county commissioners, or fire chief or a rural fire protection district or other person authorized to issue fire permits pursuant to ORS 477.515, 477.530, 476.380, or 478.960.

~~[(28)]~~ **(29)** "Preparatory burning" means controlled burning of portions of selected problem fields for the specific purpose of reducing the fire hazard potential or other conditions which would otherwise inhibit rapid ignition burning when the field is subsequently open burned.

~~[(29)]~~ **(30)** "Priority acreage" means acreage located within a priority area.

~~[(30)]~~ **(31)** "Priority areas" means the following areas of the Willamette Valley:

(a) Areas in or within three miles of the city limits of incorporated cities having populations of 10,000 or greater;

(b) Areas within one mile of airports servicing regularly scheduled airline flights;

(c) Areas in Lane County south of the line formed by U.S. Highway 126 and Oregon Highway 126;

(d) Areas in or within three miles of the city limits of the City of Lebanon;

(e) Areas on the west and east side of and within 1/4 mile of these highways: 99, 99E, and 99W. Areas on the south and north side of and within 1/4 mile of U.S. Highway 20 between Albany and Lebanon, Oregon Highway 34 between Lebanon and Corvallis, Oregon

Highway 228 from its junction south of Brownsville to its rail crossing at the community of Tulsa.

~~[(31)]~~ **(32)** "Prohibition conditions" means conditions under which open field burning is not allowed except for individual burns specifically authorized by the Department pursuant to OAR 340-26-015(2).

~~[(32)]~~ **(33)** "Propane flaming" means a mobile flamer device which meets the following design specifications and utilizes an auxiliary fuel such that combustion is nearly complete and emissions are significantly reduced:

(a) Flamer nozzles shall not be more than 15 inches apart;

(b) A heat deflecting hood is required and shall extend a minimum of 3 feet beyond the last row of nozzles.

~~[(33)]~~ **(34)** "Propane flaming permit" means a permit issued by the Department pursuant to ORS 468A.575 and consisting of a validation number and specifying the conditions and acreage specifically registered and allocated for propane flaming.

~~[(34)]~~ **(35)** "Quota" means an amount of acreage established by the Department for each fire district for use in authorizing daily burning limits in a manner to provide, as reasonably as practicable, an equitable opportunity for burning in each area.

~~[(35)]~~ **(36)** "Rapid ignition techniques" means a method of burning in which all sides of the field are ignited as rapidly as practicable in order to maximize plume rise. Little or no preparatory backfire burning shall be done.

~~[(36)]~~ **(37)** "Released allocation" means that part of a growers allocation, by registration form, that is unused and voluntarily released to the Department for first come-first serve dispersal to other grower registrants.

~~[(37)]~~ **(38)** "Residue" means straw, stubble and associated crop material generated in the production of grass seed and cereal grain crops.

~~[(38)]~~ **(39)** "Responsible person" means each person who is in ownership, control, or custody of the real property on which open burning occurs, including any tenant thereof, or who is in ownership, control or custody of the material which is burned, or the grower registrant. Each person who causes or allows open field burning, propane flaming, or stack or pile burning to be maintained shall also be considered a responsible person.

~~[(39)]~~ **(40)** "Small-seeded seed crops requiring flame sanitation" means small-seeded grass, legume, and vegetable crops, or other types approved by the Department, which are planted in early autumn, are grown specifically for seed production, and which require flame sanitation for proper cultivation. For purposes of this Division, clover and sugar beets are specifically included. Cereal grains, hairy vetch, or field peas are specifically not included.

~~[(40)]~~ **(41)** "Smoke management" means a system for the daily or hourly control of open field burning, propane flaming, or stack or pile burning through authorization of the times, locations, amounts and other restrictions on burning, so as to provide for suitable atmospheric dispersion of smoke particulate and to minimize impact on the public.

~~[(41)]~~ **(42)** "Southerly winds" means winds coming from directions from 90° to 290° in the south part of the compass, averaged through the effective mixing height.

~~[(42)]~~ **(43)** "Stack burning" means the open burning of **bound, baled, collected, gathered, accumulated,** piled or stacked **straw** residue from perennial or annual grass seed or cereal grain crops.

~~[(43)]~~ **(44)** "Stack burning permit" means a permit issued by the Department pursuant to ORS 468A.575 ~~[and]~~ **that** ~~[consisting of a validation number]~~**identifies the responsible person, date and time of permit issuance,** and specif~~[ing]~~**ies** the ~~[conditions and]~~ acreage **and location authorized** ~~[specifically registered]~~ for stack or pile burning.

~~[(44)]~~ **(45)** "Test fires" means individual field burns specifically authorized by the Department for the purpose of determining or monitoring atmospheric dispersion conditions.

~~[(45)]~~ **(46)** "Training fires" means individual field burns set by or for a public agency for the official purpose of training personnel in fire-fighting techniques.

~~[(46)]~~ **(47)** "Unusually high evaporative weather conditions" means a combination of meteorological conditions following periods of rain which result in sufficiently high rates of evaporation, as determined by the Department, where fuel (residue) moisture content would be expected to approach about 12 percent or less.

~~[(47)]~~ **(48)** "Validation number" means:

(a) For open field burning a unique five-part number issued by the Department or its delegate identifying a

specific field and acreage allowed to be open field burn ed and the date and time the permit was issued. (e.g., a validation number issued August 26 at 2:30 p.m. for a 70-acre burn for a field registered on line 2 of registration form number 1953 would be 1953-2-0826-1430-070);
(b) For propane flaming and stack or pile burning a unique five part alphanumerical, issued by the Department or its delegate, identifying a specific field and acreage allowed to be propane flamed or stack or pile burned, the date and time the permit was issued, and the burn type. (e.g., a validation number issued on July 15 for a 100 acre field to be propane flamed registered on line 4 of registration form 9999 would be 9999-4-0715-P-100.

~~[(48)]~~ **(49)** "Ventilation Index (VI)" means a calculated value used as a criterion of atmospheric ventilation capabilities. The Ventilation Index as used in these rules is defined by the following identity:

$$VI = \frac{\text{(Effective mixing height (feet))}}{1000} \times \text{(Average wind speed through the effective mixing height (knots))}$$

~~[(49)]~~ **(50)** "Willamette Valley" means the areas of Benton, Clackamas, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties lying between the crest of the Coast Range and the crest of the Cascade Mountains, and includes the following:

(a) "South Valley", the areas of jurisdiction of all fire permit issuing agents or agencies in the Willamette Valley portions of the counties of Benton, Lane, or Linn;

(b) "North Valley", the areas of jurisdiction of all other fire permit issuing agents or agencies in the Willamette Valley.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f.

& ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

General Requirements

340-26-010

(1) No person shall cause or allow open field burning~~[,]~~**or** propane flaming~~[, or stack or pile burning]~~ on any acreage unless said acreage ~~[or stack or pile location]~~ has first been registered and mapped pursuant to OAR 340-26-012(1), the registration fee has been paid, and the registration (permit application) has been approved by the Department.

(2) No person shall cause or allow open field burning, propane flaming, or stack or pile burning without first obtaining and being able to readily demonstrate a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-26-012(2). On the specific day of and prior to the open field burning, propane flaming, or pile or stack burning of any grass seed or cereal grain crop or associated residue the grower registrant shall obtain, in person or by telephone, a valid burning permit and fire permit from the appropriate permit issuing agent pursuant to OAR 340-26-012.

(3) **The Department may prohibit any person from registering acreage for open field burning or propane flaming and may deny burn permits for open field burning, propane flaming, and stack and pile burning until all delinquent registration fees, late fees, and burn permit fees from previous seasons are paid. The Department may also institute appropriate legal action to collect the delinquent fees.**

~~[(3)]~~**(4)** No person shall open field burn cereal grain acreage unless that person first issues to the Department a signed statement, and then acts to insure, that said acreage will be planted in the following growing season to a small-seeded seed crop requiring flame sanitation for proper cultivation, as defined in OAR 340-26-005~~[(34)]~~**(40)**.

~~[(4)]~~**(5)** No person shall cause or allow open field burning,

propane flaming, or stack or pile burning which is contrary to the Department's announced burning schedule specifying the times, locations and amounts of burning permitted, or to any other provision announced or set forth by the Department or this Division.

~~[(5)]~~ **(6)** Each responsible person open field burning or propane flaming shall have an operating radio receiver and shall directly monitor the Department's burn schedule announcements at all times while open field burning or propane flaming.

~~[(6)]~~ **(7)** Each responsible person open field burning or propane flaming shall actively extinguish all flames and major smoke sources when prohibition conditions are imposed by the Department or when instructed to do so by an agent or employee of the Department.

~~[(7)]~~ **(8)** No person shall cause or allow open field burning, or stack or pile burning within 1/4 mile of either side of any Interstate freeway within the Willamette Valley or within 1/8 mile of either side of the designated roadways listed in OAR 837-110-080(2)(c). In addition, no person shall cause or allow open field burning in any of the remaining area within a fire safety buffer zone unless a noncombustible ground surface has been provided between the field to be burned and the nearest edge of the roadway right-of-way as required by OAR 837-110-080.

~~[(8)]~~ **(9)** Each responsible person open field burning, propane flaming, or stack or pile burning within a priority area or fire safety buffer zone around a designated city, airport or highway shall refrain from burning and promptly extinguish any burning if it is likely that the resulting smoke would noticeably affect the designated city, airport or highway.

~~[(9)]~~ **(10)** Each responsible person open field burning shall make every reasonable effort to expedite and promote efficient burning and prevent excessive emissions of smoke by:

(a) Meeting all of the State Fire Marshal requirements specified in OAR 837-110-~~[0040]~~**040** through **OAR 837-110-**080;

(b) Ensuring field residues are evenly distributed, dry, and in good burning condition;

(c) Employing rapid ignition techniques on all acreage where there are no imminent fire hazards or public safety concerns.

~~[(10)]~~ **(11)** Open field burning, propane flaming, or stack or pile

burning in compliance with this Division does not exempt any person from any civil or criminal liability for consequences or damages resulting from such burning, nor does it exempt any person from complying with any other applicable law, ordinance, regulation, rule, permit, order or decree of the Commission or any other government entity having jurisdiction.

~~[(11)]~~ **(12)** Any revisions to the maximum acreage to be burned, allocation or permit issuing procedures, or any other substantive changes to this Division affecting open field burning, propane flaming, or stack or pile burning for any year shall be made prior to June 1 of that year. In making such changes, the Commission shall consult with Oregon State University.

~~[(12)]~~ **(13)** Open field burning shall be regulated in a manner consistent with the requirements of the Oregon Visibility Protection Plan for Class I areas (sec. 5.2 of the State of Oregon Clean Air Act Implementation Plan adopted under OAR 340-20-047).

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-88; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Certified Alternative to Open Field Burning

340-26-011 [DEQ 105, f. & ef. 12-26-75;
DEQ 114, f. 6-4-76;
DEQ 138, f. 6-30-77;
DEQ 140(Temp), f. & ef. 7-27-77
thru 11-23-77;

DEQ 6-1978, f. & ef. 4-18-78;
DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78;
DEQ 2-1980, f. & ef. 1-21-80;
DEQ 12-1980, f. & ef. 4-21-80;
DEQ 9-1981, f. & ef. 3-19-81;
Repealed by DEQ 5-1984, f. & ef. 3-7-84]

Registration, Permits, Fees, Records

340-26-012 In administering a field burning smoke management program, the Department may contract with counties or fire districts or other responsible individual to administer registration of acreage, issuance of permits, collection of fees and keeping of records for open field burning, propane flaming, or stack or pile burning within their permit jurisdictions. The Department shall pay said authority for these services in accordance with the payment schedule provided for in ORS 468A.615. Three quarters of said payment shall be made prior to July 1 of each year and the remainder shall be paid within 10 days after completion of the end of season reconciliation.

(1) Registration of acreage.

(a) On or before April 1 of each year, **each grower intending to** ~~[all acreage to be]~~ open burn~~[ed] [,]~~ **or** propane flame~~[d] [, or stack or pile burned]~~ under this Division shall ~~[be]~~ register~~[ed]~~ **the total acreage to be open burned or propane flamed. Said acreage shall be registered** with the Department or its authorized permit agent on **the** registration forms provided ~~[by the Department]~~. ~~[Said acreage]~~ **Candidate fields for open burning or propane flaming shall be listed on the registration form and** shall also be delineated on specially provided registration map materials and identified using a unique field reference code. Registration**, listing of fields,** and mapping shall be completed according to the established procedures of the Department. At the time of registration, a non-refundable registration fee of $2 shall be paid for each acre registered for open field burning and $1 shall be paid for each acre registered for propane flaming.
~~[After December 31, 1993]~~ The registration fees for open field burning and propane flaming shall be paid into separate designated accounts.

A complete registration (permit application) shall consist of a fully executed registration form, map and fee. Acreage registered by April 1 ~~[under any classification (open field burning, propane~~

~~flaming, or stack or pile burning)~~] may be issued a burn permit ~~[under another classification]~~ if:

~~[(A) allocation is available for the subsequent classification and;~~

~~(B) the initial registration fee is made equal to or greater than the subsequent classification and allocation is transferred under the direction of the Department.~~

~~After December 31, 1993 acreage registered by April 1 under any classification (open field burning, propane flaming, or stack or pile burning) may be issued a burn permit if:~~]

~~[(i)]~~ (A) allocation is available and;

~~[i]~~ (B) the initial registration fee account has a sufficient balance.

(b) Registration of open field burning~~[,]~~**and** propane flaming ~~[, or stack or pile burning]~~acreage ~~[and payment of applicable registration fees into an open field burning, propane flaming, or stack or pile burning account]~~ after April 1 of each year shall require the prior approval of the Department and an additional $1 per acre late registration fee. The late registration fee shall not be charged if the late registration is not due to the fault of the registrant or one under the registrant's control.

(c) Copies of all registration forms and fees shall be forwarded to the Department promptly by the permit agent. Registration map materials shall be made available to the Department at all times for inspection and reproduction.

(d) The Department shall act on any registration application within 60 days of receipt of a completed application. The Department may deny or revoke any registration application which is incomplete, false or contrary to state law or this Division.

(e) The grower registrant shall insure the information presented on the registration form and map is complete and accurate.

(2) Permits.

(a) Permits for open field burning, propane flaming, or stack or pile burning shall be issued by the Department, or its authorized permit agent, to the grower registrant in accordance with the established procedures of the Department, and the times, locations, amounts and other restrictions set forth by the Department or this Division.

(b) A fire permit from the local fire permit issuing agency is also required for all open burning pursuant

to ORS 477.515, 477.530, 476.380, 478.960.

(c) A valid open field burning permit shall consist of:

(A) An open field burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered and annually allocated for burning;

(B) A validation number issued by the local permit agent on the day of the burn identifying the specific acreage allowed for burning and the date and time the permit was issued~~[; and]~~.

~~[(C) Payment of the required $8.00 per acre burn fee.]~~

(d) A valid propane flaming permit shall consist of:

(A) A propane flaming permit issued by the Department which specifies the permit conditions in effect at all times while flaming and which identifies the acreage specifically registered and annually allocated for propane flaming;

(B) A validation number issued by the local permit agent identifying the specific acreage allowed for propane flaming and the date and time the permit was issued~~[; and]~~.

~~[(C) Payment of the required $2 per acre propane flaming fee.]~~

(e) A valid stack or pile burning permit shall consist of: **The name of the responsible person, date and time the permit was issued, and shall specify the acreage and location authorized.**

~~[(A) A stack or pile burning permit issued by the Department which specifies the permit conditions in effect at all times while burning and which identifies the acreage specifically registered for burning;~~

~~(B) A validation number issued by the local permit agent identifying the specific acreage allowed for burning and the date and time the permit was issued; and~~

~~(C) Payment of the required burn fee:]~~

(f) Each responsible person open field burning, propane flaming, or stack or pile burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) $8 per acre sanitized by open field burning;

(B) $2 per acre sanitized by propane flaming;

(C) For all acreage burned in stacks or piles:

(i) $2 per acre from January 1, 1992, to December 31, 1997;
(ii) $4 per acre burn fee in 1998;
(iii) $6 per acre burn fee in 1999;
(iv) $8 per acre burn fee in 2000; and
(v) $10 per acre burn fee in 2001 and thereafter.

For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in subparagraph (C) shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

~~[(f)]~~ **(g)** Burning permits shall at all times be limited by and subject to the burn schedule and other requirements or conditions announced or set forth by the Department.

~~[(g)]~~ **(h)** No person shall issue burning permits for open field burning, propane flaming, or stack or pile burning of:

(A) More acreage than the amount sub-allocated annually to the District by the Department pursuant to OAR 340-26-013(2);

(B) Priority or fire safety buffer zone acreage located on the upwind side of any city, airport, Interstate freeway or highway within the same priority area or buffer zone.

~~[(h)]~~ **(i)** It is the responsibility of each local permit issuing agency to establish and implement a system for distributing open field burning, propane flaming, or stack or pile burning permits to individual grower registrants when burning is authorized, provided that such system is fair, orderly and consistent with state law, this Division and any other provisions set forth by the Department.

(3) Fees.

(a) Permit agents shall collect, properly document and promptly forward all required registration, late registration fees, and burn fees to the Department.

(b) All fees shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund and shall be appropriated pursuant to ORS 468A.550 to 468A.620.

(4) Records.

(a) Permit agents shall at all times keep proper and accurate records of all transactions pertaining to registrations, permits, fees, allocations, and other matters specified by the Department. Such records shall be kept by the permit agent for a period of at least five years and made available for inspection by the appropriate authorities.

(b) Permit agents shall submit to the Department on specially provided forms weekly reports of all acreage burned in their permit jurisdictions. These reports shall cover the weekly period of Monday through Sunday, and shall be mailed and post-marked no later than the first working day of the following week.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. &cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Acreage Limitations, Allocations

340-26-013

(1) Limitation of Acreage.

(a) Except for acreage and residue open field burned pursuant to OAR 340-26-035, 340-26-040, 340-26-045, and 340-26-055 the maximum acreage to be open field burned annually in the Willamette Valley under this Division shall not exceed:

~~[(A) 140,000 acres for 1992 and 1993;]~~
~~[(B)]~~ **(A)** 120,000 acres for 1994 and 1995;
~~[(C)]~~ **(B)** 100,000 acres for 1996 and 1997; and
~~[(D)]~~ **(C)** 40,000 acres for 1998 and thereafter.

(b) Notwithstanding the annual limitations, up to 25,000

acres of steep terrain and species identified by the Director of Agriculture may be open burned annually and shall be considered outside the limitation.

(c) Other limitations on acreage allowed to be open field burned are specified in OAR 340-26-015(7), **OAR 340-26-031(2),** 340-26-033~~[(2)]~~**(1),** and 340-26-035(1).

(d) The maximum acreage to be propane flamed annually in the Willamette Valley under this Division shall not exceed 75,000 acres.

(e) Other limitations on acreage allowed to be propane flamed are specified in OAR 340-26-045.

(2) Allocation of Acreage.

(a) In the event that total registration as of April 1 is less than or equal to the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) and (d) of this rule, the Department shall sub-allocate to each grower registrant and each district (subject to daily burn authorization) 100 percent of their respective registered acreage.

(b) In the event that total registration as of April 1 exceeds the maximum acreage allowed to be open field burned or propane flamed annually, pursuant to subsection (1)(a) of this rule, the Department may sub-allocate to growers on a pro rata share basis not more than 100 percent of the maximum acreage limit, referred to as "grower allocation". In addition, the Department shall sub-allocate to each respective fire district, its pro rata share of the maximum acreage limit based on acreage registered within the district, referred to as "district allocation".

(c) To insure optimum permit utilization, the Department may adjust fire district allocations.

(d) Transfer of allocations for farm management purposes may be made within and between fire districts and between grower registrants on a one-in/one-out basis under the supervision of the Department. The Department may assist grower registrants by administering a reserve of released allocation for first come-first served utilization.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f.

& ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. & ef. 6-30-77; DEQ 140(Temp), f. & ef. 7-27-77 thru 11-23-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 13-1979, f. & ef. 6-8-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; AQ 17, f. & ef. 3-11-92

[**ED. NOTE:** The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Daily Burning Authorization Criteria

340-26-015 As part of the smoke management program provided for in ORS 468A.590 the Department shall set forth the types and extent of open field burning, propane flaming, and stack and pile burning to be allowed each day according to the provisions established in this section and this Division:

(1) During the active burning season and on an as needed basis, the Department shall announce the field burning schedule over the field burning radio network operated specifically for this purpose. The schedule shall specify the times, locations, amounts and other restrictions in effect for open field burning, propane flaming, and stack and pile burning. The Department shall notify the State Fire Marshal of the burning schedule for dissemination to appropriate Willamette Valley agencies.

(2) Prohibition conditions.

(a) Prohibition conditions shall be in effect at all times unless specifically determined and announced otherwise by the Department.

(b) Under prohibition conditions, no permits shall be issued and no open field burning shall be conducted in any area except for individual burns specifically authorized by the Department on a limited extent basis. Such limited burning may include field-by-field burning, preparatory burning, or burning of test fires, except that:

(A) No open field burning shall be allowed:

(i) In any area subject to a ventilation index of less than 10.0;

(ii) In any area upwind, or in the immediate vicinity, of any area in which, based upon real-time monitoring, a violation of federal or state air quality standards is projected to occur.

(B) Only test-fire burning may be allowed:
(i) In any area subject to a ventilation index of between 10.0 and 15.0, inclusive, except for experimental burning specifically authorized by the Department pursuant to OAR 340-26-035;
(ii) When relative humidity at the nearest reliable measuring station exceeds 50 percent under forecast northerly winds or 65 percent under forecast southerly winds.

(3) Marginal conditions.
(a) The Department shall announce that marginal conditions are in effect and open field burning is allowed when, in its best judgment and within the established limits of this Division, the prevailing atmospheric dispersion and burning conditions are suitable for satisfactory smoke dispersal with minimal impact on the public, provided that the minimum conditions set forth in paragraphs (2)(b)(A) and (B) of this rule are satisfied.
(b) Under marginal conditions, permits may be issued and open field burning may be conducted in accordance with the times, locations, amounts, and other restrictions set forth by the Department and this Division.

(4) Hours of burning.
(a) Burning hours shall be limited to those specifically authorized by the Department each day and may be changed at any time when necessary to attain and maintain air quality.
(b) Burning hours may be reduced by the fire chief or his deputy, and burning may be prohibited by the State Fire Marshal, when necessary to prevent danger to life or property from fire, pursuant to ORS 478.960.

(5) Locations of burning:
(a) Locations of burning shall at all times be limited to those areas specifically authorized by the Department, except that:
(A) No priority or fire safety buffer zone acreage shall be burned upwind of any city, airport, Interstate freeway or highway within the same priority area or buffer zone;
(B) No south Valley priority acreage shall be burned upwind of the Eugene-Springfield non-attainment area.

(6) Amounts of burning.

(a) ~~[In order]~~ To provide for an efficient and equitable distribution of burning, daily authorizations of acreages shall be issued by the Department in terms of single or multiple fire district quotas. The Department shall establish quotas for each fire district and may adjust the quotas of any district when conditions in its judgment warrant such action.

(b) Unless otherwise specifically announced by the Department, a one quota limit shall be considered in effect for each district authorized for burning.

(c) The Department may issue more restrictive limitations on the amount, density or frequency of burning in any area or on the basis of crop type, when conditions in its judgment warrant such action.

(7) Limitations on burning based on air quality.

(a) The Department shall establish the minimum allowable effective mixing height required for burning based upon cumulative hours of smoke intrusion in the Eugene-Springfield area as follows:

(A) Except as provided in paragraph (B) of this subsection, burning shall not be permitted whenever the effective mixing height is less than the minimum allowable height specified in Table 1, and by reference made a part of this Division;

(B) Notwithstanding the effective mixing height restrictions of paragraph (A) of this subsection, the Department may authorize burning of up to 1000 acres total per day for the Willamette Valley, consistent with smoke management considerations and this Division.

(8) Limitations on burning based on rainfall.

(a) Open field burning and propane flaming shall be prohibited in any area for one drying day (up to a maximum of four consecutive drying days) for each 0.10 inch increment of rainfall received per day at the nearest reliable measuring station.

(b) The Department may waive the restrictions of subsection (a) of this section when dry fields are available as a result of special field preparation or condition, irregular rainfall patterns, or unusually high evaporative weather condition.

(9) Other discretionary provisions and restrictions.

(a) The Department may require special field preparations before burning, such as, but not limited to, mechanical fluffing of residues, when conditions in its judgment warrant such action.

(b) The Department may designate specified periods following permit issuance within which time active field ignition must be initiated and/or all flames must be actively extinguished before said permit is automatically rendered invalid.

(c) The Department may designate additional areas as priority areas when conditions in its judgment warrant such action.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 22-1978, f. & ef. 12-28-78; DEQ 24-1979(Temp), f. & ef. 7-5-79; DEQ 28-1979, f. & ef. 9-13-79; DEQ 30-1979, f. & ef. 9-27-79; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

[**ED. NOTE**: The text of Temporary Rules is not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the adopting agency or the Secretary of State.]

Winter Burning Season Regulations
340-26-020

Stat. Auth.: ORS Ch. 468 & 468A
[DEQ 29, f. 6-12-71, ef. 7-12-71; DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 138, f. 6-30-77; DEQ 6-1978, f. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; Repealed by DEQ 5-1984, f. & ef. 3-7-84]

Civil Penalties
340-26-025 [DEQ 93(Temp), f. & ef. 7-11-75 thru 11-28-75; DEQ 104, f. & ef. 12-26-75; DEQ 114, f. 6-4-76; DEQ 1, f. 6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78

thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984; f. & ef. 3-7-84; Repealed by DEQ 15-1990, f. & cert. ef. 3-30-90]

Tax Credits for Approved Alternative Methods, and Approved Alternative Facilities

340-26-030 [DEQ 114, f. & ef. 6-4-76; DEQ 138, f. 6-30-77; DEQ 6-1978, f. & ef. 4-18-78; DEQ 8-1978(Temp), f. & ef. 6-8-78 thru 10-5-78; DEQ 2-1980, f. & ef. 1-21-80; DEQ 12-1980, f. & ef. 4-21-80; DEQ 9-1981, f. & ef. 3-19-81; DEQ 5-1984, f. & ef. 3-7-84; Repealed by DEQ 12-1984, f. & ef. 7-13-84]

Burning by Public Agencies (Training Fires)

340-26-031 Open field burning on grass seed or cereal grain acreage by or for any public agency for official purposes, including the training of fire-fighting personnel, may be permitted by the Department on a prescheduled basis consistent with smoke management considerations and subject to the following conditions:

(1) Such burning must be deemed necessary by the official local authority having jurisdiction and must be conducted in a manner consistent with its purpose.
(2) Such burning must be limited to the minimum number of acres and occasions reasonably needed but in no case exceed 35 acres per fire or occasion.
(3) The responsible person shall comply with the provisions of OAR 340-26-010 through 340-26-013.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 5-1984, f. & ef. 3-7-84; AQ 17, f. & ef. 3-11-92

Preparatory Burning

340-26-033 The Department encourages the preparatory burning of portions of selected problem fields to reduce or eliminate potential fire hazards and safety problems and to expedite the subsequent burning of the field. Such burning shall be consistent with smoke management considerations and subject to

the following conditions:

(1) Each responsible person shall limit the acres burned to the minimum necessary to eliminate potential fire hazards or safety problems but in no case exceed 5 acres for each burn unless specifically authorized by the Department.
(2) Each responsible person conducting preparatory burning shall employ backfiring burning techniques.
(3) Each responsible person conducting preparatory burning shall comply with the provisions of OAR 340-26-010 through 340-26-013 and OAR 837-110-010 through 837-110-090.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 11-1987, f. & ef. 6-15-87

Experimental Burning

340-26-035 The Department may allow open field burning for demonstration or experimental purposes pursuant to the provisions of ORS 468A.620, consistent with smoke management considerations and subject to the following conditions:
(1) Acreage experimentally open burned, propane flamed, or stack or pile burned shall not exceed 1,000 acres annually.
(2) Acreage experimentally open burned shall not apply to the district allocation or to the maximum annual acreage limit specified in OAR 340-26-013(1)(a) or (d).
(3) Such burning is exempt from the provisions of OAR 340-26-015 but must comply with the provisions of OAR 340-26-010 and 340-26-012, except that the Department may elect to waive all or part of the per acre open field burning or propane flaming fee.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; AQ 17, f. & ef. 3-11-92

Emergency Burning, Cessation

340-26-040 Pursuant to ORS 468A.610 and upon finding of extreme danger to public health or safety, the Commission may order temporary emergency cessation of all open field burning in

any area of the Willamette Valley.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 5-1984, f. & ef. 3-7-84; AQ 17, f. & ef. 3-11-92

Propane Flaming
340-26-045

(1) The use of propane flamers, mobile field sanitizing devices, and other field sanitation methods specifically approved by the Department are subject to the following conditions:
  (a) The field shall first be prepared as follows:
    (A) Either the field must have previously been open burned and the appropriate fees paid; or
    (B) The field stubble must be flail-chopped, mowed, or otherwise cut close to the ground and the loose straw removed so the remaining stubble will not sustain an open fire.
  (b) Propane flaming operations shall comply with the following criteria:
    (A) Unless otherwise specifically restricted by the Department propane flaming may be conducted only between the hours of 9 a.m. and sunset between June 1 and August 31 of each year and 9 a.m. to one-half hour before sunset between September 1 and October 14 of each year;
    (B) Propane flamers shall be operated in overlapping strips, crosswise to the prevailing wind, beginning along the downwind edge of the field;
    (C) No person shall cause or allow propane flaming which results in sustained open fire. Should sustained open fire create excessive smoke all flame and smoke sources shall be immediately and actively extinguished;
    (D) No person shall cause or allow any propane flaming which results in visibility impairment on any Interstate highways or roadways specified in OAR 837-110-080(1) and (2). Should visibility impairment occur, all flame and smoke sources shall be immediately and actively extinguished;
    (E) The acreage must be registered and permits

obtained pursuant to OAR 340-26-012.

(F) No person shall cause or allow propane flaming when either the relative humidity at the nearest reliable measuring station exceeds 65 percent or the surface winds exceed 15 miles per hour;

(G) All regrowth over 8 inches in height shall be mowed or cut close to the ground and removed .

(d) All propane flaming operations shall be conducted in accordance with the State Fire Marshal's safety requirements specified in OAR 837-110-100 through 837-110-160.

(e) No person shall cause or allow to be initiated or maintained any propane flaming or other mobile fire sanitation methods not certified by the Department on any day or at any time if the Department has determined and notified the State Fire Marshal that propane flaming is prohibited because of adverse meteorological or air quality conditions.

(2) The Department may issue restrictive limitations on the amount, density or frequency of propane flaming or other mobile fire sanitation methods in any area when meteorological conditions are unsuitable for adequate smoke dispersion, or deterioration of ambient air quality occurs.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 5-1984, f. & ef. 3-7-84; DEQ 11-1987, f. & ef. 6-15-87; DEQ 20-1988(Temp), f. 8-12-88, cert. ef. 8-12-88 thru 2-2-89; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

Stack Burning

340-26-055 The open burning of piled or stacked residue from perennial or annual grass seed or cereal grain crops used for seed production is allowed subject to the following conditions:

(1) No person shall cause or allow to be initiated or maintained any stack or pile burning on any day or at any time if the Department has notified the State Fire Marshal that such burning is prohibited because of meteorological or air quality conditions;

(2) No person shall cause or allow stack or pile burning of any

grass seed or cereal grain residue unless said residue is dry and free of all other combustible and non-combustible material ;

(3) Each responsible person shall make every reasonable effort to promote efficient burning, minimize smoke emissions, and extinguish any stack burning which is in violation of any rule of the Commission;

(4) No stack or pile burning shall be conducted within any State Fire Marshal buffer zone "non-combustible ground surface" area (e.g., within 1/4 mile of Interstate I-5, or 1/8 mile of any designated roadway), as specified in OAR 837-110-080;

(5) The acreage must be ~~[registered and]~~ permit~~[s]~~**ed** ~~[obtained]~~ pursuant to OAR 340-26-012.

(6) Unless otherwise specifically agreed by the parties, after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, and payment of the appropriate fees, shall be upon the person who bales, removes, controls, or is in possession of the straw.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A
Hist.: DEQ 11-1987, f. & ef. 6-15-88; DEQ 8-1989, f. & cert. ef. 6-7-89; AQ 17, f. & ef. 3-11-92

TABLE 1
(340-26-015)

MINIMUM ALLOWABLE EFFECTIVE MIXING HEIGHT REQUIRED FOR BURNING BASED UPON THE CUMULATIVE HOURS OF SMOKE INTRUSION IN THE EUGENE-SPRINGFIELD AREA

Cumulative Hours of Smoke Intrusion in the Eugene-Springfield Area	Minimum Allowable Effective Mixing Height (feet)
0 - 14	No minimum
15 - 19	4,000
20 - 24	4,500
25 and greater	5,500

revised 3/11/94
OAR26fnl.93

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality Air Quality Division

OAR Chapter 340

DATE:	**TIME:**	**LOCATION:**
2/25/94	9:00 am	Land Board Room Division of State Lands 775 Summer Street Salem, OR 97310

HEARINGS OFFICER(s): Kevin Downing

STATUTORY AUTHORITY: ORS 468A.555 to ORS 468A.620, Oregon Laws Chapter 414

ADOPT:

AMEND: OAR 340-26-005, OAR 340-26-010, OAR 340-26-012, and OAR 340-26-055

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:

Oregon Administrative Rules Chapter 340, Division 26 governing the burning of grass seed and cereal grain crop residue is being amended to comply with the provisions of House Bill 2211.

The proposed amendments change the registration of open field burning and propane flaming acreage from a field by field system to an acreage system, repeals the stack burning registration requirements, and provides a 10 day grace period for payment of burn permit fees.

The amendments also address burn permit fees for stack and pile burning and straw disposal by parties other than grass seed growers.

The proposed changes will provide the grower with more flexibility to make management decisions during the burn season, reduce grower and administrative costs, and provide additional revenue for research and development.

LAST DATE FOR COMMENT: February 25, 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: Stephen Crane
ADDRESS: Air Quality Division
750 Front Street NE, Suite 120
Salem, Oregon 97310
TELEPHONE: 503-373-7302
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

Oregon Administrative Rules Chapter 340, Division 26
Field Burning Rules (Willamette Valley)

Date Issued: January 18, 1994
Public Hearings: February 25, 1994
Comments Due: February 25, 1994

WHO IS AFFECTED:

Seed growers, custom balers, straw brokers, and other parties of the Willamette Valley disposing of grass seed and cereal grain crop residue by burning

WHAT IS PROPOSED:

The Department is proposing to amend Oregon Administrative Rules Chapter 340, Division 26, Field Burning Rules to conform with Oregon Laws 1993, Chapter 414 (House Bill 2211). The proposed rules govern the burning all grass seed and cereal grain crop residue in the Willamette Valley.

WHAT ARE THE HIGHLIGHTS:

The proposed amendments change the registration for open field burning and propane flaming acreage from a field by field system to an acreage system, repeal the stack burning registration requirements, and provide a 10 day grace period for payment of burn permit fees.

The amendments also address burn permit fees for stack and pile burning and straw disposal by parties other than grass seed growers.

The proposed changes will provide the grower with more flexibility to make management decisions during the burn season, reduce grower and administrative costs, and provide additional revenue for research and development.

HOW TO COMMENT:

Public Hearings to provide information and receive public comment are scheduled as follows:

February 25, 1994, 9:00 am
Land Board Room
Division of State Lands
775 Summer Street
Salem, OR 97310

Written comments must be received by 5:00 p.m. on February 25, 1994 at the following address:

Department of Environmental Quality
Western Region
Air Quality Division
750 Front Street N.E., Suite 120
Salem, Oregon 97310

A copy of the Proposed Rule may be reviewed at the above address. A copy may be obtained from the Department by calling the Air Quality Division at 378-8240 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.

Revised 12/29/93
COMMENT.FRM

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Division 26, Field Burning Rules (Willamette Valley)

Rulemaking Statements

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

1. Legal Authority

Chapter 414, Oregon Laws 1993 (Enrolled House Bill 2211)

Oregon Revised Statutes OAR 468A.555 through 468A.620

2. Need for the Rule

These rules are intended to implement Chapter 414, Oregon Laws 1993 (Enrolled House Bill 2211).

House Bill 2211 amends Oregon Revised Statute ORS 468A.615 requiring the Department to adopt a simplified and flexible acreage registration system for propane flaming and open field burning, repeal stack burning registration requirements, and revise the payment schedule to permit agents for registration of stack burning acreage. In addition, the bill addresses the payment of burn permit fees on stack burning acreage on which less than 100 percent of the straw was removed, provides a ten day grace period for payment of burn permit fees, and places the burden of straw disposal upon the person removing or baling the field. The proposed rules fulfill these requirements.

3. Principal Documents Relied Upon in this Rulemaking

Oregon Revised Statutes ORS 468A.550 through ORS 468A.620

Chapter 414, Oregon Laws 1993 (Enrolled House Bill 2211)

4. Advisory Committee Involvement

In January 1993 the Department established an advisory committee to review and discuss amendments to Division 26, Field Burning Rules (Willamette Valley). The committee consisted of seven grass seed growers representing all geographic areas of the Willamette Valley, and representatives from the Oregon Seed Council, the Office of the State Fire Marshal, and the Department of Agriculture. Many of the issues addressed in House Bill 2211 and the proposed rule amendments were discussed and suggested by the field burning advisory committee during two meetings held in February, 1993. The committee's proposals were jointly submitted to the legislature by the Oregon Seed Council and Department of Agriculture.

The Department held a third advisory committee meeting on November 23, 1993. Approximately two weeks prior to the meeting each of the 12 participants were provided copies of the proposed rules and invited to comment. Four grass seed growers, a representative from the Oregon Seed Council, and a representative from the Oregon Department of Agriculture attended. After review and discussion, the proposed rules were revised and approved by the members. A copy of the amended rules were provided to absentee committee members with an invitation to comment. No comments were received.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Division 26, Field Burning Rules (Willamette Valley)

Fiscal and Economic Impact Statement

Introduction

- Statement of overall degree of economic impact

The proposed amendments, because they are mostly administrative in nature, should have little or no overall fiscal or economic impact on the regulated community, or local or state government. The Department anticipates an increase in revenue available for research and development to find alternatives to field burning which may result in funding for small businesses and local colleges.

General Public

Because the proposed rule amendments are administrative in nature they are not expected to have a fiscal or economic impact on the general public.

Small Business

The proposed rule amendments stipulate that custom balers, straw brokers and other parties who contract with growers to remove or take possession of grass seed or cereal grain residue and subsequently dispose of the residue by open burning are responsible for obtaining burn permits and paying the appropriate burn fees. The fees, established by statute, are two dollars per acre through December 31, 1997. On and after January 1, 1998 the fees increase by two dollars per acre per year with a maximum of ten dollars per acre in the year 2001 and thereafter. Because most of this material is shipped out of state and the market appears to be growing stronger, the Department expects little or no fiscal or economic impact on these business.

Eliminating the requirement to register stack burning acreage and the subsequent reduction in fees paid to fire districts, and changing to a acreage registration system for propane flaming and open field burning will provide the grower with more flexibility to make management decisions, reduce the overall number of fields

registered, and reduce grower costs. In addition, the savings in the Department's administrative costs will result in additional funds allocated to small business and local colleges for the research and development of alternatives to open burning.

Large Business

The proposed rules are not expected to have a fiscal or economic affect on large business.

Local Governments

The proposed rules will reduce the workload and subsequent revenue paid to local fire districts under contract to register acreage and issue burn permits. Because this money is specifically allocated for field burning activities the reduction in payments should not have significant fiscal or economic affect on local governments.

State Agencies

- DEQ

The Department of Agriculture is under DEQ contract to administer the smoke management program, therefore, the proposed rule amendments affects both agencies.

The implementation of an acreage registration system, and the elimination of stack burning registration requirements and the associated reduction in fees paid to permit agents is expected to result in a savings of approximately $87,000 per season but no change in FTE. The net savings will be applied toward the research and development of alternatives to open field burning and will not be used for administration.

The other proposed amendments should have no fiscal or economic affect on either agency.

- Other Agencies

The proposed rule amendments are not expected to have a fiscal or economic affect on other agencies.

Assumptions

Approximately 100,000 acres are registered for stack burning each season at a cost of about $0.87 per acre, including the Department's administrative costs and payments made to the fire districts. By statute, the Department cannot collect a registration fees to cover its cost, therefore, eliminating the registration requirement

should result in a net savings of $87,000 per season.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Division 26, Field Burning Rules (Willamette Valley)

Land Use Evaluation Statement

1. **Explain the purpose of the proposed rules.**

   Oregon Administrative Rules Chapter 340, Division 26 governing the burning of grass seed and cereal grain crop residue is being amended to comply with the provisions of House Bill 2211, Oregon Laws 1993, Chapter 414.

   The proposed amendments change the registration of open field burning and propane flaming acreage from a field by field system to an acreage system, repeal the stack burning registration requirements, and provide a 10 day grace period for payment of burn permit fees.

   The amendments also address burn permit fees for stack and pile burning and straw disposal by parties other than grass seed growers.

   The proposed changes will provide the grower with more flexibility to make management decisions during the burn season, reduce grower and administrative costs, and provide additional revenue for research and development.

2. **Do the proposed rules affect existing rules, programs or activities that are considered land use programs in the DEQ State Agency Coordination (SAC) Program?**

   Yes____ No X

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

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

      Yes____ No X (if no, explain): The current SAC program does not identify the regulation of field burning as a program that affects land use.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or

2. Reasonably expected to have significant effects on

   a. resources, objectives or areas identified in the statewide planning goals, or

   b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

This program was not specifically referenced in the statewide planning goals and is not expected to have significant effects on resources, objectives, or areas identified in the planning goals. The program is not reasonably expected to have significant effects on land uses in the acknowledged comprehensive plans.

3. If the proposed rules have been determined a land use program under 2. above, but are not subject to existing land use compliance and compatibility procedures, explain the new procedures the Department will use to ensure compliance and compatibility.

Not applicable

Sha Greenwood
Division

Intergovernmental Coord.

1/5/94
Date

Revised 12/28/93 Landuse.E

Attachment C

State of Oregon
Department of Environmental Quality Memorandum

Date: February 28, 1994

To: Environmental Quality Commission

From: Kevin Downing, Presiding Officer

Subject: Hearings Report for Rulemaking Proposal - Division 26, Field Burning Rules (Willamette Valley)

One hearing was held to accept testimony on proposed rules to comply with 1993 House Bill 2211.

Written comments were received from two individuals during the public comment period.

A hearing was held on February 25th at 9:00 AM in the Land Board Room of the Division of State Lands, 775 Summer Street in Salem. Seven people attended the hearing, one made oral comments. No written comments were submitted. These are summarized below.

Summary of Testimony

Oral Comments

Randy Crisell, 330 S. Settlemeier, Woodburn, OR 97071

Commentor noted that grass seed growers are prohibited from stack burning within 1/4 mile of the interstate freeway while other agricultural burning is unregulated within the same distance at other points along the freeway. The regulation appears arbitrary in achieving the desired result of eliminating smoke intrusions on freeway traffic. Propane flaming, also uncontrolled in this zone, may also have adverse impacts on ground level visibility. Commentor suggested that burning be allowed with hardship exemptions within the area in question.

Written Comments

Representative Liz VanLeeuwen, 27070 Irish Bend Loop, Halsey, OR 97348

OAR 340-26-005 (6) Determining cumulative hours of smoke intrusion in the Eugene/Springfield area.

> Commentor expressed concern that impacts from Eugene and Springfield not be added together so that smoke from a single event be recorded twice.

OAR 340-26-012 (2)(f) Permit fees for open burning, propane flaming or stack/pile burning.

> Commentor suggests that rule language is not clear enough that stack or pile burning fees are to be prorated by the amount of straw burned. Also how the straw is removed should not be limited by "usual or standard baling methods."

Sharon A. Schrenk, OR/PAK Feed & Storage, LTD, P.O. Box 352, Junction City, OR 97448

OAR 340-26-055 (6) Stack Burning

> Commentor suggests the term "Straw Farmer" should be added to the list of persons responsible for the disposal of straw and the term "Straw Crop" should be used in place of the terms "Straw", "Straw Residue", "Residue", and "Crop".

WRITTEN COMMENTS

Ronald M. Somers
Attorney at Law
106 East Fourth Street
The Dalles, Oregon 97058

Commentor expressed concern about smoke intrusions into Category I airsheds and the open burning of cereal grain residue.

Sharon Schrenk
OR/PAC Feed & Forage, LTD.
P.O. Box 352
Junction City, Oregon 97448

Commentor requested the Department recognize balers, straw compressor operators, and straw brokers as "Straw Farmers" because they harvest a straw crop.

Representative Liz VanLeeuwen
27070 Irish Bend Loop
Halsey, Oregon 97348

Commentor expressed concern that smoke impacts measured by the Department's Eugene and Springfield nephelometers were combined thereby doubling the cumulative hours of smoke impact.

Commentor also stated the language governing stack and pile burning fees needed clarification.

Attachment E

EVALUATION OF PUBLIC COMMENTS

I. Commentor's concern regarding smoke intrusions into Category I airsheds and the open burning of cereal grain residue.

The primary function of the Department's smoke management program is to prevent field burning smoke from impacting Category I airsheds and populated areas within the Willamette Valley. Meteorological conditions are monitored daily throughout the burn season and burn permits are issued only when the Department is confident no smoke intrusions will occur.

II. Commentor's request for the Department to recognize balers, straw compressor operators, and straw brokers as "Straw Farmers."

The Department met with Agriculture Fiber Association and discussed their concerns. The Association asked to be recognized as an agricultural industry and straw to be recognized as an agriculture product. They requested a few minor changes to the rules with the hope that other state agencies will follow suit and recognize them as an agricultural industry. The Department recognizes this new and developing industry as a non-polluting alternative to field burning that benefits the grower and the environment. The Department made the requested revisions.

III. Commentor's concern that smoke impacts measured by the Department's Eugene and Springfield nephelometers are combined thereby doubling the cumulative hours of smoke impact. Commentor also stated the language governing stack and pile burning fees needed clarification.

Two nephelometers are sited in the southern Willamette valley to measure smoke intrusions in Eugene and Springfield. The cumulative average, not the combined total, of the nephelometer readings are used to determine the cumulative hours of smoke impact. In other words, the readings from the two nephelometer sites are not added together so the smoke from a single event is not recorded twice.

The language governing stack and pile burning fees was developed and adopted by the field burning advisory committee, which consisted mostly of grass seed growers. The proposed

language has also been reviewed by the other industry representatives and the Department of Agriculture. Although the term "dry" is not precise, the advisory committee felt this term was more meaningful and implementable than a precise moisture content measurement.

IV. Commentor noted that grass seed growers are prohibited from burning along designate highways in the Willamette Valley but other agricultural burning is permitted.

In 1988, after a fatal automobile accident on Interstate 5, the governor directed the Office of the State Fire Marshal and DEQ to regulate open field burning, propane flaming, and stack burning along designated roadways to prevent additional accidents. The Department was not given the authority to regulate other agricultural waste products and, unfortunately, smoke from these burns do impact Oregon's highways. The commentor has a legitimate point, however, the state only has the authority to regulate the burning of grass seed and cereal grain residue.

Attachment F

CHANGES TO ORIGINAL RULE MAKING PROPOSAL
RESPONSE TO PUBLIC COMMENT

AGRICULTURE FIBER ASSOCIATION

The Department met with representatives from the Agriculture Fiber Association and, at their request, made the following changes (highlighted text) to Division 26:

OAR 340-26-003

In the interest of public health and welfare, it is the declared public policy of the State of Oregon to reduce the practice of open field burning while developing and providing alternative methods of field sanitation and alternative methods of utilizing and marketing **grass seed and cereal grain straw** ~~[crop]~~ residues and to control, reduce, and prevent air pollution from open field burning, propane flaming, and stack and pile burning by smoke management. In developing and carrying out a smoke management control program it is the policy of the Environmental Quality Commission:

STACK BURNING FEES

OAR 340-26-012 (2) (F)

The original language adopted by the 1993 legislature (highlighted):

Each responsible person open field burning, propane flaming, or stack or pile burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) $8 per acre sanitized by open field burning;
(B) $2 per acre sanitized by propane flaming;
(C) For all acreage burned in stacks or piles:
  (i) $2 per acre from January 1, 1992, to December 31, 1997;
  (ii) $4 per acre burn fee in 1998;
  (iii) $6 per acre burn fee in 1999;
  (iv) $8 per acre burn fee in 2000; and
  (v) $10 per acre burn fee in 2001 and thereafter.

For acreage from which less than 100 percent of the straw is removed and burned in stacks or piles, the same per acre as the fee imposed under subparagraph (D) of this paragraph, but with a reduction in the amount of acreage for which the fee is charged by the same percentage as the reduction in the amount

of straw to be burned.

Language proposed by the advisory committee and incorporated into Division 26 (highlighted):

Each responsible person open field burning, propane flaming, or stack or pile burning shall pay a per acre burn fee within ten days of the date the permit was issued. The fee shall be:

(A) $8 per acre sanitized by open field burning;
(B) $2 per acre sanitized by propane flaming;
(C) For all acreage burned in stacks or piles:
  (i) $2 per acre from January 1, 1992, to December 31, 1997;
  (ii) $4 per acre burn fee in 1998;
  (iii) $6 per acre burn fee in 1999;
  (iv) $8 per acre burn fee in 2000; and
  (v) $10 per acre burn fee in 2001 and thereafter.

For grass seed and cereal grain residue from previous seasons, broken bales, or fields where a portion of straw was removed using usual or standard baling methods, the acreage actually burned shall be estimated and the same per acre fee as imposed in subparagraph (C) shall be charged. The estimated acreage shall be rounded to the nearest whole acre.

OTHER CHANGES

No other changes were made to Division 26 as a result of public comment.

ADVISORY COMMITTEE MEMBERSHIP AND REPORT

In January 1993 the Department established an advisory committee to review and discuss amendments to Division 26, Field Burning Rules (Willamette Valley). The committee consisted of seven grass seed growers representing all geographic areas of the Willamette Valley, and representatives from the Oregon Seed Council, the Office of the State Fire Marshal, and the Department of Agriculture. Many of the issues addressed in House Bill 2211 and the proposed rule amendments were discussed and suggested by the field burning advisory committee during two meetings held in February, 1993. The committee's proposals were jointly submitted to the legislature by the Oregon Seed Council and Department of Agriculture.

The Department held additional advisory committee meetings in November 1993 and February 1994 to develop the final revisions to Division 26. The committee made numerous constructive comments and suggestions and proved to be an invaluable resource during the development of these rules.

Ray Rice
Grass Seed Grower
Northwest Valley

Bob Lindsay
Grass Seed Grower
Southeast Valley

Robert Riches
Grass Seed Grower
Central/East Valley

Eric Bowers
Grass Seed Grower
Southeast Valley

David Nelson
Executive Secretary
Oregon Seed Council

Jim Britton
Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
Salem

Charles Craig
Assistant Administrator
Natural Resources Division
Oregon Department of Agriculture
Salem

Stan Christensen
Grass Seed Grower
North/Central Valley

Robert Doerfler
Grass Seed Grower
Central/East Valley

Ralph Fisher
Grass Seed Grower
Central Valley

Henry Hanf
Supervising Deputy
Office of the State Fire Marshal
Salem

Dr. Robert Palzer
Citizen

RULE IMPLEMENTATION PLAN

TRAINING PROGRAMS

The Department of Agriculture held an initial training session for the contract permit agents and fire districts on March 9, 1994 to prepare for the 1994 registration process which begins in mid-March. Additional training will be conducted in late spring or as needed.

Permit agents and the Department of Agriculture will assist the grower community with the new registration system and will provide training through regularly scheduled industry meetings. Copies of the final rules will also be mailed to the regulated community.

Training will also be available to the regulated community throughout the burn season.

The Department met with members of the Agricultural Fiber Association in February and March 1994 to discuss the proposed rules and answer questions. Additional meetings will be scheduled as the need arises. The Department also met with representatives of the State Fire Marshal and the Oregon Seed Council to discuss implementation of the proposed rules and provide training for the grass seed industry and affected fire districts not under contract with the Department of Agriculture. Additional meeting with the State Fire Marshal are being scheduled.

ADMINISTRATIVE PROCEDURES

The Department of Agriculture has revised their administrative procedures, permit agent manuals, registration forms, and burn permits to conform with the proposed rules. These materials will be provided to the permit agents at the March meeting.

LIZ VanLEEUWEN
State Representative
DISTRICT 37
LINN COUNTY

REPLY TO ADDRESS INDICATED:
☐ House of Representatives
Salem, OR 97310-1347
☑ 27070 Irish Bend Loop
Halsey, Oregon 97348

Home Phone:
(503) 369-2544
Capitol Message:
(503) 986-1200
Session Phone:
(503) 986-1437

2/25/94

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

Mr. Steve Crane, DEQ FAX 503/373-7944

Steve, attached is a one page - hand written response to the proposed Div. 26 Field Burning Rules.

Basically they look good with these two clarifications.

Please let me know what happens. Sincerely, Liz VanL.

Phone 503/326-2344

on 340-26-005 - (6)
"average of the totals of cumulative hours of smoke..." OKay, I think. If you are not adding Springfield & Eugene together to get a double figure. i.e. please don't count the same smoke twice.

~~Opt. H~~ OK

Geo./Liz VanLeeuwen
27070 Irish Bend Loop
Halsey, OR 97348

~~340-26-012~~ 340-26-012 (2) (f)

Wait — the fee paid for stack & pile burning is to be prorated by amount of straw to be burned. (Maybe that's what your language says, but not clearly) Also how that straw was removed should not be limited to "usual or standard baling methods."

From Liz VanLeeuwen

attached is chapt 414 of OR laws 1993 sect 3 (1) (E)

(v) $10 per acre in 2001 and thereafter; and [.]

(E) For acreage from which less than 100 percent of the straw is removed and burned in stacks or piles, the same per acre as the fee imposed under subparagraph (D) of this paragraph, but with a reduction in the amount of acreage for which the fee is charged by the same percentage as the reduction in the amount of straw to be burned.

RONALD M. SOMERS
ATTORNEY AT LAW
106 EAST FOURTH STREET
THE DALLES, OREGON 97058-0618

POST OFFICE BOX 516
TELEPHONE: 296-2181
FAX: 503-296-9382

AQ

OFFICE OF THE DIRECTOR

January 31, 1994

Fred Hansen, Director
Environmental Quality Commission
811 SW 6th Avenue
Portland, OR 97204

William Weffinger, Member
Environmental Quality Comm.
121 SW Salmon, Suite 1100
Portland, OR 97204

Henry Lorenzen, Member
Environmental Quality Comm.
PO Box 218
Pendleton, OR 97801

Linda R. McMahan, Member
Environmental Quality Comm.
Berry Botanic Garden
11505 SW Summerville Ave.
Portland, OR 97219

Emery Castle, Member
Environmental Quality Comm.
Oregon State University
307 Ballard Hall
Corvallis, OR 97331

Carol Whipple, Member
Environmental Quality Comm.
21755 Highway 138 West
Elkton, OR 97436

Dear Ladies and Gentlemen:

I have read with great interest today copies of the new Rulemaking Hearing authorizing amendments of the field burning rules of the Willamette Valley.

To introduce myself, I was a member of the Commission from 1974 to 1982, approximately 8-1/2 years. During that time we saw the legislature phase out field burning and bring it back. I have the highest respect for Dave Nelson of the Seed Council and would rate him among the top three lobbyists I have seen perform in my lifetime in the State of Oregon.

The bottom line that all of you are going to have to look at some day is the federal rules which do not allow you to authorize, directly or indirectly, intrusions into Category I airsheds. Perhaps sometime it would be helpful to have staff identify the Category I airsheds which are mostly wilderness areas adjacent to the Willamette Valley.

It is a well recognized principle that there is no license to pollute since it causes a trespass and one day there may be a semi-smart law student who will join the commission members in a

proceeding in federal court to eliminate the trespass into the Category I airsheds. The grass seed industry is a vital industry in the state. They advised us in 1975 and the legislature that within ten years they would have a procedure for sanitizing their fields without the need of burning them and when the deadlines roll around they always get extended. In the meantime the state spends ten to fifteen million dollars a year to attract tourists to the State of Oregon to observe our occluded skyline and for the approximately half million residents of the state with compromised respiratory systems produces an enormous burden.

I see the wisdom of enacting the legislation but I don't understand how cereal grains got included back into the picture since there is no need to sanitize fields for seed grains as there is with the grass seed industry that could not stand foreign organisms. Cereal grains are routinely grown east of the mountains with no field burning and it should not be allowed.

One day a law suit will be commenced and it will be interesting. I am not unmindful of the fact that one of the Ninth Circuit Court of Appeals Judges does have an interest in a grass seed farm.

This is just a note to let you know I am disappointed that we have evolved back to allowing cereal grains to be burned when they were banned. It seems the problem is getting worse instead of better.

Very truly yours,

Ronald M. Somers

RMS:sr

OR/PAC FEED & FORAGE, LTD.
P. O. BOX 352
JUNCTION CITY, OR 97448
(503) 689-2680
(503) 689-3175 FAX

DATE: ***February 14, 1994***

TO: ***STEPHEN CRANE***

FROM: ***SHARON A SCHRENK***

SUBJECT: ***DEQ PROPOSAL***

NUMBER OF PAGES TO FOLLOW: -2-

IF YOU DO NOT RECEIVE ALL PAGES, OR THE COPY IS NOT CLEAR, PLEASE CONTACT SENDER

MR. CRANE:

ENCLOSED ARE MY THOUGHTS AND CONCERNS AS WE BRIEFLY DISCUSSED THIS MORNING. SHOULD YOU HAVE QUESTIONS, OR SHOULD YOU NOT FULLY UNDERSTAND MY THOUGHT PROCESS, PLEASE DO NOT HESITATE TO CALL.

THANK-YOU FOR THE OPPORTUNITY TO SHARE THIS WITH YOU.

SHARON A SCHRENK

February 11, 1994

Department of Environmental Quality
Western Region
Air Quality Division
750 Front Street N.E., Suite 120
Salem, OR 97310

After reviewing your proposed rule changes for OAR, chapter 340, Division 26, I have the following comments and questions:

First, your memorandum dated January 18, 1994 to Interested and Affected Public: defines the problem, as" *growers are currently responsible for the disposal of baled grass seed residue even though a custom baler, straw broker, or other party has control or custody of the material.*"

Also in your memorandum, you refer to the residue as straw: . . ."*and places the burden of **straw** disposal upon the person removing or baling the field.*" " *The new rules also place the burden of disposal and payment of burn fees on the custom baler, straw broker, or other parties in custody or control of the straw residue.*".

One page 2 of the Division 26, FIELD BURNING RULES, 340-26-003, you mention the residue as a crop . . . "and alternative methods of utilizing and marketing ***CROP*** residues . . . "

You refer to the subject of disposal four different ways:

residue
straw
straw residue
crop

Since you are referencing the residue as ***STRAW and*** a ***CROP***, we feel straw farmers should be named first..."even though a **STRAW FARMER**, *custom baler, or straw broker, has control or custody of the material.* Striking the "other parties" designation. The straw farmer is the most important person because he harvests a **straw *crop*** from a **straw** residue. The custom baler and straw broker come after the straw farmer who harvests the **straw crop.**

CROP: the total quantity cut or harvested.
RESIDUE: something that remains after a part is taken, separated, or designated.
CUSTOM : "regular trade or business" **BALER:** "one who bundles or packages goods, to make into bales"
CONCLUSION: Custom Baler gets paid for his service of baling straw or grass seed residue.

STRAW: "the stalk from which grain grows, and from which it is thrashed."
BROKER: "one who is employed to buy and sell for others"

It is obvious to me through your chosen terminology that the residue is a STRAW CROP. Since this residue is now determined to be a straw crop and straw is a crop that is harvested, we are straw farmers.

Bruce Andrews Director of the Oregon Department of Agriculture testified during the 1993 Legislative session that straw is definitely an agricultural commodity and "balers" are definitely farmers.

The *baled grass seed residue* is a **crop** according to your rule 340-26-003. Now that straw has been determined to be a crop, we ask you to be specific and identify us as straw farmers harvesting a straw crop. The "other parties" you name, must be the straw farmers performing the balance of the accepted non-thermal farming practice determined by studies through OSU to be the most efficient practice to remove the residue (crop).

HB 2211 has tied us tightly to the grass seed industry by, stating " *after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, shall be upon the person who bales or removes the straw.*" The STRAW FARMER.

Your proposal will allow us to better manage our operations, both as growers and straw farmers. With the reduction of paperwork, and requirements, we are able to concentrate on our farming practices. Since some of the straw is not marketable either as feed or mulch, but must be removed according to our rental agreements, we need an alternative for disposal by burning the stacks, your proposal has made this route more assessable and for that we are grateful.

All we ask, is that you change the verbiage and name us as straw farmers, not "other parties" since you recognize the residue as a crop. In order for us to develop and market the straw crop, to reduce and prevent air pollution from open field burning, we need to be recognized for what we are. **STRAW FARMERS!!**

Please consider my request to define "residue" as a STRAW CROP, and define "other parties" as STRAW FARMERS. The harvesting of the material is an accepted farming practice with machines of animal husbandry. It only makes sense to say is like it is: "straw farmers harvesting a straw crop." I thank-you for your consideration.

Sincerely,

Sharon A. Schrenk

Sharon A. Schrenk
P. O. Box 352
Junction City, OR 97448
503 689-2680
503 689-3175 FAX

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item G
April 22, 1994 Meeting

Title:

Proposed Amendments to Solid Waste Rules to Incorporate Changes Required for Federal Subtitle D Implementation, Changes in "Annual" Permit Fees and Other Housekeeping Changes

Summary:

The proposed rule would establish new dates by which all existing land disposal sites have to provide financial assurance for closure and post-closure care; would require self-reporting and quarterly payments of the "annual" solid waste permit fees permit fee for larger facilities; would establish a $500 renewal fee for Letter Authorizations, and a new $500 permit exemption determination fee; and other housekeeping changes.

Department Recommendation:

Adopt the rule amendments regarding solid waste permit fees and other changes to solid waste rules required by 1993 legislation as presented in Attachment A of the Department Staff Report.

Report Author | Division Administrator | Director

April 1, 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: April 5, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item G, April 22, 1994, EQC Meeting

Proposed Amendments to Solid Waste Rules to Incorporate Changes Required for Federal Subtitle D Implementation, Changes in "Annual" Permit Fees and Other Housekeeping Changes

Background

On January 14, 1994 the Director authorized the Waste Management and Cleanup Division to proceed to a rulemaking hearing on proposed rules which would:

- Establish new dates by which existing land disposal sites (industrial as well as municipal) have to provide financial assurance for closure and post-closure care as required by Federal Subtitle D landfill criteria and new state law;
- Require self-reporting and quarterly payments of the solid waste "annual" permit fee and 1991 Recycling Act fee for larger facilities; and
- Establish a new type of permit for treatment of petroleum-contaminated soils ($2,500 fee), a $500 renewal fee for Letter Authorizations and a new $500 permit exemption determination fee.

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 the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on or before February 2, 1994.

---

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

Public Hearings were held on March 3, 1994 at 2:00 p.m. in Portland; March 8, 1994 at 10 a.m. in LaGrande; March 8, 1994 at 2:00 p.m. in Corvallis; and March 10, 1994 at 10 a.m. in Bend, with Deanna Mueller-Crispin, Tim Davison, Charles W. Donaldson, and E. Patricia Vernon, respectively, serving as Presiding Officers. The Presiding Officers' Reports (Attachment C) summarize the oral testimony presented at the hearing.

Written comment was received through March 14, 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, 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

Three bills from the 1993 Legislative Session (Senate Bill 1012, Senate Bill 1037 and Senate Bill 42) required changes in solid waste rules. The Department is proposing certain other changes to improve program operation. The rulemaking consists of three main components. Each is discussed separately.

1. Financial Assurance and Other "Subtitle D" Issues (SB 1012).

   DEQ requested certain additional authorities from the 1993 Legislature to fully implement the Federal criteria (40 CFR Part 258, or "Subtitle D") for municipal solid waste landfills. 1993 Senate Bill 1012 modified state law to match the federal requirements, including:

   - A specific due date to provide financial assurance for landfill closure and post-closure care (previous state law required financial assurance five years before anticipated closure);

- o A new requirement for financial assurance for corrective action; and
- o A 30-year post-closure care period (previous state law required 10 years).

In addition, SB 1012 extended these requirements to all land disposal sites, industrial as well as municipal.

The U.S. Environmental Protection Agency amended its Subtitle D regulations for municipal solid waste landfills on October 1, 1993, delaying the effective dates. The Environmental Quality Commission (EQC) adopted temporary rules on October 29, 1993 to make effective dates for Subtitle D in Department rule conform to the federal date changes. These temporary effective date changes need to be made permanent. In addition, a revised date needs to be set for provision of financial assurance for industrial landfills (as allowed by SB 1012) so that this requirement is not earlier for industrial landfills than for municipal landfills covered under the delayed Subtitle D date.

2. Change in Permit Fee Collection Schedule and Other Permit and Fee Issues (SB 1037)

1993 Senate Bill 1037 removed the requirement that solid waste permit fees be submitted "annually." Although SB 1037 does not require the Department to move to collecting solid waste permit fees on a quarterly basis, passage of the bill demonstrated a clear legislative intent for that to happen, as least for larger solid waste disposal sites. This rule provides for quarterly payment (for larger facilities) and changes the fee collection system to self-payment of the "annual" permit fees.

The Department identified the need to provide for the following:

- o A one-time renewal of Letter Authorization permits (and associated $500 fee); and
- o A permit exemption determination fee of $500, for which no fee is currently charged but which requires considerable staff time to review.

The rule provides for these new fee categories.

The Solid Waste Advisory Committee identified the need for a new type of solid waste permit for longer-term treatment of petroleum contaminated soils ($2,500

fee). The Department is not recommending adoption of this new type of permit at this time.

3. Definitions and Other Changes (SB 42)

1993 Senate Bill 42 was a "housekeeping" bill, correcting erroneous material in ORS 459 and 459A, including changes in some definitions.

Relationship to Federal and Adjacent State Rules

1. Federal. The financial assurance requirements including their effective dates and the 30-year post-closure care requirement are identical to federal requirements for municipal solid waste landfills. State law also applies these requirements to all land disposal sites (including construction and demolition and industrial). Currently there are no federal criteria for construction and demolition or industrial sites, so this State requirement is more stringent. The requirements for financial assurance for corrective action are tied to both the federal standards and are therefore equivalent (for municipal landfills); and also to the state groundwater protection standards which in some cases are more stringent than federal requirements.

   There are no federal requirements for permit fees.

   The requirement for acceptance of the construction certification report by the Department before waste may be received at the site is more stringent than federal requirements.

2. Adjacent States. *Washington.* Washington requires financial assurance for closure and post-closure care for all types of landfill facility. This financial assurance must be provided at the time a new permit is applied for. Existing facilities had to provide the financial assurance by November 27, 1989. Financial assurance for corrective action is required for municipal solid waste landfills only, not industrial. Twenty years of post-closure care are required for non-municipal facilities. The regional Health Department must make findings during a pre-operational review of the construction certification that the facility may accept waste.

   California. California requires financial assurance for closure, post-closure care and corrective action for all types of solid waste landfills (except those receiving only inert wastes). The corrective action financial assurance is for foreseeable as

well as for known releases. The schedule for provision of financial assurance is the same as the Subtitle D schedule for municipal solid waste landfills. In addition, financial responsibility for operating liability is required. Thirty-year post-closure maintenance is required for all landfills. The California program also has provisions for "permit to construct" and "permit to receive waste" for all types of landfills.

Idaho. Municipal solid waste landfills must meet Subtitle D requirements, but by state statute, Idaho may not impose any requirement stricter than the federal regulations. Idaho has no financial assurance requirements for non-municipal land disposal facilities. One-year post-closure cover maintenance is required for non-municipal facilities.

Nevada. Nevada requires financial assurance (closure, post-closure and corrective action) for all types of landfill, on the Subtitle D implementation schedule. Thirty years of post-closure care are also required for all landfill classes. A construction report is not required before waste may be accepted.

Authority to Address the Issue

1993 Senate Bill 1012, 1993 Senate Bill 1037, 1993 Senate Bill 42, ORS 468.020, ORS 459.045, ORS 459A.100-120

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

Fee Changes. A Solid Waste Permit Fee Work Group (see membership, Attachment F) that had assisted the Department in the development of solid waste fee revisions in 1991 was reconvened to consider the permit fee revisions. The Work Group met on December 2, 1993 and agreed with the Department's proposal to change permit fee collection to self-payment for municipal solid waste landfills. They felt that the current system should not be changed for industrial landfills (that is, retain annual billing by the Department for annual permit fees). There was consensus that whatever procedures made the most sense administratively for both the permittees and the Department should be adopted. The Work Group was particularly concerned that quarterly reporting for small industrial facilities would be burdensome, and would not be justified by the amount of the fee remitted quarterly. The Department agreed that smaller industrial sites should not be required to report quarterly. However, the

Department believes that a common basis for permit fees should be maintained for both municipal and industrial sites. Unless sites self-report, a common base cannot logistically be maintained. Therefore the Department recommends that industrial sites also be required to self-report and self-pay, but that the threshold requiring quarterly reporting be higher for industrial sites than municipal (20,000 tons/year vs. 1,000 tons/year). The Work Group did not object to the new $500 permit exemption determination fee. The Work Group suggested that the Department consider extending the original term of a Letter Authorization from six months to one year rather than allowing one six-month renewal with a $500 fee.

Other Changes. The Solid Waste Advisory Committee (SWAC) (see membership, Attachment G) considered the fee changes and other proposed changes at its December 16, 1993 meeting. The SWAC agreed with the Department's proposed fee changes. The SWAC was concerned about some provisions of the draft proposed changes in financial assurance criteria, and recommended that a work group consider the entire financial assurance rule. The SWAC also recommended that the Department consider a new type of permit for petroleum-contaminated soil cleanups that might take longer than a year, along with certain other changes. The Department revised the draft rule taking the SWAC's comments into consideration. The Department has also established a work group to consider criteria for the provision of financial assurance as part of a separate rulemaking procedure. At this time the Department is only proposing to establish effective dates for financial assurance which conform to the federal Subtitle D effective dates. Otherwise financial assurance requirements would become effective, by statute, on April 9, 1994 for all solid waste land disposal sites.

The Subtitle D changes were proposed to make DEQ rules conform to the federal criteria for municipal solid waste landfills under 40 CFR Part 258. Most of the other proposed changes were in response to the 1993 legislation mentioned above. Other changes are proposed to improve operation of the solid waste program.

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

1. Financial Assurance and Other "Subtitle D" Issues.

   The proposed rule establishes April 9, 1995 as the date by which all existing land disposal sites (industrial as well as municipal) must provide financial assurance for closure and post-closure care activities. (October 9, 1995 is the effective date for certain very small municipal landfills meeting federal criteria.) As noted

above, the Department is developing additional criteria for financial assurance through a separate rulemaking procedure, which will be considered at a later EQC meeting (tentatively August 26, 1994). The 30-year post-closure care requirement from SB 1012 is put into rule. The delayed federal effective dates for municipal solid waste landfills to comply with Subtitle D criteria are established in permanent rule.

2. Change in Permit Fee Collection Schedule and Other Permit and Fee Issues.

The rule would require all solid waste permittees (except transfer stations, material recovery facilities and closed land disposal sites) to self-pay solid waste permit fees (including the 1991 Recycling Act fee) instead of being billed for those fees by DEQ. Now, these sites already report quarterly (or annually) the tonnage on which the fees are based. Large sites will submit permit fees quarterly, and "small" sites annually (municipal landfills receiving less than 1,000 tons/year, and industrial sites receiving less than 20,000 tons/year).

A new fee ($500) for renewal of a Letter Authorization is established, in conjunction with allowing a one-time six-month renewal. This would recognize that sometimes circumstances (such as inclement weather) may prevent a disposal action under a Letter Authorization from being completed under the six-month term currently allowed. It also recognizes that additional DEQ staff time would be required to review, inspect and sign off on Letter Authorization renewals. Letter Authorizations for petroleum-contaminated soil cleanups conducted under a cost-recovery agreement with the Department are exempt from the renewal fee.

The rule as put forward for public comment included a new Special Soil Treatment Permit ($2,500 fee) in response to SWAC comment. At the SWAC meeting it was noted that in some instances (short summer construction season or contamination with heavy oils such as diesel) soil cleanup may require more than the one year allowed under a Letter Authorization (with the new one-time renewal). The alternative would be either a full-blown solid waste disposal permit ($5,000 fee) or another means of disposal (thermal treatment, landfilling). As conceived, the Special Soil Treatment Permit was to accommodate cleanups lasting more than one year but less than three years, allowing limited duration treatment of petroleum contaminated soils.

Due to the tight timeline between the December SWAC meeting and the time the draft rule had to be ready for public comment, the Department carried out a parallel in-house review. This review suggested that the new permit would not

work well for either the regulated community or for the Department. As a solid waste permit, the new Special Soil Treatment Permit would be subject to engineering and hydro analyses, and to public notice requirements. The Department lacks staff resources to administer these permits in an expedited manner. An applicant could wait six months to a year for the permit process to be completed. Therefore the Department has concluded that this "solution" is really one in appearance only, and recommends removing this new permit from the proposed rule adoption package. The Department will begin discussions with the regulated community to explore other ways of dealing with this issue.

Another new fee ($500) is proposed for a Permit Exemption Determination. Existing DEQ rules provide that a person may request a determination from the Department that a given waste needing disposal is inert, and thus no permit is needed to dispose of it (OAR 340-93-080). A person making this request must submit technical information to the Department. Staff time is needed to review this information and to determine whether a permit is required. The $500 fee would cover the costs to the Department of making this determination.

3. Definitions and Other Changes.

Certain changes are made in definitions in Chapter 340 Divisions 90 and 93 to make them conform to revised definitions in SB 42.

Further minor and housekeeping changes are proposed. These include a requirement that the Department accept the construction certification report for a new landfill unit before waste may be placed in that unit.

Summary of Significant Public Comment and Changes Proposed in Response

See Attachment E for a more detailed evaluation of public comment and the Department's responses.

1. Financial Assurance and other "Subtitle D" Issues

A. **Financial test for private landfill owners.** One person proposed revising the Department's financial assurance rule establishing a "corporate guarantee" as an allowable financial assurance mechanism. The person provided language for a self-assurance mechanism or financial test for financial assurance for private landfill owners. Another person supported

the concept of allowing a corporate guarantee as a financial assurance instrument.

The Department is initiating a separate rulemaking to revise its criteria on financial assurance for landfill closure and post-closure care. The proposed language will be considered in context of that rulemaking.

B. **Regulations for industrial landfills.** One person commented that industrial landfills were overregulated, and noted that the new rules (especially the 30-year post-closure care requirement) would add new costs.

The proposed rules implement changes required by 1993 Senate Bill 1012, including the 30-year care requirement. The rules allow permittees to request that the post-closure care period be shortened if environmentally warranted. The Department does not propose any additional changes to that existing flexibility.

2. Change in Permit Fee Collection Schedule and Other Permit and Fee Issues

A. **Special Soil Treatment Permit.** Five persons commented on the Special Soil Treatment Permit in the draft rule put forward for public comment, and issues concerning the cleanup of petroleum-contaminated soil. Commenters agreed with the goal of the Permit which was to offer flexibility in soil cleanups while ensuring adequate Department control of those cleanups. Commenters recommended a minimum of three years (with one person recommending extensions beyond that time). There was comment that the new Permit procedures should not be significantly more burdensome than those for Letter Authorizations. Permit fees of $1,200 to $1,500 instead of the proposed $2,500 were recommended.

As noted in the **Summary of Rulemaking Proposal**, the Department is withdrawing its recommendation for this new permit. Additional issues arose during review which made it clear that this proposal would neither serve the needs of the regulated community or of the Department. The Department will meet with the regulated community to explore other ways of dealing with the issue. The concerns expressed by the commenters will be part of that discussion.

B. **Renewal of Letter Authorization.** One person representing the Oregon Petroleum Marketers Association expressed support for the proposed six-month renewal, but recommended that no renewal fee be charged.

The Department believes that the $500 renewal permit processing fee is appropriate and needed to cover the Department's costs in administering the additional time for Letter Authorizations. Letter Authorizations are not subject to an annual permit fee or per-ton disposal fee, so the permit processing fee is the Department's only means of covering its associated administrative costs. The recommendation is to retain the $500 renewal fee in the rule.

3. Definitions and Other Changes

A. **Construction Certification Report.** The proposed new section requires Department acceptance of a construction certification report for a new landfill unit before the permittee can begin waste filling operations. The draft rule as put forward for public comment also specified that if the Department did not respond within 30 days to a construction certification report, a permittee may proceed to use the unit if the permittee has received prior written Department approval of a fill plan. One person pointed out that if DEQ has not approved the fill plan, a permittee still cannot begin filling a new landfill unit. This person recommended that a definite timeframe also be established for Department approval of the required fill plan, or an alternative be established to the fill plan approval process.

The Department views all landfill engineering plan approvals as important. However the construction certification report documenting compliance with the construction quality assurance (CQA) plan is particularly critical. Therefore, because of its great importance, Department review of this element has been singled out in the proposed rule as a specific requirement before a new unit is placed into operation. In turn, the Department agrees to a specified turnaround time.

Not only the fill plan but also many other engineering plans must in practice be reviewed by the Department as part of approving the design, construction and operation of a landfill unit. Thus it is logical to remove from the proposed rule specific reference to an approved fill plan, since

these other plans are not spelled out in rule. The Department proposes to remove reference to the approved fill plan from the rule.

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

1. Financial Assurance and Other "Subtitle D" Issues.

   Operators of existing land disposal sites (industrial as well as municipal) will be required to submit financial assurance for closure and post-closure care by April 9, 1995 (or October 9, 1995 for very small municipal landfills meeting the "small community exemption" under 40 CFR §258.1(f)(1)).

   The time period required for provision of post-closure care is raised from ten to 30 years for all land disposal sites.

2. Change in Permit Fee Collection Schedule and Other Fee Issues.

   Instead of paying an annual permit fee 30 days after a DEQ billing (usually in July or August), solid waste permittees will self-report the fee, paying either quarterly (if a large site) or annually (if a small site). The submittal will be tied to the quarterly or annual solid waste disposal fees already submitted by municipal solid waste sites. Industrial sites will be required to submit permit fees in conjunction with tonnage reports. The new fee collection system will go into effect July 31, 1994. The Department will prepare reporting forms, fact sheets and other information to assist permittees.

   The holder of a Letter Authorization who cannot finish the action within six months can apply for a six-month renewal, and will need to pay a $500 renewal fee, unless already under a cost recovery agreement with the Department.

   Persons seeking a permit exemption determination from the Department to dispose of basically inert materials will be subject to a new $500 fee. These are industrial facilities with materials such as foundry sands or glass to be disposed of.

3. Other Changes.

   All permittees of solid waste landfills that open new cells will be affected by the requirement for the construction certification report to be accepted by the Department before waste may be received at the site.

Recommendation for Commission Action

It is recommended that the Commission adopt the rule amendments regarding solid waste permit fees and other changes to solid waste rules required by 1993 legislation 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 Officers' Reports on Public Hearings
D. List of Written Comments Received
E. Department's Evaluation of Public Comment and Changes Made in Response
F. Solid Waste Permit Fee Work Group Membership
G. Advisory Committee Membership
H. Rule Implementation Plan

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)
40 CFR Part 258
1993 Senate 1012
1993 Senate Bill 42
1993 Senate Bill 1036

Approved:

Section: _____

Division: Mary Ward

Report Prepared By: Deanna Mueller-Crispin
Phone: (503) 229-5808
Date Prepared: April 1, 1994

Attachment A

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATIVE RULES
SOLID WASTE MANAGEMENT

Proposed Revisions, incorporating changes from SB1012, SB42 and SB1037
12/17/93

OAR 340 References in brackets [ ] show former numbering in OAR Chapter 340 Division 61.

Proposed additions are underlined
Proposed deletions are in brackets with [~~strikethrough~~].

(Note: Text incorporates amendments as adopted by the EQC on Dec. 10, 1993)

DIVISION 90
RECYCLING AND WASTE REDUCTION

340-90-010 DEFINITIONS

The definitions in this rule apply to OAR Chapter 340, Divisions 90 and 91. As used in these Divisions 90 and 91 unless otherwise specified:

(1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district. For the purposes of these rules "Affected person" also means a person involved in operation of a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

~~(2) "Area of the state" means any city or county or combination or portion thereof or other geographical area of the state as may be designated by the Commission.~~

~~(3) "Collection franchise" means a franchise, certificate, contract or license issued by a city or county authorizing a person to provide collection service.~~

~~(4)~~(2) "Collection service" means a service that provides for collection of solid waste or recyclable material or both, but does not include that part of a business operated under a certificate issued under ORS 822.110. "Collection service" of recyclable materials does not include a place to which persons not residing on or occupying the property may deliver source separated recyclable material.

~~(5)~~(3) "Collector" means the person who provides collection service.

~~(6)~~(4) "Commercial" means stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other nonmanufacturing entities, but does not include manufacturing activities. Business, manufacturing or processing activities in residential dwellings are also not included.

~~(7)~~(5) "Commission" means the Environmental Quality Commission.

~~(8)~~(6) "Compost" means the controlled biological decomposition of organic material or the product resulting from a process. Composting for the purposes of soil remediation is not included.

~~(9)~~(7) "Consumer of newsprint" means a person who uses newsprint in a commercial or government printing or publishing operation.

~~(10)~~(8) "Department" means the Department of Environmental Quality.

~~(11)~~(9) "Depot" means a place for receiving source separated recyclable material.

~~(12)~~(10) "Director" means the Director of the Department of Environmental Quality.

~~(13)~~(11) "Disposal site" means land and facilities used for the disposal, handling or transfer of or ~~resource~~ energy recovery, material recovery, and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, ~~resource~~ energy recovery facilities, incinerators for solid waste delivered by the public or by a ~~solid waste~~ collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a ~~landfill~~ site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a ~~solid waste~~ collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

~~(14)~~(12) "Energy recovery" means 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.

(13) "Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

~~(15)~~(14) "Generator" means a person who last uses a material and makes it available for disposal or recycling.

~~(16)~~(15) "Glass container manufacturer" means a person that manufactures commercial containers whose principal component part consists of virgin glass, recycled glass or post-consumer glass, or any combination thereof, for sale in Oregon, or if manufactured in Oregon for export to other states or countries, including but not limited to all commercial manufacturing operations that produce beverage containers, food or drink packaging material made primarily of glass, or any combination of both of these items.

~~(17)~~(16) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting

from the following processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/ foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; or municipal solid waste from manufacturing or industrial facilities such as office or "lunch room" waste, or packaging material for products delivered to the generator.

~~(18)~~(17) "Land disposal site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond or lagoon.

~~(19)~~(18) "Local government unit" means the territory of a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities, townships, counties, parishes, regional associations of cities and counties, Indian reservations, and metropolitan service districts, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste. If a county regulates solid waste collection within unincorporated areas of the county but not within one or more incorporated cities or municipalities, then the county local government unit shall be considered as only those areas where the county directly regulates solid waste collection.

~~(20)~~(19) "Material Recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties ~~after serving a specific purpose and can, therefore,~~ and can be reused or recycled for ~~the same or other~~ some purpose.

~~(21)~~(20) "Metropolitan service district" means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS chapters 268, 459, and 459A.

~~(22)~~(21) "Multi-family" means dwellings of five or more units.

~~(23)~~(22) "Newsprint" means paper meeting the specifications for Standard Newsprint Paper and Roto Newsprint Paper as set forth in the current edition of the Harmonized Tariff Schedule of the United States for such products.

~~(24)~~(23) "On-route collection" means pick up of source separated recyclable material from the generator at the place of generation.

~~(25)~~(24) "On-site collection" has the same meaning as on-route collection.

~~(26)~~(25) "Opportunity to recycle" means those activities described in OAR 340-90-020, 030, 040, and 050.

~~(27)~~(26) "Permit" means a document issued by the Department, bearing the signature of the Director or the Director's authorized representative which by its conditions may authorize the permittee to construct, install, modify or operate a disposal site in accordance with specified limitations.

~~(28)~~(27) "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.

~~(29)~~(28) "Post-consumer waste" means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post- consumer waste does not include manufacturing waste.

~~(30)~~(29) "Principal recyclable material" means material which is a recyclable material at some place where the opportunity to recycle is required in a wasteshed and is identified by the Commission in OAR 340-90-070.

~~(31)~~(30) "Recyclable material" means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

~~(32)~~(31) "Recycled-content newsprint" means newsprint that includes post-consumer waste paper.

~~(33)~~(32) "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

~~(34)~~(33) "Recycling setout" means any amount of source-separated recyclable material set out at or near a residential dwelling for collection by the recycling collection service provider.

~~(35)~~(34) "Residential" means single family dwellings and multi-family dwellings having four or less units.

~~(36) "Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes energy recovery, material recovery, recycling and reuse.~~

~~(37)~~(35) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

~~(38) "Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes but does not include that part of a business licensed under ORS 481.345.~~

~~(39)~~(36) "Solid waste" means all useless or discarded putrescible and nonputrescible ~~wastes~~ materials, including but not limited to garbage, rubbish, refuse, ashes, ~~waste~~ paper and cardboard~~;~~, sewage sludge, septic tank and cesspool pumpings or other sludge~~;~~, useless or discarded commercial, industrial, demolition and construction ~~wastes~~ materials; discarded or abandoned vehicles or parts thereof~~;~~, discarded home and industrial appliances; manure, vegetable or animal solid and semisolid ~~wastes~~ materials, dead animals~~,~~ and infectious waste as defined in ORS 459.38~~76. and other wastes; but the term~~ Solid waste does not include:

(a) Hazardous wastes as defined in ORS 466.005;

(b) Materials used for fertilizer or for other productive purposes or which are salvageable as such materials are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals.

~~(40)~~(37) "Solid waste management" means prevention or reduction of solid waste~~;~~ management of the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste~~;~~ ~~or resource~~ recycling, reuse and material or energy recovery from solid waste~~;~~ and facilities necessary or convenient to such activities.

~~(41)~~(38) "Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

~~(42)~~(39) "Urbanized area" means, for jurisdictions within the State of Oregon, the territory within the urban growth boundary of each city of 4,000 or more population, or within the urban growth boundary established by a metropolitan service district. For jurisdictions outside the State of Oregon, "urbanized area" means a geographic area with substantially the same character, with respect to minimum population density and commercial and industrial density, as urbanized areas within the State of Oregon.

~~(43) "Waste" means useless or discarded materials.~~

~~(44)~~(40) "Wasteshed" means the areas of the state of Oregon as defined in ORS 459A.010 and OAR 340-90-050.

~~(45)~~(41) "Yard debris" means vegetative and woody material generated from residential property or from commercial landscaping activities. Includes grass clippings, leaves, hedge trimmings and similar vegetative waste, but does not include stumps or similar bulky wood materials.

340-90-030 GENERAL REQUIREMENTS

(1) The city, county, or metropolitan service district responsible for solid waste management shall insure that a place for collecting source separated recyclable materials is located at each permitted disposal site or located at an alternative location in the jurisdiction that is more convenient to the population being served.

(2) Each city with a population of 4,000 or more or, where applicable within the urban growth boundary established by a metropolitan service district, shall provide on-route collection service for source separated recyclable materials at least once a month for all collection service customers within the city limits and the county shall provide that service to the collection service customers within the urban growth boundary but outside of the city limits.

(3) The city or county responsible for solid waste management shall carry out a public education and promotion program that meets the following minimum requirements.

(a) An initial written or more effective notice or combination of both that is reasonably designed to reach each residential and commercial generator of recyclable materials, and that clearly explains why people should recycle, the recycling opportunities available to the recipient, the materials that can be recycled and the proper preparation of those materials for recycling. The notice shall include the following specific information:

(A) Reasons why people should recycle; and

(B) Name, address and telephone number of the person providing on-route collection where applicable; and

(C) Listing of depots for recyclable materials at all disposal sites serving the area and any alternatively approved more convenient locations, including the materials accepted and hours of operation; or

(D) Instead of paragraphs (B) and (C) a telephone number to call for information about depot locations and collection service as appropriate.

(b) Existing residential and commercial collection service customers shall be provided information, at least semi-annually, through a ~~A~~ written or ~~reminder, a~~ more effective notice or combination of both~~, about the on-route recycling collection program that is reasonably designed to reach all solid waste collection service customers every six (6) months~~ listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why source separation of materials for recycling is necessary.

(c) Written information to be distributed to disposal site users at all disposal sites or alternatively more convenient locations with attendants and where it is otherwise practical. The written information shall include the following:

(A) Reasons why people should recycle; and

(B) List of materials that can be recycled; and

(C) Instruction for the proper preparation of recyclable materials.

(d) At sites without attendants, a sign indicating availability of recycling at the site or at the more convenient location shall be prominently displayed that indicates materials accepted and hours of operation.

(e) Identify and establish a procedure for citizen involvement for the development and implementation of an education and promotion program.

(f) Notification and education materials provided to local media and other groups that maintain regular contact with commercial and residential generators and the public in general, including local newspapers, trade publications, local television and radio stations, community groups, neighborhood associations.

(g) A person identified as the education and promotion representative for the appropriate jurisdiction to be the official contact to work with the other affected persons in matters relating to education and promotion for recycling.

340-90-040 LOCAL GOVERNMENT RECYCLING PROGRAM ELEMENTS

In addition to the minimum requirements in OAR 340-90-030 each city with a population of 4000 or more and any county responsible for the area between the city limits and the urban growth boundary shall implement additional recycling program requirements selected from section (3) of this rule in accordance with the following requirements:

(1) Each city with a population of at least 4,000 but not more than 10,000 that is not within a metropolitan service district and any county responsible for the area between the city limits and the urban growth boundary of such city shall implement one of the following ~~by July 1, 1992~~, except where otherwise indicated:

(a) Implement OAR 340-90-040(3)(a), (b), and (c); or

(b) Select and implement at least three program elements listed in OAR 340-90-040(3); or

(c) Implement an alternative method that is approved by the Department in accordance with the requirements of OAR 340-90-080.

(2) Each city with a population of more than 10,000 or that is within a metropolitan service district and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of such city shall implement one of the following ~~by July 1, 1992~~, except where otherwise indicated:

(a) Implement OAR 340-90-040(3)(a), (b), (c) and one additional element in OAR 340-90-040(3); or

(b) Select and implement at least five program elements listed in OAR 340-90-040(3); or

(c) Implement an alternative method that is approved by the Department in accordance with the requirements of OAR 340-90-080.

(3) Program elements.

(a) Deliver to each residential collection service customer at least one durable recycling container ~~not later than January 1, 1993~~. For purposes of this program element a durable container shall be a rigid box or bucket with a volume of at least twelve (12) gallons made of material that holds up under all weather conditions for at least five (5) years, and is easily handled by the resident and the collector.

(b) Provide on-route collection at least once each week of source separated recyclable materials, excluding yard debris, to residential collection service customers provided on the same day that solid waste is collected from each customer.

(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-90-030(3). The expanded program shall include at a minimum the following elements:

(A) All new residential and commercial collection service customers shall each receive a packet of educational materials that contain information listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why source separation of materials for recycling should be done.

(B) Existing residential and commercial collection service customers shall be provided information identified in OAR 340-90-0~~3~~4~~0~~(3)(c)(A) at least

quarterly through a written or more effective notice or combination of both.

(C) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year shall be provided directly to the collection service customer in written form and shall include additional information including the procedure for preparing materials for collection.

(D) Targeting of at least one community or media event per year to promote recycling.

(E) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste.

(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate city or county for each multi-family dwelling complex having five or more units. The collection program shall meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less.

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program for the collection and composting of residential yard debris. The program shall include the following elements:

(A) Promotion of home composting of yard debris through written material or some other effective media form that is directed at the residential generator of yard debris; and either

(B) At least monthly on-route collection of yard debris from residences for production of compost or other marketable products; or

(C) System of residential yard debris collection depots, for the production of compost or other marketable products, located such that there is at least one conveniently located depot for every 25,000 population and open to the public at least once a week.

(f) Taking into account material generation rates, establish and implement regular, on-site collection of source separated principal recyclable materials from commercial entities that employ ten (10) or more persons and that occupy one thousand (1000) square feet or more in a single location. This program element does not apply to manufacturing, business or processing activities in residential dwellings.

(g) Establish depots for recycling collection of all principal recyclable materials listed in OAR 340-90-070, and where feasible, additional materials. This program shall provide at least one (1) recycling depot in addition to the depot(s), if any, required by OAR 90-030(1) and shall result in at least one (1) conveniently located depot for every 25,000 population. The expanded program shall include promotion and education that maximizes the use of the expanded depot program. The depots shall operate as follows:

(A) Have regular and convenient hours for residential generators of solid waste; and

(B) Open on the weekend days; and

(C) Established in location(s) such that it is convenient for residential generators of solid waste to use the depot(s).

(h) Establish collection rates for residential solid waste from single family residences and single residential units in complexes of less than five units, that encourages source reduction of waste, reuse and recycling. The rates at a minimum, shall include the following elements:

(A) At least one rate for a container that is twenty-one (21) gallons or less in size and costs less than larger containers; and

(B) Rates shall be based on the average weight, as determined in paragraph (E), of solid waste disposed per container for various sizes of containers; and

(C) Rates, as calculated on a per pound disposed basis shall not decrease per pound with the increasing size of the container or the number of containers; and

(D) Rates per container service shall be established such that each additional container beyond the first container for each residential unit shall have a fee charged that is at least the same fee and no less than the first container; and

(E) Rates, calculated on a per pound disposed basis, shall be established by the city or county through development of their own per pound average weights for various container sizes by sampling and calculating the average weights for a cross section of containers within their residential service area.

(4) Effective January 1, 1996, in addition to the requirements in sections (1) and (2) of this rule, each city with a population of 4,000 or more and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of such city in any wasteshed that is required to meet a 25 percent, 30 percent, 40 percent or 45 percent recovery rate in OAR 340-90-050 shall provide the opportunity to recycle rigid plastic containers if the conditions set forth in subsection (5) below are met.

(5) The opportunity to recycle rigid plastic containers is required within a wasteshed when the Recycling Markets Development Council determines that a stable market price for

rigid plastic containers, that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers, exists for such wasteshed.

(6) If a wasteshed fails to achieve the recovery rate set forth in OAR 340-90-050, any city with a population of 4,000 or more, or a county responsible for the area between the city limits and the urban growth boundary of such city shall implement, not later than July 1, 1996, two additional program elements selected from section (3) of this rule.

340-90-060 DETERMINATION OF RECOVERY RATES

(1) Recovery rates required in OAR 340-90-050 shall be determined by the Department by dividing the total weight of material recovered by the sum of the total weight of the material recovered plus the total weight of municipal solid waste disposed that was generated in each respective wasteshed.

(2) Recovery rates shall include the following:

(a) All materials collected for recycling, both source separated or sorted from solid waste, including yard debris.

(b) Beverage containers collected under the requirements of ORS 459A.700 - 459A.740.

(c) Not withstanding the foregoing, no material shall be counted toward the recovery rate if it is disposed.

(3) Recovery rates may include the composting or burning for energy recovery the material collected under sections (1) and (2) of this rule when there is not a viable market for recycling that material, provided that the following conditions are met:

(a) Mixtures of materials that are composted or burned for energy recovery are not comprised of 50 percent or more by weight of materials that could have been recycled if properly source separated; and

(b) A place does not exist within a wasteshed that will pay for the material or accept it for free or a place does not exist outside of the wasteshed that will pay a price for the material that, at a minimum, covers the cost of transportation of the material to market; and

(c) The appropriate county or metropolitan service district in the report required under OAR 340-90-100 provides data on the weight, type of material and method of material recovery for material to be counted in the recovery rate under this section and written explanation of the basis for determining that a viable market did not exist for the wasteshed, including markets available within and outside of the wasteshed, transportation distances and costs, and market prices for the material if it were to be recycled as source separated material.

(4) Recovery rates shall not include the following:

(a) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are recycled before becoming part of a product that has entered the wholesale or retail market, or any preconsumer waste.

(b) Metal demolition debris in which arrangements are made to sell or give the material to processors before demolition such that it does not enter the solid waste stream.

(c) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream. Discarded vehicle parts that are received at recycling drop-off facilities operated as part of the general solid waste management system are not excluded from the recovery rate calculation.

(d) Commercial, industrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances that are handled or processed for use in manufacturing new products and that do not routinely enter the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route collection programs.

(e) Material recovered for composting or energy recovery from mixed solid waste, except as provided in section (2)(a) and OAR 340-90-050(35).

(f) Mixed solid waste burned for energy recovery.

(5) For the purposes of calculating the recovery rate the following shall not be included in the total solid waste disposed:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Solid waste disposed of at an industrial solid waste disposal site;

(c) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and wasteshed of origin for such materials delivered and reports the weight and appropriate wasteshed in the reports required to be submitted to the Department under OAR 340-60-039.

(d) Solid waste received at an ash monofill from an ~~resource~~ energy recovery facility; and

(e) Any solid waste not generated within the state of Oregon.

DIVISION 91
WASTE REDUCTION PROGRAM AND RECYCLING INFORMATION

340-91-030 STANDARDS FOR RECYCLING CERTIFICATION

(1) For purposes of section 340-91-010 to 090, the opportunity to recycle for any person other than a local government unit means that the opportunity to recycle is available locally or that the person has a program in place which provides the opportunity to reduce the waste disposed by the person through reduction, reuse and recycling . The opportunity to recycle for local government units means the requirements of OAR 340-90-020, 030, 040 and 050 have been met, or the disposal site permittee on behalf of the local government unit has requested and received approval for an alternative method under OAR 340-90-035.

(2) Except as otherwise provided in section (6) of this rule, disposal site may not accept any solid waste generated from persons either within or outside the State of Oregon unless the Department has certified that: the recycling programs offered to or by the person provide an opportunity to recycle; and that for a local government unit meets the requirements of ORS 459A.005 to 459A.085 and 459.250.

(3) A person shall be considered certified if the person has not been decertified under OAR 340-91-040 and if:

(a) The permittee of the disposal site has submitted or caused to be submitted an initial recycling report containing the information required in OAR 340-91-050, and the Department has approved or conditionally approved the report; or

(b) The Department has approved or conditionally approved an initial recycling report submitted under OAR 340-90-100.

(4) The date of certification shall be considered to be the date that the initial recycling report was first approved, or conditionally approved, by the Department.

(5) For each initial recycling report submitted to fulfill the requirements of section (3) of this rule, the Department shall respond by 60 days after receipt of a completed initial recycling report by either certifying that the opportunity to recycle is provided or by indicating what deficiencies exist in providing the opportunity to recycle. If the Department does not respond within this time limit, the local government unit shall not be considered to be certified under OAR 340-91-030.

(6) A disposal site may accept wastes for disposal that are generated from a person outside the State of Oregon without certification required under section (2) of this rule, if:

(a) the person is implementing a waste reduction program under ORS 459.055 and OAR 340-91-0670 that is approved by the Department; or

(b) the disposal site accepts no more than 1,000 tons per year of wastes generated within any single local government unit. This 1,000 ton per year exemption shall apply separately to each incorporated city or town or similar local government unit, and to the unincorporated area of each county or similar local government unit, but not to other smaller geographic units referred to in section (7) of this rule; or

(c) The disposal site accepts a separate industrial waste from a person other than a local government.

(7) For the purposes of OAR 340-91-100 to 110, the term "local government unit" shall include smaller geographic units such as individual franchise or contract areas if a disposal site requests that the Department certify the recycling programs in the smaller geographic unit. The Department will certify the recycling programs in the smaller geographic unit if it determines that the opportunity to recycle is provided to all residents and businesses within the unit, as provided in section (1) of this rule, and that the boundaries of the unit were not drawn for the purpose of excluding potential recycling opportunities or otherwise reducing recycling requirements.

340-91-080 SUBMITTALS, APPROVAL, AND AMENDMENTS FOR WASTE REDUCTION PROGRAMS

(1) For persons within the State of Oregon, information required for approval of waste reduction programs shall be submitted by the person.

(2) For persons outside the State of Oregon, information required for approval of waste reduction programs shall be submitted, or caused to be submitted, by the disposal site permittee proposed to accept waste from the person.

(3) Where the waste proposed to be disposed comes from more than one jurisdiction, information submitted for approval shall cover all affected jurisdictions.

(4) The Department shall review the material submitted in accordance with this rule, and shall approve the waste reduction program within 60 days of completed submittal if sufficient evidence is provided that the criteria set forth in ORS 459.055, as further defined in OAR 340-91-070, are met.

(5) If the Department does not approve the waste reduction programs, the Department shall notify the disposal site that is to receive the waste and the persons who participated in preparing the submittal material, based on written findings. The procedure for review of this decision or correction of deficiencies shall be the same as the procedure for decertification and recertification set forth in OAR 340-91-100.

(6) In order to demonstrate continued implementation of the waste reduction program, by February of each year, information required in OAR ~~340-91-105 (3)~~ 340-90-100 and any solid waste management plan specifications as well as information described in the submittal pursuant to in subparagraph (4)(h) of this rule must be submitted for the preceding calendar year.

(7) If a person amends a waste reduction program, any changes in the information previously reported under this rule shall be reported to the Department. The Department shall approve the amended program provided that the criteria set forth in ORS 459.055 as further defined in OAR 340-91-070 are met.

DIVISION 93
SOLID WASTE: GENERAL PROVISIONS

DEFINITIONS

340-93-030 [Renumbered from 340-61-010]

As used in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97 unless otherwise specified:

(1) "Access Road" means any road owned or controlled by the disposal site owner which terminates at the disposal site and which provides access for users between the disposal site entrance and a public road.

(2) "Agricultural Waste" means residues from agricultural products generated by the raising or harvesting of such products on farms or ranches.

(3) "Agronomic Application Rate" means a rate of sludge or other solid waste land application which improves tilth comparable to other soil amendments commonly used in agricultural practices, matches or does not exceed nutrient requirements for projected crop patterns, or changes soil pH to desired levels for projected crop patterns. In no case shall the waters of the state be adversely impacted.

(4) "Airport" means any area recognized by the Oregon Department of Transportation, Aeronautics Division, for the landing and taking-off of aircraft which is normally open to the public for such use without prior permission.

(5) "Aquifer" means a geologic formation, group of formations or portion of a formation capable of yielding usable quantities of groundwater to wells or springs.

(6) "Assets" means all existing and probable future economic benefits obtained or controlled by a particular entity.

(7) "Baling" means a volume reduction technique whereby solid waste is compressed into bales for final disposal.

(8) "Base Flood" means a flood that has a one percent or greater chance of recurring in any year or a flood of a magnitude equaled or exceeded once in 100 years on the average of a significantly long period.

(9) "Biological Waste" means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include diapers soiled with urine or feces.

(10) "Clean Fill" means material consisting of soil, rock, concrete, brick, building block, tile or asphalt paving, which do not contain contaminants which could adversely impact the waters of the State or public health. This term does not include putrescible wastes, construction and demolition wastes and industrial solid wastes.

(11) "Cleanup Materials Contaminated by Hazardous Substances" means contaminated materials from the cleanup of releases of hazardous substances into the environment,

and which are not hazardous wastes as defined by ORS 466.005. [Renumbered from (55)]

(12) "Closure Permit" means a document issued by the Department bearing the signature of the Director or his/her authorized representative which by its conditions authorizes the permittee to complete active operations and requires the permittee to properly close a land disposal site and maintain and monitor the site after closure for a period of time specified by the Department.

(13) "Commercial Solid Waste" means solid waste generated by stores, offices, including manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, and other nonmanufacturing entities, but does not include solid waste from manufacturing activities. Solid waste from business, manufacturing or processing activities in residential dwellings is also not included.

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

(15) "Composting" means the process of controlled biological decomposition of organic solid waste. It does not include composting for the purposes of soil remediation.

(16) "Composting Facility" means a facility which receives mixed solid waste or source separated materials and uses a controlled biological decomposition process to produce a useable product.

(17) "Construction and Demolition Waste" means solid waste resulting from the construction, repair, or demolition of buildings, roads and other structures, and debris from the clearing of land, but does not include clean fill when separated from other construction and demolition wastes and used as fill materials or otherwise land disposed. Such waste typically consists of materials including concrete, bricks, bituminous concrete, asphalt paving, untreated or chemically treated wood, glass, masonry, roofing, siding, plaster; and soils, rock, stumps, boulders, brush and other similar material. This term does not include industrial solid waste and municipal solid waste generated in residential or commercial activities associated with construction and demolition activities.

(18) "Construction and Demolition Landfill" means a landfill which receives only construction and demolition waste.

(19) "Corrective action" means action required by the Department to remediate a release of constituents above the levels specified in 40 CFR §258.56 or OAR Chapter 340 Division 40, whichever is more stringent.

(20)~~[19]~~ "Cover Material" means soil or other suitable material approved by the Department that is placed over the top and side slopes of solid wastes in a landfill.

(21)~~[20]~~ "Cultures and Stocks" means etiologic agents and associated biologicals, including specimen cultures and dishes and devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Culture" does not include throat and urine cultures.

(22)~~(21)~~ "Current Assets" means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

(23)~~(22)~~ "Current Liabilities" means obligations whose liquidation is reasonably expected to require the use of existing resources properly classifiable as current assets or the creation of other current liabilities.

(24)~~(23)~~ "Department" means the Department of Environmental Quality.

(25)~~(24)~~ "Designated Well Head Protection Area" means the surface and subsurface area surrounding a public water supply well or wellfield, through which contaminants are likely to move toward and reach the well(s), and within which waste management and disposal, and other activities, are regulated to protect the quality of the water produced by the well(s). A public water supply well is any well serving 14 or more people for at least six months each year.

(26)~~(25)~~ "Digested Sewage Sludge" means the concentrated sewage sludge that has decomposed under controlled conditions of pH, temperature and mixing in a digester tank.

(27)~~(26)~~ "Director" means the Director of the Department of Environmental Quality.

(28)~~(27)~~ "Disposal site" means land and facilities used for the disposal, handling, treatment or transfer of or ~~[resource]~~ energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, land application units (except as exempted by subsection (74)(b) of this rule), transfer stations, [~~resource~~] energy recovery facilities, incinerators for solid waste delivered by the public or by a [~~solid waste~~] collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a [~~landfill~~] site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a [~~solid waste~~] collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(29)~~(28)~~ "Domestic Solid Waste" includes, but is not limited to, residential (including single and multiple residences), commercial and institutional wastes, as defined in ORS 459A.100; but the term does not include:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Building demolition or construction wastes and land clearing debris, if delivered to a disposal site that is limited to those purposes and does not receive other domestic or industrial solid wastes;

(c) Industrial waste going to an industrial waste facility; or

(d) Waste received at an ash monofill from an energy recovery facility.

(30)~~(29)~~ "Endangered or Threatened Species" means any species listed as such pursuant to Section 4 of the Federal Endangered Species Act and any other species so listed by the Oregon Department of Fish and Wildlife.

(31)~~(30)~~ [Renumbered from 340-61-010(42)(a)] "Energy Recovery" means recovery in which all or a part of the solid waste materials are processed to [~~utilize~~] use the heat content, or other forms of energy, of or from the material.

(32)~~(31)~~ "Financial Assurance" means a plan for setting aside financial resources or otherwise assuring that adequate funds are available to properly close and to maintain and monitor a land disposal site after the site is closed according to the requirements of a permit issued by the Department.

(33)~~(32)~~ "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters which are inundated by the base flood.

(34)~~(33)~~ "Gravel Pit" means an excavation in an alluvial area from which sand or gravel has been or is being mined.

(35)~~(34)~~ "Groundwater" means water that occurs beneath the land surface in the zone(s) of saturation.

(36)~~(35)~~ "Hazardous Substance" means any substance defined as a hazardous substance pursuant to section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 et seq.; oil, as defined in ORS 465.200; and any substance designated by the Commission under ORS [~~465.499~~] 465.400. [Renumbered from (56)]

(37)~~(36)~~ "Hazardous Waste" means discarded, useless or unwanted materials or residues and other wastes which are defined as hazardous waste pursuant to ORS 466.005.

(38)~~(37)~~ "Heat-treated" means a process of drying or treating sewage sludge where there is an exposure of all portions of the sludge to high temperatures for a sufficient time to kill all pathogenic organisms.

(39)~~(38)~~ "Incinerator" means any device used for the reduction of combustible solid wastes by burning under conditions of controlled air flow and temperature.

(40)~~(39)~~ "Industrial Solid Waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466 or under Subtitle C of the federal Resource Conservation and Recovery Act. Such waste may include, but is not limited to, waste resulting from the following processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; municipal solid waste from manufacturing or industrial facilities such as office

or "lunch room" waste; [~~office buildings or lunch rooms in a manufacturing or industrial facility if not mixed with wastes from the manufacturing or industrial processes;~~] or packaging material for products delivered to the generator.

(41)~~(40)~~ "Industrial Waste Landfill" means a landfill which receives only a specific type or combination of industrial waste.

(42)~~(41)~~ "Inert" means containing only constituents that are biologically and chemically inactive and that, when exposed to biodegradation and/or leaching, will not adversely impact the waters of the state or public health.

(43)~~(42)~~ "Infectious Waste" means biological waste, cultures and stocks, pathological waste, and sharps; as defined in ORS 459.386.

(44)~~(43)~~ "Land Application Unit" means a disposal site where sludges or other solid wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal.

(45)~~(44)~~ "Land Disposal Site" means a disposal site in which the method of disposing of solid waste is by landfill, dump, waste pile, pit, pond, lagoon or land application.

(46)~~(45)~~ "Landfill" means a facility for the disposal of solid waste involving the placement of solid waste on or beneath the land surface.

(47)~~(46)~~ "Leachate" means liquid that has come into direct contact with solid waste and contains dissolved, miscible and/or suspended contaminants as a result of such contact.

(48)~~(47)~~ "Liabilities" means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

(49)~~(48)~~ "Local Government Unit" means a city, county, metropolitan service district formed under ORS Chapter 268, sanitary district or sanitary authority formed under ORS Chapter 450, county service district formed under ORS Chapter 451, regional air quality control authority formed under ORS 468A.100 to 468A.130 and 468A.140 to 468A.175 or any other local government unit responsible for solid waste management.

(50)~~(49)~~ "Low-risk Disposal Site" means a disposal site which, based upon its size, site location, and waste characteristics, the Department determines to be unlikely to adversely impact the waters of the State or public health.

(51)~~(50)~~ "Material recovery" means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties [~~after serving a specific purpose and can, therefore,~~] and can be reused or recycled for [~~the same or other~~] some purpose. [Renumbered from OAR 340-61-010(42)(b)]

(52)~~(51)~~ "Material Recovery Facility" means a solid waste management facility which separates materials for the purposes of recycling from an incoming mixed solid waste stream by using manual and/or mechanical methods, or a facility at

which previously separated recyclables are collected. "Material recovery facility" includes composting facilities.

(53)~~(52)~~ "Medical Waste" means solid waste that is generated as a result of patient diagnosis, treatment, or immunization of human beings or animals.

(54)~~(53)~~ "Monofill" means a landfill or landfill cell into which only one type of waste may be placed.

(55)~~(54)~~ "Municipal Solid Waste Landfill" means a discrete area of land or an excavation that receives domestic solid waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under §257.2 of 40 CFR, Part 257. It may also receive other types of wastes such as nonhazardous sludge, hazardous waste from conditionally exempt small quantify generators, construction and demolition waste and industrial solid waste.

(56)~~(55)~~ "Net Working Capital" means current assets minus current liabilities.

(57)~~(56)~~ "Net Worth" means total assets minus total liabilities and is equivalent to owner's equity.

(58)~~(57)~~ "Pathological Waste" means biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological waste" does not include teeth or formaldehyde or other preservative agents.

(59)~~(58)~~ "Permit" means a document issued by the Department, bearing the signature of the Director or his authorized representative which by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

(60)~~(59)~~ "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.

(61)~~(60)~~ "Processing of Wastes" means any technology designed to change the physical form or chemical content of solid waste including, but not limited to, baling, composting, classifying, hydropulping, incinerating and shredding.

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

(63)~~(62)~~ "Putrescible Waste" means solid waste containing organic material that can be rapidly decomposed by microorganisms, and which may give rise to foul smelling, offensive products during such decomposition or which is capable of

attracting or providing food for birds and potential disease vectors such as rodents and flies.

(64)~~(63)~~ "Recycling" means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity. [Renumbered from (42)(c)]

(65)~~(64)~~ "Regional disposal site" means[~~:~~

~~(a) A disposal site selected pursuant to Chapter 679, Oregon Laws 1985; or~~

~~(b) A~~] a disposal site that receives, or a proposed disposal site that is designed to receive more than 75,000 tons of solid waste a year [~~from commercial haulers~~] from outside the immediate service area in which the disposal site is located. As used in this [~~paragraph,~~] subsection, "immediate service area" means the county boundary of all counties except a county that is within the boundary of the metropolitan service district. For a county within the metropolitan service district, "immediate service area" means that metropolitan service district boundary.

(66)~~(65)~~ "Release" has the meaning given in ORS 465.200(14). [Renumbered from (57)]

(67)~~(66)~~ "Resource Recovery" means the process of obtaining useful material or energy from solid waste and includes energy recovery, material recovery and recycling.

(68)~~(67)~~ "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity. [Renumbered from (42)(d)]

(69)~~(68)~~ "Salvage" means the controlled removal of reusable, recyclable or otherwise recoverable materials from solid wastes at a solid waste disposal site.

(70)~~(69)~~ "Sensitive Aquifer" means any unconfined or semiconfined aquifer which is hydraulically connected to a water table aquifer, and where flow could occur between the aquifers due to either natural gradients or induced gradients resulting from pumpage.

(71)~~(70)~~ "Septage" means the pumpings from septic tanks, cesspools, holding tanks, chemical toilets and other sewage sludges not derived at sewage treatment plants.

(72)~~(71)~~ "Sharps" means needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(73)~~(72)~~ "Sludge" means any solid or semisolid waste and associated supernatant generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar characteristics and effects.

(74)~~(73)~~ "Sole Source Aquifer" means the only available aquifer, in any given geographic area, containing potable groundwater with sufficient yields to supply domestic or municipal water wells.

(75)~~(74)~~ "Solid waste" means all useless or discarded putrescible and non-putrescible [~~wastes,~~] materials, including but not limited to garbage, rubbish, refuse, ashes, [~~waste~~] paper and cardboard[~~;~~], sewage sludge, septic tank and cesspool pumpings or other sludge[~~;~~], useless or discarded commercial, industrial, demolition and construction [~~wastes;~~] materials, discarded or abandoned vehicles or parts thereof[~~;~~], discarded home and industrial appliances[~~;~~], manure[~~;~~], vegetable or animal solid and semi-solid [~~wastes,~~]materials, dead animals[~~,~~] and infectious waste. [~~and other wastes; but t~~] The term does not include:

(a) Hazardous waste[s] as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, provided the materials are used at or below agronomic application rates.

(76)~~(75)~~ "Solid Waste Boundary" means the outermost perimeter (on the horizontal plane) of the solid waste at a landfill as it would exist at completion of the disposal activity.

(77)~~(76)~~ "Source Separate" means that the person who last uses recyclable materials separates the recyclable material from solid waste.

(78)~~(77)~~ "Tangible Net Worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

(79) "Third party costs" mean the costs of hiring a third party to conduct required closure, post-closure or corrective action activities.

(80)~~(78)~~ "Transfer station" means a fixed or mobile facility[~~, normally used as an adjunct of a solid waste collection and disposal system or material or energy recovery system, between a collection route and disposal site, including but not limited to a large hopper, railroad gondola, shipping container or barge.~~] other than a collection vehicle where solid waste is taken from a smaller collection vehicle and placed in a larger transportation unit for transport to a final disposal location.

(81)~~(79)~~ "Treatment" or "Treatment Facility" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of any solid waste. It includes but is not limited to soil remediation facilities. It does not include "composting" as defined in section (15) of this rule, "material recovery" as defined in section [~~(50)~~] (51) of this rule, nor does it apply to a "material recovery facility" as defined in section [~~(51)~~] (52) of this rule.

(82)~~(80)~~ "Underground Drinking Water Source" means an aquifer supplying or likely to supply drinking water for human consumption.

(83)~~(81)~~ "Vector" means any insect, rodent or other animal capable of transmitting, directly or indirectly, infectious diseases to humans or from one person or animal to another.

~~[(82) "Waste" means useless or discarded materials.]~~

(84)~~(83)~~ "Water Table Aquifer" means an unconfined aquifer in which the water table forms the upper boundary of the aquifer. The water table is typically below the upper boundary of the geologic strata containing the water, the pressure head in the aquifer is zero and the elevation head equals the total head.

(85)~~(84)~~ "Woodwaste" means chemically untreated wood pieces or particles generated from processes used in the timber products industry. Such materials include but are not limited to sawdust, chips, shavings, bark, hog-fuel and log sort yard waste, but do not include wood pieces or particles containing chemical additives, glue resin or chemical preservatives.

(86)~~(85)~~ "Woodwaste Landfill" means a landfill which receives primarily woodwaste.

(87)~~(86)~~ "Zone of Saturation" means a three dimensional section of the soil or rock in which all open spaces are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge, discharge or withdrawal.

NOTE: Definition updated to be consistent with current Hazardous Waste statute.

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

Stat. Auth.: ORS 459.045(1) & (3), 459.235(2), 459.420 & 468.065
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 18-1988, f. & cert. ef. 7-13-88 (and corrected 2-3-89); DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 24-1990, f. & cert. ef. 7-6-90

PERMIT REQUIRED

340-93-050 [Renumbered from 340-61-020]

(1) Except as provided by section (2) of this rule, no person shall establish, operate, maintain or substantially alter, expand, improve or close a disposal site, and no person shall change the method or type of disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit therefor from the Department.

(2) Persons owning or controlling the following classes of disposal sites are specifically exempted from the above requirements to obtain a permit under OAR Chapter 340 Divisions 93 through 97, [~~these rules,~~] but shall comply with all other provisions of OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] and other applicable laws, rules, and regulations regarding solid waste disposal:

(a) A facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste and solid waste;

(b) [~~(a)~~] Disposal sites, facilities or disposal operations operated pursuant to a permit issued under ORS 468B.050;

(c) [~~(b)~~] A land disposal site used exclusively for the disposal of clean fill, unless the materials have been contaminated such that the Department determines that their nature, amount or location may create an adverse impact on groundwater, surface water or public health or safety;

NOTE: Such a landfill may require a permit from the Oregon Division of State Lands. A person wishing to obtain a permit exemption for an inert waste not specifically mentioned in this subsection may submit a request to the Department with such information as the Department may require to evaluate the request for exemption, pursuant to OAR 340-93-080.

(d) [~~(c)~~] Composting operations used only by the owner or person in control of a dwelling unit to dispose of food scraps, garden wastes, weeds, lawn cuttings, leaves, and prunings generated at that residence and operated in a manner approved by the Department;

(e) [~~(d)~~] Facilities which receive only source separated materials for purposes of material recovery or for composting, except when the Department determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health;

(f) [~~(e) Solid waste collection vehicles, operated by commercial solid waste collection companies or government agencies, which serve as mobile and roving transfer stations that are not available for direct use by the general public and do not stay in one location for a period to exceed 72 hours.~~] A site used to transfer a container, including but not limited to a shipping container, or other vehicle holding solid waste from one mode of transportation to another (such as barge to truck), if:

(A) The container or vehicle is not available for direct use by the general public;

(B) The waste is not removed from the original container or vehicle; and

(C) The original container or vehicle does not stay in one location longer than 72 hours, unless otherwise authorized by the Department.

(3) The Department may, in accordance with a specific permit containing a compliance schedule, grant reasonable time for solid waste disposal sites or facilities to comply with OAR Chapter 340 Divisions 93 through 97. [~~these rules.~~]

(4) If it is determined by the Department that a proposed or existing disposal site is not likely to create a public nuisance, health hazard, air or water pollution or other environmental problem, the Department may waive any or all requirements of OAR 340-93-070, 340-93-130, 340-93-140, 340-93-150, [~~340-93-060(2)~~] 340-94-060(2) and 340-95-030(2) and issue a letter authorization in accordance with OAR 340-93-060.

(5) Each person who is required by sections (1) and (4) of this rule to obtain a permit shall:

(a) Make prompt application to the Department therefor;

(b) Fulfill each and every term and condition of any permit issued by the Department to such person;

(c) Comply with OAR Chapter 340 Divisions 93 through 97; [~~these rules;~~]

(d) Comply with the Department's requirements for recording, reporting, monitoring, entry, inspection, and sampling, and make no false statements, representations, or certifications in any form, notice, report, or document required thereby.

(6) Failure to conduct solid waste disposal according to the conditions, limitations, or terms of a permit[~~, letter authorization~~] or OAR Chapter 340 Divisions 93 through 97, [~~these rules,~~] or failure to obtain a permit [~~or letter authorization,~~] is a violation of OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] and shall be cause for the assessment of civil penalties for each violation as provided in OAR Chapter 340, Division 12 or for any other enforcement action provided by law. Each and every day that a violation occurs is considered a separate violation and may be the subject of separate penalties.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84; DEQ 14-1984, f. & ef. 8-8-84

LETTER AUTHORIZATIONS

340-93-060 [Renumbered from 340-61-027]

Pursuant to OAR 340-93-050(4), the Department may authorize the short-term operation of a disposal site by issuing a permit called "letter authorization" subject to the following:

(1) A letter authorization may be issued only on the basis of a complete written application which has been approved by the Department. Applications for letter authorizations shall be complete only if they contain the following items:

(a) The quantity and types of material to be disposed;

(b) A discussion of the need and justification for the proposed project;

(c) The expected amount of time which will be required to complete the project;

(d) The methods proposed to be used to insure safe and proper disposal of solid waste;

(e) The location of the proposed disposal site;

(f) A statement of approval from the property owner or person in control of the property, if other than the applicant;

(g) Written verification from the local planning department that the proposal is compatible with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(h) Any other relevant information which the Department may require.

(2) Upon receipt of a complete written application the Department may approve the application if it is satisfied that:

(a) The applicant has demonstrated sufficient need and justification for the proposal;

(b) The proposed project is not likely to cause a public nuisance, health hazard, air or water pollution or other environmental problem.

(3) The Department may revoke or suspend a letter authorization on any of the following grounds:

(a) A material misrepresentation or false statement in the application;

(b) Any relevant violation of any statute, rule, order, permit, ordinance, judgment or decree.

(4) The Department may issue letter authorizations for periods not to exceed six [~~(6)~~] months. If circumstances have prevented the holder of a letter authorization from completing the action allowed under the letter authorization, he or she may request a one-time six-month renewal from the Department. Further renewals are not allowed. A letter authorization shall not be used for any disposal actions requiring longer than a total of one year to complete; such actions are subject to a regular solid waste land disposal permit. [~~Any requests to conduct additional disposal shall require a new application and a new authorization.~~]

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 26-1981, f. & ef. 9-8-81

APPLICATIONS FOR PERMITS

340-93-070 [Renumbered from 340-61-025]

(1) Applications for permits shall be processed in accordance with the Procedures for Issuance, Denial, Modification and Revocation of Permits as set forth in OAR Chapter 340, Division 14, except as otherwise provided in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97.

(2) Applications for a permit shall be accepted by the Department only when complete, as detailed in section (3) of this rule.

(3) Applications for permits shall be complete only if they:

(a) Are submitted in triplicate on forms provided by the Department, are accompanied by all required exhibits using paper with recycled content with

copy printed on both sides of the paper whenever possible, follow the organizational format and include the level of informational detail required by the Department, and are signed by the property owner or person in control of the premises;

(b) Include written recommendations of the local government unit or units having jurisdiction to establish a new disposal site or to substantially alter, expand, or improve a disposal site or to make a change in the method or type of disposal. Such recommendations shall include, but not be limited to, a statement of compatibility with the acknowledged local comprehensive plan and zoning requirements or the Land Conservation and Development Commission's Statewide Planning Goals;

(c) Identify any other known or anticipated permits from the Department or other governmental agencies. If previously applied for, include a copy of such permit application and if granted, a copy of such permit.

(d) Include payment of application fees as required by OAR 340-97-110 and 340-97-120;

(e) Include a site characterization [~~feasibility study~~] report(s) prepared in accordance with OAR 340-93-130, to establish a new disposal site or to substantially alter, expand or improve a disposal site or to make a change in the method or type of disposal at a disposal site, unless the requirements of said site characterization report(s) [~~feasibility study~~] have been met by other prior submittals;

(f) Include detailed plans and specifications as required by OAR 340-93-140.

(g) For a new land disposal site:

(A) Include a written closure plan that describes the steps necessary to close all land disposal units at any point during their active life pursuant to OAR 340-94-110 to 340-94-120 or OAR 340-95-050 to 340-95-060; and

(B) Provide evidence of financial assurance for the costs of closure of the land disposal site and for post-closure maintenance of the land disposal site, pursuant to OAR 340-94-140 or OAR 340-95-090, unless the Department exempts a non-municipal land disposal site from this requirement pursuant to OAR 340-95-050(3).

(h) [~~(g)~~] Include any other information the Department may deem necessary to determine whether the proposed disposal site and the operation thereof will comply with all applicable rules of the Department.

(4) If the Department determines that a disposal site is a "low-risk disposal site" or is not likely to adversely impact the waters of the State or public health, the Department may waive any of the requirements of subsections (3)(e) and (f) of this rule, OAR 340-93-150, 340-94-060(2) and 340-95-030(2). In making this judgment, the Department may consider the size and location of the disposal site, the volume and types of waste received and any other relevant factor. The applicant must submit any information the Department deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

(5) If a local public hearing regarding a proposed disposal site has not been held and if, in the judgment of the Department, there is sufficient public concern regarding the proposed disposal site, the Department may, as a condition of receiving and acting upon an application, require that such a hearing be held by the county board of commissioners or county court or other local government agency responsible for solid waste management, for the purpose of informing and receiving information from the public.

(6) Permit renewals:

(a) Notwithstanding OAR 340-14-020(1), [~~after the effective date of this rule~~] any permittee intending to continue operation beyond the permitted period must file a complete renewal application for renewal of the permit at least 180 days before the existing permit expires;

(b) A complete application for renewal must be made in the form required by the Department and must include the information required by this Division and any other information required by the Department;

(c) Any application for renewal which would substantially change the scope of operations of the disposal site must include written recommendations from the local government unit as required in subsection (3)(b) of this rule;

(d) If a completed application for renewal of a permit is filed with the Department in a timely manner prior to the expiration date of the permit, the permit shall not be deemed to expire until the Department takes final action on the renewal application;

(e) If a completed application for renewal of a permit is not filed 180 days prior to the expiration date of the permit, the Department may require the permittee to close the site and apply for a closure permit, pursuant to OAR 340-94-100 or 340-95-050;

(f) Permits continued under subsection (6)(d) of this rule remain fully effective and enforceable until the effective date of the new permit.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81; DEQ 2-1984, f. & ef. 1-16-84

VARIANCES AND PERMIT EXEMPTIONS

340-93-080 [Renumbered from 340-61-080]

(1) Variances. The Commission may by specific written variance [~~or conditional permit~~] waive certain requirements of OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] when circumstances of the solid waste disposal site location, operating procedures, and/or other conditions indicate that the purpose and intent of OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] can be achieved without strict adherence to all of the requirements.

(2) Permit exemptions. Pursuant to OAR 340-93-050(2), a person wishing to obtain an exemption from the requirement to obtain a solid waste permit for disposal of an inert waste in specified locations may submit a request to the Department. The applicant must demonstrate that the waste is substantially the same as "clean fill." The request shall include but not be limited to the following information:

(a) The exact location (including a map) at which the waste is to be disposed of and a description of the surrounding area;

(b) The monthly rate of disposal;

(c) A copy of the Material Safety Data Sheet (or equivalent, if a MSDS is not available) for all applicable raw materials used at the facility generating the waste;

(d) A description of the process generating the waste and how that process fits into the overall operation of the facility;

(e) Documentation that the waste is not hazardous as defined in OAR Chapter 340, Division 101. The procedure for making a hazardous waste determination is in OAR 340-102-011;

(f) A demonstration that the waste is inert, stable, non-putrescible, and physically similar to soil, rock, concrete, brick, building block, tile, or asphalt paving;

(g) A demonstration that the waste will not discharge constituents which would adversely impact the waters of the state or public health.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

PRELIMINARY APPROVAL

340-93-090 [Renumbered from 340-61-031]

(1) The Department may issue written preliminary approval to any applicant for a Solid Waste Disposal Permit, prior to submission of detailed engineering plans and specifications, based on the material submitted in a site characterization [~~feasibility study~~] report(s) in accordance with the requirements of OAR 340-93-070.

(2) The purpose of the preliminary review and approval process is to inform the applicant of the Department's concerns, if any, regarding the proposal and to provide guidance in the development of the detailed plans and specifications required to complete the permit application. Receipt of preliminary approval does not grant the applicant any right to begin construction or operation of a disposal site.

(3) Request for preliminary approval shall be made to the Department in writing. Within 45 days of receipt of such request, the Department shall either grant or deny preliminary approval or request additional information.

(4) Granting of preliminary approval shall not prevent the Department from denying or conditionally approving a completed permit application.

(5) If the Department denies preliminary approval, it shall clearly state the reasons for denial. Failure to receive preliminary approval shall not prevent an applicant from completing a permit application. Any application completed after denial of preliminary approval shall specifically address those concerns listed in the Department's letter of denial.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 26-1981, f. & ef. 9-8-81

DENIAL OF PERMITS

340-93-110 [Renumbered from 340-61-026]

Upon receipt of a completed application, the Department shall deny the permit if:

(1) The application contains false information.

(2) The application was wrongfully accepted by the Department.

(3) The proposed disposal site would not comply with OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] or other applicable rules of the Department.

(4) The proposal is not part of or not compatible with the adopted local solid waste management plan approved by the Department.

(5) There is no clearly demonstrated need for the proposed new, modified or expanded disposal site or for the proposed change in the method or type of disposal.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 26-1981, f. & ef. 9-8-81

VIOLATIONS

340-93-120 [Renumbered from 340-61-085]

Violations of OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] shall be punishable as provided in ORS Chapter 459 and pursuant to OAR Chapter 340, Division 12.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

SITE CHARACTERIZATION [~~FEASIBILITY STUDY~~] REPORT(S)

340-93-130 [Renumbered from 340-61-030]

The purpose of the site characterization [~~feasibility study~~] report(s) required by OAR 340-93-070(3)(e) is to demonstrate that the proposed facility will be located in a suitable site and will use appropriate technology in design, construction and operation. The site characterization [~~feasibility study~~] report(s) shall describe existing site conditions and a conceptual engineering proposal in sufficient detail to

determine whether the facility is feasible and protects the environment. The site characterization [~~feasibility study~~] report(s) shall include, but not be limited to, the following:

(1) Information on site location and existing site conditions, including:

(a) A site location description, including a location map and list of adjacent landowners;

(b) An Existing Conditions Map of the area showing land use and zoning within 1/4 mile of the disposal site; and

(c) Identification of any siting limitations and how those limitations will be addressed.

(2) A description of the scope, magnitude, type, and purpose of the proposed facility, including but not limited to the following:

(a) Estimated capacity and projected life of the site;

(b) Identification of the communities, industries and/or markets to be served;

(c) Anticipated types and quantities of solid wastes to be received, disposed of and/or processed by the facility;

(d) Summary of general design criteria and submittal of conceptual engineering plans;

(e) Description of how the proposed technology compares to current technological practices, or to similar proven technology, including references to where similar technology has been effectively implemented;

(f) Demonstration that the proposed facility is compatible with the local solid waste management plan and the state solid waste management plan;

(g) Planned future use of the disposal site after closure;

(h) Key assumptions used to calculate the economic viability of the proposed facility; and

(i) The public involvement process that has been and will be implemented.

(3) A proposal for protection and conservation of the air, water and land environment surrounding the disposal site, including control and/or treatment of leachate, methane gas, litter and vectors, and control of other discharges, emissions and activities which may result in a public health hazard, a public nuisance or environmental degradation.

(4) For a landfill, the following shall be included:

(a) A detailed soils, geologic, and groundwater report of the site prepared and stamped by a professional Engineer, Geologist or Engineering Geologist with current Oregon registration. The report shall include consideration of surface features, geologic formations, soil boring data, water table profile, direction of groundwater flow, background quality of water resources in the anticipated zone of influence of the landfill, need and availability of cover material,

climate, average rates of precipitation, evapotranspiration, runoff, and infiltration (preliminary water balance calculations);

(b) Information on soil borings to a minimum depth of 20 feet below the deepest proposed excavation and lowest elevation of the site or to the permanent groundwater table if encountered within 20 feet. A minimum of one boring per representative landform at the site and an overall minimum of one boring per each ten acres shall be provided. Soil boring data shall include the location, depth, surface elevation and water level measurements of all borings, the textural classification (Unified Soil Classification System), permeability and cation exchange capacity of the subsurface materials and a preliminary soil balance;

(c) For all water wells located within the anticipated zone of influence of the disposal site, the depth, static level and current use shall be identified;

(d) Background groundwater quality shall be determined by laboratory analysis and shall include at least each of the constituents specified by the Department.

(5) Any other information the Department may deem necessary to determine whether the proposed disposal site is feasible and will comply with all applicable rules of the Department.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81

DETAILED PLANS AND SPECIFICATIONS REQUIRED

340-93-140 [Renumbered from 340-61-035] Except as provided in OAR [~~340-93-060(4);~~] 340-93-070(4):

(1) Any person applying for a Solid Waste Disposal Permit shall submit plans and specifications conforming with current technological practices, and sufficiently detailed and complete so that the Department may evaluate all relevant criteria before issuing a permit. The plans and specifications shall follow the organizational format, and include the level of information detail, as required by the Department. The Department may refuse to accept plans and specifications that are incomplete and may request such additional information as it deems necessary to determine that the proposed disposal site and site operation will comply with all pertinent rules of the Department.

(2) Engineering plans and specifications submitted to the Department shall be prepared and stamped by a professional engineer with current Oregon registration.

(3) If in the course of facility construction any person desires to deviate significantly from the approved plans, the permittee shall submit a detailed description of the proposed change to the Department for review and approval prior to implementation. If the Department deems it necessary, a permit modification shall be initiated to incorporate the proposed change.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72; DEQ 26-1981, f. & ef. 9-8-81

CONSTRUCTION CERTIFICATION

340-93-150 [Renumbered from 340-61-036] Except as provided in OAR 340-93-070(4):

(1) The Department may require, upon completion of major or critical construction at a disposal site, that the permittee submit to the Department a final project report signed by the project engineer or manager as appropriate. The report shall certify that construction has been completed in accordance with the approved plans including any approved amendments thereto.

(2) If any major or critical construction has been scheduled in the plans for phase development subsequent to the initial operation, the Department may require that the permittee submit additional certification for each phase when construction of that phase is completed.

(3) Solid waste shall not be disposed of in any new waste management unit (such as a landfill cell) of a land disposal site unless/until the permittee has received prior written approval from the Department of the required engineering design, construction, operations, and monitoring plans. Only after the Department has accepted a construction certification report prepared by an independent party, certifying to the Department that the unit was constructed in accordance with the approved plans, may waste be placed in the unit. If the Department does not respond to a certified construction certification report within 30 days of its receipt, the permittee may proceed to use the unit for disposal of the intended solid waste.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 26-1981, f. & ef. 9-8-81

PLACE FOR COLLECTING RECYCLABLE MATERIAL

340-93-160

(1) All solid waste permittees shall ensure that a place for collecting source separated recyclable material is provided for every person whose solid waste enters the disposal site. The place for collecting recyclable material shall be located either at the disposal site or at another location more convenient to the population served by the disposal site.

(2) [Renumbered from 340-60-060] Any disposal site that identifies a more convenient location for the collection of recyclable materials as part of providing the opportunity to recycle shall provide information to users of the disposal site about the location of the recycling collection site, what recyclable materials are accepted and hours of operation.

(3)[~~(2)~~] [Renumbered from 340-60-065] Exemption. Any disposal site that does not receive source separated recyclable material or solid waste containing recyclable material is not required to provide a place for collecting source separated recyclable material.

(4) [Renumbered from 340-60-070] Small Rural Sites. Any disposal site from which marketing of recyclable material is impracticable due to the amount or type of recyclable material received or geographic location shall provide information to the users of the disposal site about the opportunity to recycle at another location serving the

wasteshed. Such information shall include the location of the recycling opportunity, what recyclable materials are accepted and hours of operation.

(5)[~~(3)~~] The Department may modify the requirements in this rule if the Department finds that the opportunity to recycle is being provided through an acceptable alternative method.

CLEANUP MATERIALS CONTAMINATED WITH HAZARDOUS SUBSTANCES

340-93-170

(1) Applicability:

(a) For the purposes of this rule, "cleanup materials contaminated by hazardous substances" such as petroleum contaminated soils include only those materials which are not hazardous wastes as defined by ORS 466.005;

(b) This rule applies to cleanup materials contaminated with hazardous substances when such materials are removed from the site of contamination for treatment and/or disposal elsewhere. It does not apply to activities governed under ORS 465 or 466.

(2) Management "hierarchy." Preferred management options for cleanup materials contaminated by hazardous substances are as follows:

(a) First, use of alternative or resource recovery technologies where cross media effects are well controlled, such as thermal desorption;

(b) Use of alternative technologies where cross media effects are less easily controlled, such as biological treatment of petroleum contaminated soils (bioremediation);

(c) Disposal at a permitted landfill using best management practices.

(d) If subsection (c) of this section is clearly impractical, or if local needs require disposal at a facility without a liner and leachate collection system, disposal at another permitted landfill pursuant to subsection (3)(d) of this rule may be authorized by the Department.

(3) Landfill disposal:

(a) [Renumbered from 340-61-060(2):] For the purpose of this rule, best management practices shall be defined as a landfill meeting the design criteria in 40 CFR 258, Subpart D, or an alternate design approved by the Department with a bottom lining system which performs equivalent to a composite liner consisting of a 60 mil thickness geomembrane component and two feet of soil achieving a maximum saturated hydraulic conductivity of 1×10^{-6} centimeters per second; and a leachate collection and treatment system designed to maintain a leachate head of one foot or less;

(b) [Renumbered from 340-61-060(2)(b):] The land and facilities used for disposal, treatment, transfer, or resource recovery of cleanup material contaminated by hazardous substances, unless that activity is otherwise regulated by the Department, shall be defined as a disposal site under ORS

459.005 and shall be subject to the requirements of OAR Chapter 340 Divisions 93 through 97, [~~these rules,~~] including permit requirements;

(c) [Renumbered from 340-61-060(2)(a):] Cleanup materials contaminated by hazardous substances may be landfilled only in solid waste landfills authorized by the Department to receive this type of material;

(d) [Renumbered from 340-61-060(2)(c):] To protect groundwater, the Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances if the following criteria are met:

(A) The landfill uses "best management practices" as defined in this rule;

(B) A Special Waste Management Plan for the facility pursuant to OAR 340-94-040(11)(b)(J) or 340-95-020(3)(j) is approved by the Department which specifically addresses the management of the cleanup materials and requires, at a minimum, the following practices:

(i) The owner or operator of the landfill maintains for the facility a copy of the analytical results of one or more representative composite samples from the contaminated materials received for disposal;

(ii) The owner or operator maintains for the facility a record of the source, types, and volumes of the contaminated materials received for disposal, and reports the sources, types, and volumes received to the Department in a quarterly waste report;

(iii) Petroleum-contaminated soils, whenever possible, are incorporated into the daily cover material unless such practice would increase risks to public health or the environment; and

(iv) Any other requirements which the Department determines are necessary to protect public health and the environment.

(e) [Renumbered from 340-61-060(2)(d):] The Department may authorize an owner or operator of a landfill to receive cleanup materials contaminated by hazardous substances for disposal at a landfill which does not meet the requirements of subsection (d) of this section if:

(A) The landfill accepts less than 1,000 tons or five percent of the total volume of waste received, whichever is less, per year of cleanup material contaminated by hazardous substances; or

(B) The cleanup materials contain concentrations of hazardous substances which do not exceed the cleanup levels approved by the Department for the site from which the materials were removed; or

(C) The Department determines that the total concentrations and the hazardous characteristics of the hazardous substances in the cleanup materials will not present a threat to public health or the environment at the disposal facility, after considering the following factors:

(i) The compatibility of the contaminated materials with the volumes and characteristics of other wastes in the landfill;

(ii) The adequacy of barriers to prevent release of hazardous constituents to the environment, including air, ground and surface water, soils, and direct contact;

(iii) The populations or sensitive areas, such as aquifers, wetlands, or endangered species, potentially threatened by release of the hazardous substances;

(iv) The demonstrated ability of the owner or operator of the facility to properly manage the wastes;

(v) Relevant state and federal policies, guidelines and standards; and

(vi) The availability of treatment and disposal alternatives.

(4) Procedures:

(a) A landfill owner or operator who wants to receive cleanup materials contaminated with hazardous substances shall apply to the Department for Hazardous Substance Authorization, including a Special Waste Management Plan for the materials to be received;

(b) The applicant shall pay a Hazardous Substance Authorization fee as specified in OAR 340-97-120.

WASTES REQUIRING SPECIAL MANAGEMENT

340-93-190 [Incorporates part of 340-61-060 "Specified Wastes"]

(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) [Renumbered from 340-61-060(3)(b):] 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) [Renumbered from 340-61-060(3)(c):] 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 OAR Chapter 340 Divisions 93 through 96. [~~these rules.~~] Equipment shall be provided of sufficient size and design to densely compact the material to be included in the landfill;

(c) [Renumbered from 340-61-060(1)(d):] Oil Wastes. More than [~~30~~] 25 gallons of petroleum-bearing wastes such as used oil filters, oil-absorbent materials, suspended solids that have settled to the bottom of the tank ("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) [Renumbered from 340-61-060(3)(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 wasteshed 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.~~] OAR 340-32-100 through 340-32-120 and OAR 340-32-5590 through 340-32-5650.

(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.

LANDFILL SITING: REQUEST FOR DEQ ASSISTANCE

340-93-250 [Renumbered from 340-61-021]

(1) A city or county responsible for implementing a Department-approved Solid Waste Management Plan which identifies the need for a landfill may request assistance from the Department in establishing a landfill under ORS 459.047.

(2) Applications for requests for assistance in siting landfills under ORS 459.047 shall be in the form of a letter signed by the governing body of the city or county with attachments as necessary to fully describe the need and justification for the request, need for the site as outlined in the Department-approved Solid Waste Management Plan and types of assistance required.

(3) When the request for assistance includes Department siting of the landfill under ORS 459.047, exhibits and information shall be submitted which document the following:

(a) The local government has an adopted, Department-approved Solid Waste Management Plan which identifies the need for a landfill;

(b) The local government has re-evaluated the plan in consultation with the Department and has confirmed that siting a landfill in the immediate future is still needed;

(c) An explanation of why the local government is unable to proceed successfully to site the landfill, including a discussion of progress to date and the obstacles to be overcome;

(d) All pertinent reports, plans, documents and records relative to the siting process to date will be made available to the Department at the Department's request;

(e) The local government has carried out a process for landfill siting (with technical assistance from the Department if requested) including a minimum of the following:

(A) Alternative sites have been reviewed and ranked as to adequacy and probable acceptability based upon locally developed criteria and applicable laws and regulations;

(B) Information has been gathered on at least the top ranked site sufficient to satisfy the requirements of the "site characterization [~~"Feasibility Study R~~] report(s)" provided for in OAR 340-93-130. Certain requirements of the "site characterization [~~"Feasibility Study R~~] report(s)" may be waived, for the purpose of this section, by the Department upon a demonstration of prohibitive cost or legal constraint;

(C) A public participation process, including the use of a citizens advisory committee or other approach which provides for public access, review and input has been carried out in the siting process.

(4) The Department shall give reasonable public notice of each such request, including the prompt publication of a summary of such request in the Secretary of State's Bulletin.

(5) Requests for siting under ORS 459.047 will be reviewed by the Commission and written findings as to the acceptability of the process under subsection (3)(e) of this rule will be prepared. Should the process be found incomplete, the Commission may request the Department or the local government to complete the process.

(6) Landfill siting in Marion, Polk, Clackamas, Washington or Multnomah Counties under ORS 459.049:

(a) [Renumbered from 340-61-022] Public comment to determine need. Prior to the Commission making a determination of need for any landfill site under ORS 459.049, the Department shall give prior reasonable public notice of, and hold a public informational hearing on, the need for the landfill site;

(b) [Renumbered from 340-61-023] Public hearing in area affected by proposed site. Prior to siting a landfill under ORS 459.049, the Department shall give prior reasonable public notice of and hold a public informational hearing in the area affected by the proposed site.

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 25-1980, f. & ef. 10-2-80; DEQ 30-1980, f. & ef. 11-10-80; DEQ 2-1984, f. & ef. 1-16-84

DIVISION 94
SOLID WASTE: MUNICIPAL SOLID WASTE LANDFILLS

APPLICABILITY

340-94-001

(1) OAR Chapter 340, Division 94 applies to municipal solid waste landfills and their appurtenances such as leachate management facilities, and to ash monofills.

(2) The criteria adopted in OAR 340-94-010 apply to all municipal solid waste landfills which receive waste on or after October 9, 1993, unless the landfill meets the following requirements for a later effective date:[~~,~~]

(a) For existing municipal solid waste landfills or lateral expansions of municipal solid waste landfills that meet the conditions of 40 CFR, §258.1(e)(2) ("small landfills"): the criteria apply if the landfill receives waste on or after April 9, 1994;

(b) For new, existing or lateral expansions of municipal solid waste landfills that meet the conditions in 40 CFR, §258.1(f)(1) ("very small landfills serving certain small communities"): the criteria apply if the landfill receives waste on or after October 9, 1995.

[~~(3) Municipal solid waste landfills in which the last load of waste was received after October 9, 1991, but before October 9, 1993 and which complete installation of final cover within six months of last receipt of wastes, must comply with final cover requirements as specified in 40 CFR §258.1(d) and §258.60(a) but not with the other criteria adopted in OAR 340-94-010.~~]

(3) Municipal solid waste landfills that receive waste after October 9, 1991 but stop receiving waste before a date certain, and which complete installation of a final cover as specified in 40 CFR, §258.60(a) by another date certain, are exempt from the other criteria adopted in OAR 340-94-010. The dates are as follows:

(a) All municipal solid waste landfills (unless the landfill meets the conditions under subsections (3)(b) or (3)(c) of this rule): no waste received after October 9, 1993, and installation of final cover completed by October 9, 1994;

(b) A "small landfill" meeting the criteria in 40 CFR, §258.1(e)(2): no waste received after April 9, 1994 and installation of final cover completed by October 9, 1994;

(c) A "very small landfill serving certain small communities" meeting the criteria in 40 CFR, §258.1(f)(1): no waste received after October 9, 1995 and installation of final cover completed by October 9, 1996.

(4) In order to meet the requirements for later effective dates as a "very small landfill serving certain small communities," a landfill owner or operator shall make the demonstration required in 40 CFR, §258.1(f)(2) by April 9, 1994. The owner or operator shall keep the demonstration available for inspection by the Department.

(5) [~~(4)~~] Persons who receive municipal solid waste but who are exempt from any or all criteria in 40 CFR, Part 258 must comply with all relevant requirements in OAR Chapter 340, Divisions 93, 94, 95, 96 and 97.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

ADOPTION OF UNITED STATES ENVIRONMENTAL PROTECTION AGENCY MUNICIPAL SOLID WASTE REGULATIONS

340-94-010

(1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 93 through 97, the criteria for municipal solid waste landfills, prescribed by the United States Environmental Protection Agency in Title 40, CFR, Part 258, and any amendments or technical corrections promulgated thereto as of October 1, 1993 [~~June 26, 1992~~] are adopted by reference and prescribed by the Commission to be observed by all persons who receive municipal solid waste and who are subject to ORS 459.005 through 459.405 and 459A.

(2) Wherever there may be a discrepancy between requirements in 40 CFR, Part 258 as adopted by the Commission and OAR Chapter 340 Divisions 93 through 97, [~~these rules,~~] the more protective standard shall apply.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

LOCATION RESTRICTIONS

340-94-030

(1) If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with landfill location restrictions in 40 CFR, Part 258, Subpart B. Except as otherwise provided in OAR Chapter 340[-] Division 94, any person who designs, constructs, maintains, or operates any municipal solid waste landfill must do so in conformance with the location requirements of this rule.

(2) [Renumbered from 340-61-040(10):] Floodplains. No person shall establish, expand or modify a landfill in a floodplain in a manner that will allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(3) [Renumbered from 340-61-040(7)] Endangered Species. In addition to the requirements of 40 CFR, Part 258, Subpart B, no person shall establish, expand or modify a landfill in a manner that will cause or contribute to the actual or attempted:

(a) Harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting of any endangered or threatened species of plants, fish, or wildlife;

(b) Direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(4) Sensitive Hydrogeological Environments. In addition to the requirements of 40 CFR, Part 258, Subpart B, no person shall establish or expand a landfill in a gravel pit excavated into or above a water table aquifer or other sensitive or sole source aquifer, or in a designated wellhead protection area, where the Department has determined that:

(a) Groundwater must be protected from pollution because it has existing or potential beneficial uses (OAR 340-40-020); and

(b) Existing natural protection is insufficient or inadequate to minimize the risk of polluting groundwater.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

OPERATING CRITERIA

340-94-040

(1) If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with landfill operating criteria in 40 CFR, Part 258, Subpart C. Except as otherwise provided in OAR Chapter 340[-] Division 94, any person who maintains or operates any municipal solid waste landfill must do so in conformance with the operating requirements of this rule.

(2) [Renumbered from 340-61-040(2):] Open Burning. No person shall conduct the open burning of solid waste at a landfill. The Department may authorize the infrequent burning of land-clearing debris such as tree stumps and limbs, brush and other wood waste, except that open burning of industrial wood waste is prohibited.

(3) [Renumbered from 340-61-040(5):] Surface Water:

(a) No person shall cause a discharge of pollutants from a landfill into public waters including wetlands, in violation of any applicable state or federal water quality rules or regulations;

(b) Each landfill permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters.

(4) [Renumbered from 340-61-040(9):] Surface Drainage Control. Each permittee shall ensure that:

(a) The landfill is maintained so that drainage will be diverted around or away from active and completed operational areas;

(b) The surface contours of the landfill are maintained such that ponding of surface water is minimized.

(5) Gas Control:

(a) No person shall operate or maintain a landfill except in conformance with the provisions for gas control in OAR 340-94-060(4);

(b) [Renumbered from 340-61-040(6):] Monitoring:

(A) Where the Department finds that a landfill's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells to determine the effects of the landfill on the concentration of methane gas in the soil;

(B) In addition to the requirements of 40 CFR, §258.23, if the Department determines that monitoring wells are required at a landfill, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(C) In addition to the requirements of 40 CFR, §258.23, where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of gas, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(D) In addition to the requirements of 40 CFR, §258.23, the Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(6) [Renumbered from 340-61-040(10):] Floodplains. No permittee of a landfill located in a floodplain shall allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(7) [Renumbered from 340-61-040(11):] Cover Material. Each permittee shall provide adequate quantities of cover material of a type approved by the Department for the covering of deposited solid waste at a landfill in accordance with the approved operations plan, and permit conditions and OAR Chapter 340 Divisions 93 and 94. [~~these rules.~~]

(8) [Renumbered from 340-61-040(12):] Cover Frequency. Each permittee shall place a compacted layer of at least six inches of approved cover material over the compacted wastes in a landfill at intervals specified in the permit. An applicant may propose and the Department may approve alternative cover designs or procedures which are equally protective. In evaluating such a proposal for alternative cover design or procedures, the Department may consider such factors as the volume and types of waste received, hydrogeologic setting of the facility, climate, proximity of residences or other occupied buildings, site screening, availability of equipment and cover material, any past operational problems and any other relevant factor.

(9) [Renumbered from 340-61-040(14):] Access Control. Each permittee shall insure that the landfill has a perimeter barrier or topographic constraints adequate to restrict unauthorized entry.

(10) [Renumbered from 340-61-040(23):] Vector and Bird Control:

(a) Each permittee shall ensure that effective means such as the periodic application of earth cover material or other techniques as appropriate are taken at the landfill to control or prevent the propagation, harborage, or attraction of flies, rodents, or other vectors and to minimize bird attraction;

(b) No permittee of a landfill disposing of putrescible wastes that may attract birds and which is located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport used by only piston-type aircraft shall allow the operation of the landfill to increase the likelihood of bird/aircraft collisions.

(11) In addition to the requirements of 40 CFR, Part 258, Subpart C, any person who maintains or operates any municipal solid waste landfill must do so in conformance with the following:

(a) Permitted Wastes. Only the waste types listed in the solid waste permit or the approved operations plan, or wastes previously approved by the Department in writing, may be accepted for disposal. In certain cases the Department may also require approval of the source(s) of the waste. Written requests for authorization to accept additional waste types shall be submitted to and approved by the Department prior to disposal of such waste. Requests for authorization to accept additional waste types shall include the following information:

(A) Waste characterization with detailed physical and chemical characteristics of the waste type such as percent solids, results of the paint filter test, Toxicity Characteristic Leaching Procedure ("TCLP") results, polychlorinated biphenyl content, and test results for ignitability, reactivity, corrosivity, etc., as appropriate;

(B) The approximate volume of waste to be disposed of on a daily and yearly basis;

(C) The source of the wastes and a description of the processes which generated the waste;

(D) Special handling and disposal procedures, to be incorporated into the Special Waste Management Plan pursuant to paragraph (11)(b)(J) of this rule.

(b) Operations Plan. Each permittee shall maintain a [Renumbered from 340-61-040(1)(d)] detailed operations plan which describes the proposed method of operation and progressive development of trenches and/or landfill lifts or cells. Said plan shall include at least the following:

(A) A description of the types and quantities of waste materials that will be received (estimated maximum daily and average annual quantities);

(B) A program for detecting and preventing the disposal at the facility of regulated hazardous wastes and polychlorinated biphenyl wastes and any other unacceptable wastes as determined by the Department.

(C) Methods of waste unloading, placement, compaction and covering;

(D) Areas and/or procedures to be used for disposal of waste materials during inclement weather;

(E) Types and weights of equipment to be used for site operation;

(F) Detailed description of any salvaging or resource recovery operations to take place at the facility;

(G) Such measures for the collection, containment, treatment or disposal of leachate as may be required;

(H) Provisions for managing surface drainage;

(I) Measures to be used for the control of fire, dust, decomposition gases, birds, disease vectors, scavenging, access, flooding, erosion, and blowing debris, as pertinent; and

(J) [Renumbered from 340-61-040(17):] A Special Waste Management Plan if certain wastes are received, which due to their unique characteristics, require special handling. Such wastes may present personnel safety hazards, create odor and vector problems, generate excessive leachate, lead to excessive settlement, puncture or tear the landfill liner, pose a fire hazard, or increase the toxicity of landfill leachate. The Special Waste Management Plan shall describe special acceptance, waste characterization, handling, storage, recordkeeping and disposal procedures for those materials. Wastes [~~requiring~~] to be included in a Special Waste Management Plan include:

(i) Cleanup materials contaminated with hazardous substances pursuant to OAR 340-93-170;

(ii) Wastes requiring special management pursuant to OAR 340-93-190(1);

(iii) Additional wastes authorized for disposal by the Department pursuant to subsection (11)(a) of this rule; and

(iv) Large dead animals, sewage sludges and grit, septage, industrial solid wastes and other materials which may be hazardous or difficult to manage by virtue of their character or large volume, unless special provisions for such disposal are otherwise approved by the Department.

(c) [Renumbered from 340-61-040(3):] Leachate. Any person constructing, operating or maintaining a landfill shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department;

(d) Endangered Species. No person shall operate a landfill in a manner that will affect endangered species in any of the ways specified in OAR 340-94-030(3);

(e) [Renumbered from 340-61-040(13):] Access roads. Each permittee shall ensure that roads from the landfill property line to the active operational area and roads within the operational area are constructed and maintained so as to minimize traffic hazards, dust and mud and to provide reasonable all-weather access for vehicles using the site;

(f) [Renumbered from 340-61-040(15):] Site Screening. To the extent practicable, each permittee shall screen the active landfill area from public view by trees, shrubbery, fence, stockpiled cover material, earthen berm, or other appropriate means;

(g) [Renumbered from 340-61-040(16):] Fire Protection:

(A) Each landfill permittee shall make arrangements with the local fire control agency to immediately acquire their services when needed and shall provide adequate on-site fire protection as determined by the local fire control agency;

(B) In case of accidental fires at the site, the operator shall be responsible for initiating and continuing appropriate fire-fighting methods until all smoldering, smoking and burning ceases;

(C) No operator shall permit the dumping of combustible materials within the immediate vicinity of any smoldering, smoking or burning conditions at a landfill, or allow dumping activities to interfere with fire-fighting efforts.

(h) [Renumbered from 340-61-040(18):] Signs. Each permittee of a landfill open to the public shall post a clearly visible and legible sign or signs at the entrance to the disposal site specifying the name of the facility, the hours and days the site is open to the public, an emergency phone number and listing the general types of materials which either will be accepted or will not be accepted;

(i) [Renumbered from 340-61-040(19):] Truck Washing Facilities. Each permittee shall ensure that any truck washing areas at a landfill are hard surfaced and that any on-site disposal of wash waters is accomplished in a manner approved by the Department;

(j) [Renumbered from 340-61-040(20:] Sewage Disposal. Each landfill permittee shall ensure that any on-site disposal of sewage is accomplished in a manner approved by the Department;

(k) [Renumbered from 340-61-040(21):] Salvage: A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the landfill only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan.

(l) [Renumbered from 340-61-040(22):] Litter:

(A) Each permittee shall ensure that effective measures such as compaction, the periodic application of cover material or the use of portable fencing or other devices are taken to minimize the blowing of litter from the active working area of the landfill;

(B) Each landfill operator shall collect windblown materials from the disposal site and adjacent property and properly dispose of same at sufficient frequency to prevent aesthetically objectionable accumulations.

(12) [Renumbered from 340-61-040(24):] Weighing. The Department may require that landfill permittees provide scales and weigh incoming loads of solid waste, to facilitate solid waste management planning and decision making.

(13) [Renumbered from 340-61-040(25):] Records. The Department may require records and reports it considers reasonably necessary to ensure compliance with conditions of a permit, OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] or provisions of OAR Chapter 340 Divisions 90 and 91. All records must be kept for a minimum of five years.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

DESIGN CRITERIA

340-94-060

(1) If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with landfill design criteria in 40 CFR, Part 258, Subpart D. Except as otherwise provided in OAR Chapter 340[-] Division 94, any person who designs, constructs, expands or modifies any municipal solid waste landfill must do so in conformance with the design requirements of this rule.

(2) [Renumbered from 340-61-040(1):] Plan Design Requirements. In addition to the requirements of 40 CFR, Part 258, Subpart D, unless an exemption has been granted under OAR 340-93-070(4), and in addition to the requirements of OAR 340-93-070, detailed plans and specifications for landfills shall include but not be limited to:

(a) Topographic maps which show natural features of the site; the location and design of all pertinent existing and proposed structures, such as berms, dikes, surface drainage control devices, access and on-site roads, water and waste water facilities, gas control devices, monitoring wells, fences, utilities, maintenance facilities, shelter and buildings; legal boundaries and property lines, and existing contours and projected finish grades. Unless otherwise approved by the Department, the scale of the plan drawings shall be no greater than one inch equals 200 feet, with contour intervals not to exceed five feet. Horizontal and vertical controls shall be established and tied to an established bench mark located on or near the site. Where the Department deems it essential to ensure compliance with OAR Chapter 340 Divisions 93 through 96, [~~these rules,~~] the bench mark shall be referenced to the Oregon State Plane Coordinate System, Lambert Projection;

(b) A minimum of two perpendicular cross section drawings through the landfill. Each cross section shall illustrate existing grade, excavation grade, proposed final grade, any additions for groundwater protection, water table profile and soil profile. Additional cross sections shall be provided as necessary to

adequately depict underlying soils, geology and landfill contours, and to display the design of environmental protection devices or structures;

(c) A description of the design assumptions and methods used to forecast flows and to determine the sizing of pumps, pipes, ditches, culverts and other hydraulic equipment used for the collection, treatment and disposal of leachate and for the control of surface drainage;

(d) A detailed operations plan pursuant to OAR 340-94-040(11)(b) and timetable which describes the proposed method of operation and progressive development of trenches and/or landfill lifts or cells.

(3) [Renumbered from 340-61-040(3):] Leachate. In addition to the requirements of 40 CFR, Part 258, Subpart D, any person designing or constructing a landfill shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department. Leachate storage and treatment impoundments shall be located, designed, constructed and monitored, at a minimum, to the same standards of environmental protection as municipal solid waste landfills.

(4) [Renumbered from 340-61-040(8):] Gas Control. No person shall establish, expand or modify a landfill such that:

(a) The concentration of methane (CH_4) gas at the landfill exceeds 25 percent of its lower explosive limit in facility structures (excluding gas control or gas recovery system components) or its lower explosive limit at the property boundary;

(b) Malodorous decomposition gases become a public nuisance.

(5) [Renumbered from 340-61-040(9)(a):] Surface Drainage Control. Each permittee shall ensure that the landfill is designed and constructed so that drainage will be diverted around or away from active and completed operational areas.

(6) Additional Requirements to Protect or to Monitor Potential Threats to Groundwater. When a person applies to construct a new or expanded landfill cell at a municipal solid waste landfill, the Department shall evaluate the need to provide protection to groundwater in addition to the requirements of 40 CFR, Part 258, Subpart D. The Department shall also evaluate whether the specific conditions at the site require an enhanced ability to monitor potential threats to groundwater in addition to the requirements in 40 CFR, Part 258, Subpart E. The evaluation shall be based on site-specific data, including but not limited to location, geography, hydrogeology and size of the site. To assist in the Department's evaluation, the applicant shall provide necessary relevant data. The Department may require a secondary leachate collection system, and/or leak detection system, or other design or technology providing equivalent protection to the environment if the Department determines that:

(a) There is significant potential for adverse impact to groundwater from the proposed cell; or

(b) Additional measures are necessary to provide adequate monitoring of potential threats to the groundwater.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

GROUNDWATER MONITORING AND CORRECTIVE ACTION

340-94-080

If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with groundwater monitoring and corrective action requirements in 40 CFR, Part 258, Subpart E. Consistent with those requirements, all municipal solid waste landfill owners and operators shall also comply with this rule.

(1) [Renumbered from 340-61-040(4):] Groundwater:

(a) Each landfill permittee shall ensure that:

(A) The introduction of any substance from the landfill into an underground drinking water source does not result in a violation of any applicable federal or state drinking water rules or regulations beyond the solid waste boundary of the landfill or an alternative boundary specified by the Department;

(B) The introduction of any substance from the landfill into an aquifer does not impair the aquifer's recognized beneficial uses, beyond the solid waste boundary of the landfill or an alternative boundary specified by the Department, consistent with OAR Chapter 340, Division 40 and any applicable federal or state rules or regulations.

(b) Where monitoring is required, monitoring wells shall be placed at Department-approved locations between the solid waste boundary and the property line if adequate room exists;

(c) The Department may specify an alternative boundary based on a consideration of all of the following factors:

(A) The hydrogeological characteristics of the facility and surrounding land;

(B) The volume and physical and chemical characteristics of the leachate;

(C) The quantity and directions of flow of groundwater;

(D) The proximity and withdrawal rates of groundwater users;

(E) The availability of alternative drinking water supplies;

(F) The existing quality of the groundwater including other sources of contamination and their cumulative impacts on the groundwater; and

(G) Public health, safety, and welfare effects.

(2) [Renumbered from 340-61-040(6):] Monitoring:

(a) Where the Department finds that a landfill's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells at Department-approved locations and depths to determine the effects of the landfill on groundwater;

(b) In addition to the requirements in 40 CFR, Part 258, Subpart E, if the Department determines that monitoring wells are required at a landfill, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(c) In addition to the requirements in 40 CFR, Part 258, Subpart E, where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of surface water and/or groundwater, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(d) The Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(3) Corrective action. The Department may require action to remediate releases of constituents above the levels specified in 40 CFR §258.56 or OAR Chapter 340 Division 40, whichever is more stringent. This authority is in addition to any other authority granted by law.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

CLOSURE AND POST-CLOSURE CARE: CLOSURE PERMITS

340-94-100 [Renumbered from 340-61-028; incorporates part of 340-61-020]

If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with closure criteria in 40 CFR, §258.60. All municipal solid waste permittees shall also comply with this rule.

(1) [Renumbered from 340-61-020(7):] Closure Permit:

(a) At least five years prior to anticipated closure of a municipal solid waste landfill, the person holding the disposal site permit shall apply to renew the permit to cover the period of time remaining for site operations, closure of the site, and all or part of the time that active post-closure site maintenance is required by the Department;

(b) The person who holds or last held the disposal site permit, or, if that person fails to comply, then the person owning or controlling a municipal solid waste landfill that is closed and no longer receiving solid waste after January 1, 1980, must continue or renew the disposal site permit after the site is closed for the duration of the period in which the Department continues to actively supervise the site, even though solid waste is no longer received at the site.

(2) [Renumbered from 340-61-028] Applications for closure permits must include but are not limited to:

(a) A closure plan prepared in accordance with OAR 340-94-110;

(b) A financial assurance plan prepared in accordance with OAR 340-94-140 unless exempted by the Department pursuant to section (3) of this rule;

(c) If the permittee does not own and control the property, the permittee shall demonstrate to the Department that the permittee has access to the landfill property after closure to monitor and maintain the site and operate any environmental control facilities;

(d) If any person other than the permittee assumes any responsibility for any closure or post-closure activities, that responsibility shall be evidenced by a written contract between the permittee and each person assuming any responsibility.

(3) The Department may exempt from the financial assurance requirements existing municipal solid waste landfills which stopped receiving waste before October 9, 1993 (or which stop receiving waste before April 9, 1994, if a "small landfill" meeting criteria in 40 CFR, §258.1(e)(2)) and complete installation of final cover [~~within six months of last receipt of wastes.~~] by October 9, 1994. The Department may also exempt from the financial assurance requirement an existing "very small landfill serving certain small communities" meeting criteria in 40 CFR, §258.1(f)(1), if such a landfill stops receiving waste before October 9, 1995 and completes installation of final cover by October 9, 1996. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

(a) The landfill poses no significant threat of adverse impact on groundwater or surface water;

(b) The landfill poses no significant threat of adverse impact on public health or safety;

(c) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;

(d) The area of the landfill that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(4) In determining if the applicant has demonstrated that a site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed.

(5) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the site continues to meet the exemption criteria in section (3) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the closure permit to require financial assurance.

(6) While a closure permit is in effect, the permittee shall submit a report to the Department within 90 days of the end of the permittee's fiscal year or as otherwise required in writing by the Department, which contains but is not limited to:

(a) An evaluation of the approved closure plan discussing current status, unanticipated occurrences, revised closure date projections, necessary changes, etc.;

(b) An evaluation of the approved financial assurance plan documenting an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance. This evaluation must also assess the adequacy of the financial assurance and justify any requests for changes in the approved plan;

(c) Other information requested by the Department to determine compliance with the rules of the Department.

(7) The Department shall terminate closure permits for municipal solid waste landfills not later than [~~ten~~] 30 years after the site is closed unless the Department finds there is a need to protect against a significant hazard or risk to public health or safety or the environment.

(8) Any time after a municipal solid waste landfill is closed, the permit holder may apply for a termination of the permit, a release from one or more of the permit requirements or termination of any applicable permit fee. Before the Department grants a termination or release under this section, the permittee must demonstrate and the Department must find that there is no longer a need for:

(a) Active supervision of the site;

(b) Maintenance of the site; or

(c) Maintenance or operation of any system or facility on the site.

(9) The Department or an authorized governmental agency may enter a municipal solid waste landfill property at reasonable times to inspect and monitor the site as authorized by ORS 459.285.

(10) The closure permit remains in effect and is a binding obligation of the permittee until the Department terminates the permit according to section (7) or (8) of this rule or upon issuance of a new closure permit for the site to another person following receipt of a complete and acceptable application.

[~~(Note: In addition to the requirements set forth in this rule, 40 CFR, §258.61 requires municipal landfill owners and operators subject to 40 CFR, Part 258 to conduct post-closure care for 30 years. Municipal solid waste landfill owners and operators are subject to the requirements of Federal law.)~~]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

CLOSURE AND POST-CLOSURE CARE: CLOSURE PLANS

340-94-110 [Renumbered from 340-61-033]

If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with closure and post-closure care requirements in 40 CFR, Part 258, Subpart F. All municipal solid waste permittees shall also comply with this rule.

(1) A closure plan must specify the procedures necessary to completely close the landfill at the end of its intended operating life. The plan must also identify the post-closure activities which will be carried on to properly monitor and maintain the closed municipal solid waste landfill site. At a minimum, the plan shall include:

(a) Detailed plans and specifications consistent with the applicable requirements of OAR 340-93-140 and 340-94-060(2), unless an exemption is granted as provided in OAR 340-93-070(4);

NOTE: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure or post-closure activities.

(b) A description of how and when the facility will be closed. The description shall, to the extent practicable, show how the disposal site will be closed as filling progresses to minimize the area remaining to be closed at the time that the site stops receiving waste. A time schedule for completion of closure shall be included;

(c) Details of how leachate discharges will be minimized and controlled and treated if necessary;

(d) Details of any landfill gas control facilities, their operation and frequency of monitoring;

(e) Details of final cover including soil texture, depth and slope;

(f) Details of surface water drainage diversion;

(g) A schedule of monitoring the site after closure;

(h) A projected frequency of anticipated inspection and maintenance activities at the site after closure, including but not limited to repairing, recovering and regrading settlement areas, cleaning out surface water diversion ditches, and re-establishing vegetation;

(i) Other information requested by the Department necessary to determine whether the disposal site will comply with all applicable rules of the Department.

(2) Approval of Closure Plan. After approval by the Department, the permittee shall implement the closure plan within the approved time schedule.

(3) Amendment of Plan. The approved closure plan may be amended at any time during the active life of the landfill or during the post-closure care period as follows:

(a) The permittee must amend the plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Divisions 93 through 97, [~~these rules,~~] or events which occur during the active life of the landfill or during the post-closure care period, significantly affect the plan. The permittee must also amend the plan whenever there is a change in the expected year of closure. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;

(b) The permittee may request to amend the plan to alter the closure requirements, to alter the post-closure care requirements, or to extend or reduce the post-closure care period based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:

(A) The nature of the landfill makes the closure or post-closure care requirements unnecessary; or

(B) The nature of the landfill supports reduction of the post-closure care period; or

(C) The requested extension in the post-closure care period or alteration of closure or post-closure care requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.

(c) The Department may amend a permit to require the permittee to modify the plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may extend or reduce the post-closure care period or alter the closure or post-closure care requirements based on cause.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

CLOSURE REQUIREMENTS

340-94-120 [Renumbered from 340-61-042]

If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with closure and post-closure care requirements in 40 CFR, Part 258, Subpart F. All municipal solid waste permittees shall also comply with this rule.

(1) When solid waste is no longer received at a municipal solid waste landfill, the person who holds or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, the person owning or controlling the property on which the landfill is located, shall close and maintain the site according to the requirements of ORS Chapter 459, all applicable rules adopted by the Commission under ORS 459.045 and all requirements imposed by the Department as a condition to renewing or issuing a disposal site permit.

(2) Unless otherwise approved or required in writing by the Department, no person shall permanently close or abandon a municipal solid waste landfill, except in the following manner:

(a) All areas containing solid waste not already closed in a manner approved by the Department shall be covered with at least three feet of compacted soil of a type approved by the Department graded to a minimum two percent and maximum 30 percent slope unless the Department authorizes a lesser depth or an alternative final cover design. In applying this standard, the Department will consider the potential for adverse impact from the disposal site on public health, safety or the environment, and the ability for the permittee to generate the funds necessary to comply with this standard before the disposal site closes. A permittee may request that the Department approve a lesser depth of cover material or an alternative final cover design based on the type of waste, climate, geological setting, or degree of environmental impact;

(b) Final cover material shall be applied to each portion of a municipal solid waste landfill within 60 days after said portion reaches approved maximum fill elevation, except in the event of inclement weather, in which case final cover shall be applied as soon as practicable;

(c) The finished surface of the closed areas shall consist of soils of a type or types consistent with the planned future use and approved by the Department. Unless otherwise approved by the Department, a vegetative cover of native grasses shall be promptly established over the finished surface of the closed site;

(d) All surface water must be diverted around the area of the disposal site used for waste disposal or in some other way prevented from contacting the waste material;

(e) All systems required by the Department to control or contain discharges to the environment must be completed and operational.

(3) Closure of municipal solid waste landfills shall be in accordance with detailed plans approved in writing by the Department pursuant to OAR 340-94-110.

(4) Closure approval:

(a) When closure is completed, the permittee shall submit a written request to the Department for approval of the closure;

(b) Within 30 days of receipt of a written request for closure approval, the Department shall inspect the facility to verify that closure has been effected in accordance with the approved closure plan and the provisions of OAR Chapter 340 Divisions 93 and 94; [~~these rules;~~]

(c) If the Department determines that closure has been properly completed, the Department shall approve the closure in writing. Closure shall not be considered complete until such approval has been made. The date of approval notice shall be the date of commencement of the post-closure period.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

POST-CLOSURE REQUIREMENTS

340-94-130 [Renumbered from 340-61-043]

If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with post-closure care requirements in 40 CFR, Part 258, Subpart F. All municipal solid waste permittees shall also comply with this rule.

(1) Post-closure requirements:

(a) Upon completion or closure of a landfill, a detailed description of the site including a plat should be filed with the appropriate county land recording authority by the permittee. The description should include the general types and location of wastes deposited, depth of waste and other information of probable interest to future land owners;

(b) During the post-closure care period, the permittee must, at a minimum:

(A) Maintain the approved final contours and drainage system of the site;

(B) Consistent with final use, ensure that a healthy vegetative cover is established and maintained over the site;

(C) Operate and maintain each leachate and gas collection, removal and treatment system present at the site;

(D) Operate and maintain each groundwater and surface water monitoring system present at the site;

(E) Comply with all conditions of the closure permit issued by the Department.

(2) Post-closure care period. Post-closure care must continue for [~~ten~~] 30 years after the date of completion of closure of the land disposal site, unless otherwise approved or required by the Department according to OAR 340-94-100(7) and (8).

[~~(Note: In addition to the requirements set forth in this rule, 40 CFR §258.61 requires municipal landfill owners and operators subject to 40 CFR Part 258 to conduct post-closure care for 30 years. Municipal solid waste landfill owners and operators are subject to the requirements of Federal law.)~~]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

FINANCIAL ASSURANCE CRITERIA

340-94-140 [Renumbered from 340-61-034]

If a municipal solid waste landfill is subject to 40 CFR, Part 258 as provided in 40 CFR, §258.1, the owner or operator shall comply with financial assurance criteria in 40 CFR, Part 258, Subpart G. All municipal solid waste permittees shall also comply with this rule.

(1) Financial Assurance Required. The owner or operator of a municipal solid waste landfill shall maintain detailed written cost estimates of the amount of financial assurance that is necessary and provide evidence of financial assurance for the costs of:

(a) Closure of the municipal solid waste landfill;

(b) Post-closure maintenance of the municipal solid waste landfill; and

(c) Any corrective action required by the Department to be taken at the municipal solid waste landfill, pursuant to OAR 340-94-080(3).

(2) Schedule for provision of financial assurance.

(a) Evidence of the required financial assurance for closure and post-closure maintenance of the landfill as determined in the financial assurance plan required by OAR 340-94-100(2)(b) shall be provided to the Department and placed in the facility operating record on the following schedule:

(A) For a new municipal solid waste landfill: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste;

(B) For a regional disposal site operating under a solid waste permit on November 4, 1993: by the effective date of this rule;

(C) For a municipal solid waste landfill operating under a solid waste permit on November 4, 1993: by April 9, 1995, or at the time a financial assurance plan is required by OAR 340-94-100(2)(b), whichever is sooner; or

(D) For a "very small landfill serving certain small communities" meeting criteria in 40 CFR, §258.1(f)(1) and operating under a solid waste permit on November 4, 1993: by October 9, 1995, or at the time a financial assurance plan is required by OAR 340-94-100(2)(b), whichever is sooner.

(b) Evidence of financial assurance for corrective action shall be provided to the Department before beginning corrective action.

(3)~~[(1)]~~ Financial assurance plans required by OAR 340-94-100(2)(b) shall include but not be limited to:

(a) A written estimate of the third-party costs of:

(A) Closing the municipal solid waste landfill;

(B) Installing, operating and maintaining any environmental control system required on the landfill site;

(C) Monitoring and providing security for the landfill site; and

(D) Complying with any other requirement the Department may impose as a condition of renewing the permit.

(b) A detailed description of the form of the financial assurance;

(c) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;

(d) A proposal to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance. To the extent practicable, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(A) A reduction of the rates a person within the area served by the municipal solid waste landfill is charged for solid waste collection service as defined by ORS 459.005; or

(B) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.

~~(4)~~[~~(2)~~] Amount of Financial Assurance Required. The amount of financial assurance required shall be established based upon the estimated closure and post-closure care costs included in the approved closure plan. This required amount may be adjusted as the plan is amended:

(a) In reviewing the adequacy of the amount of financial assurance proposed by the applicant, the Department shall consider the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges;

(G) The portion of the site property closed before final closure of the entire site;

(H) Any other conditions imposed on the permit relating to closure or post-closure of the site;

(I) The financial capability of the applicant.

(b) After reviewing the proposed amount of financial assurance, the Department may either:

(A) Approve the amount proposed by the applicant; or

(B) Disapprove the amount and require the applicant to submit a revised amount consistent with the factors considered by the Department.

(5)[(3)] Form of Financial Assurance. The financial assurance may be in any form proposed by the applicant if it is approved by the Department:

(a) The Department will approve forms of financial assurance to cover the ongoing closure activities occurring while the municipal solid waste landfill is still receiving solid waste where the applicant can prove to the satisfaction of the Department that all of the following conditions can be met:

(A) That financial assurance moneys in excess of the amount approved by the Department will not be set aside or collected by the disposal site operator. The Department may approve an additional amount of financial assurance during a review conducted in conjunction with a subsequent application to amend or renew the disposal site permit or a request by the owner or operator of a municipal solid waste landfill to extend the useful life of the landfill. Nothing in this subsection shall prohibit a site operator from setting aside an additional reserve from funds other than those collected from rate payers specifically for closure and post-closure and such a reserve shall not be part of any fund or set aside required in the applicable financial assurance plan;

(B) That the use of financial assurance is restricted so that the financial resources can only be used to guarantee that the following activities will be performed or that the financial resources can only be used to finance the following activities and that the financial resources cannot be used for any other purpose:

(i) Close the municipal solid waste landfill according to the approved closure plan;

(ii) Install, operate and maintain any required environmental control systems;

(iii) Monitor and provide security for the landfill site;

(iv) Comply with conditions of the closure permit.

(C) That, to the extent practicable, all excess moneys received and interest earned on moneys shall be disposed of in a manner which shall provide for:

(i) A reduction of the rates a person within the area served by the municipal solid waste landfill is charged for solid waste collection service (as defined by ORS 459.005); or

(ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received; or

(iii) Where the disposal site is operated and exclusively used to dispose of solid waste generated by a single business entity,

excess moneys and interest remaining in the financial assurance reserve shall be released to that business entity at the time that the permit is terminated.

(b) If the permittee fails to adequately perform the ongoing closure activities in accordance with the closure plan and permit requirements, the permittee shall provide an additional amount of financial assurance in a form meeting the requirements of subsection (5)(c) [~~(3)(c)~~] of this rule within 30 days after service of a Final Order assessing a civil penalty. The total amount of financial assurance must be sufficient to cover all remaining closure and post-closure activities;

(c) The Department will approve only the following forms of financial assurance for the final closure and post-closure activities which will occur after the municipal solid waste landfill stops receiving solid waste:

(A) A closure trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The wording of the trust agreement must be acceptable to the Department. The purpose of the closure trust fund is to receive and manage any funds that may be paid by the permittee and to disburse those funds only for closure or post-closure maintenance activities which are authorized by the Department. Within 60 days after receiving itemized bills for closure activities, the Department will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified and, if so, will send a written request to the trustee to make reimbursements;

(B) A surety bond guaranteeing payment into a closure trust fund issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The wording of the surety bond must be acceptable to the Department. A standby closure trust fund must also be established by the permittee. The purpose of the standby closure trust fund is to receive any funds that may be paid by the permittee or surety company. The bond must guarantee that the permittee will either fund the standby closure trust fund in an amount equal to the penal sum of the bond before the site stops receiving waste or within 15 days after an order to begin closure is issued by the Department or by a court of competent jurisdiction; or that the permittee will provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby closure trust account;

(C) A surety bond guaranteeing performance of closure issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The wording of the surety bond must be acceptable to the Department. A standby closure trust fund must also be established

by the permittee. The purpose of the standby closure trust fund is to receive any funds that may be paid by the surety company. The bond must guarantee that the permittee will either perform final closure and post-closure maintenance or provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby closure trust account;

(D) An irrevocable letter of credit issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. The wording of the letter of credit must be acceptable to the Department. A standby closure trust fund must also be established by the permittee. The purpose of the standby closure trust fund is to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit must be irrevocable and issued for a period of at least one year unless the issuing institution notifies both the permittee and the Department at least 120 days before the current expiration date. If the permittee fails to perform closure and post-closure activities according to the closure plan and permit requirements, or if the permittee fails to provide alternate financial assurance acceptable to the Department within 90 days after notification that the letter of credit will not be extended, the Department may draw on the letter of credit;

(E) A closure insurance policy issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus lines insurer in one or more states. The wording of the certificate of insurance must be acceptable to the Department. The closure insurance policy must guarantee that funds will be available to complete final closure and post-closure maintenance of the site. The policy must also guarantee that the insurer will be responsible for paying out funds for reimbursement of closure and post-closure expenditures after notification by the Department that the expenditures are in accordance with the closure plan or otherwise justified. The policy must provide that the insurance is automatically renewable and that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may not terminate the policy until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. Termination of the policy may not occur and the policy must remain in full force and effect if: the Department determines that the land disposal site has been abandoned; or the Department has commenced a proceeding to modify the permit to require immediate closure; or closure has been ordered by the Department, Commission or a court of competent jurisdiction; or the permittee is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the premium due is paid. The permittee is required to

maintain the policy in full force and effect until the Department consents to termination of the policy when alternative financial assurance is provided or when the permit is terminated;

(F) Corporate guarantee. A private corporation meeting the financial test may provide a corporate guarantee that closure and post-closure activities will be completed according to the closure plan and permit requirements. To qualify, a private corporation must meet the criteria of either subparagraphs (i) or (ii) of this paragraph:

(i) Financial Test. To pass the financial test, the permittee must have:

(I) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) Alternative Financial Test. To pass the alternative financial test, the permittee must have:

(I) A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or [~~Bbb~~] Baa as issued by Moody's;

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(iii) The permittee shall demonstrate that it passes the financial test at the time the financial assurance plan is filed and reconfirm that annually 90 days after the end of the corporation's fiscal year by submitting the following items to the Department:

(I) A letter signed by the permittee's chief financial officer that provides the information necessary to

document that the permittee passes the financial test; that guarantees that the funds to finance closure and post-closure activities according to the closure plan and permit requirements are available; that guarantees that the closure and post-closure activities will be completed according to the closure plan and permit requirements; that guarantees that the standby closure trust fund will be fully funded within 30 days after either service of a Final Order assessing a civil penalty from the Department for failure to adequately perform closure or post-closure activities according to the closure plan and permit, or service of a written notice from the Department that the permittee no longer meets the criteria of the financial test; that guarantees that the permittee's chief financial officer will notify the Department within 15 days any time that the permittee no longer meets the criteria of the financial test or is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; and that acknowledges that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(II) A copy of the independent certified public accountant's report on examination of the permittee's financial statements for the latest completed fiscal year;

(III) A special report from the permittee's independent certified public accountant (CPA) stating that the CPA has compared the data which the letter from the permittee's chief financial officer specifies as having been derived from the independently audited year end financial statements for the latest fiscal year with the amounts in such financial statement, and that no matters came to the CPA's attention which caused the CPA to believe that the specified data should be adjusted;

(IV) A trust agreement demonstrating that a standby closure trust fund has been established with an entity which has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The wording of the trust agreement must be acceptable to the Department.

(iv) The Department may, based on a reasonable belief that the permittee no longer meets the criteria of the financial test, require reports of the financial condition at any time from the permittee in addition to the annual report. If the Department finds, on the basis of such reports or other information, that the permittee no longer meets the criteria of the financial test, the permittee shall fully fund the

standby closure trust fund within 30 days after notification by the Department.

(G) Alternative forms of financial assurance where the applicant can prove to the satisfaction of the Department that the level of security is equivalent to paragraphs (A) through (F) of this subsection and that the criteria of subsection (5)(a) [~~(3)(a)~~] of this rule are met.

(6)[~~(4)~~] Accumulation and use of any financial assurance funds:

(a) The applicant shall set aside funds in the amount and at the frequency specified in the financial assurance plan approved by the Department. The total amount of financial assurance required shall be available in the form approved by the Department at the time that solid waste is no longer received at the site;

(b) The financial assurance plan shall contain adequate accounting procedures to insure that the disposal site operator does not collect or set aside funds in excess of the amount approved by the Department or use the funds for any purpose other than required by paragraph (5)(a)(B) [~~(3)(a)(B)~~] of this rule;

(c) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule;

(d) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the approved financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in paragraph (5)(a)(B) [~~(3)(a)(B)~~] of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the approved financial assurance plan along with an additional amount of financial assurance equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use.

(Note: In addition to the requirements set forth in this rule, 40 CFR, §258.61 requires municipal landfill owners and operators subject to 40 CFR, Part 258 to maintain financial assurance for costs of closure, post-closure care and corrective action. The financial assurance costs must be adjusted annually to compensate for inflation. Municipal solid waste landfill owners and operators are subject to the requirements of Federal law.)

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

Stat. Auth.: ORS Ch.
Hist.: DEQ 2-1984, f. & ef. 1-16-84

DIVISION 95
SOLID WASTE: LAND DISPOSAL SITES
OTHER THAN MUNICIPAL SOLID WASTE LANDFILLS

LOCATION RESTRICTIONS

340-95-010

(1) Except as otherwise provided in OAR Chapter 340[-] Division 95, any person who designs, constructs, maintains, or operates any non-municipal land disposal site must do so in conformance with the location requirements of this rule.

(2) [Renumbered from 340-61-040(7):] Endangered Species. No person shall establish, expand or modify a non-municipal land disposal site in a manner that will cause or contribute to the actual or attempted:

(a) Harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting of any endangered or threatened species of plants, fish, or wildlife;

(b) Direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using that habitat.

(3) [Renumbered from 340-61-040(10):] Floodplains. No person shall establish, expand or modify a non-municipal land disposal site in a floodplain in a manner that will allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(4) Sensitive Hydrogeological Environments. No person shall establish or expand a non-municipal land disposal site in a gravel pit excavated into or above a water table aquifer or other sole source aquifer, or in a designated wellhead protection area, where the Department has determined that:

(a) Groundwater must be protected from pollution because it has existing or potential beneficial uses (OAR 340-40-020); and

(b) Existing natural protection is insufficient or inadequate to minimize the risk of polluting groundwater.

OPERATING CRITERIA

340-95-020

(1) Except as otherwise provided in OAR Chapter 340[-] Division 95, any person who maintains or operates any non-municipal land disposal site must do so in conformance with the operating requirements of this rule.

(2) Permitted Wastes. Only the waste types listed in the solid waste permit or the operations plan, or wastes previously approved by the Department in writing, may be accepted for

disposal. In certain cases the Department may also require approval of the source(s) of the waste. Written requests for authorization to accept additional waste types shall be submitted to and approved by the Department prior to disposal of such waste. Approval of requests for authorization for one-time disposal may be granted by the Department in writing. Requests for authorization for more than one-time disposal shall require a permit modification by the Department. Requests for authorization to accept additional waste types shall include the following information:

(a) Waste characterization with detailed physical and chemical characteristics of the waste type such as percent solids, results of the paint filter test, Toxicity Characteristic Leaching Procedure ("TCLP") results, polychlorinated biphenyl content, and test results for ignitability, reactivity, corrosivity, etc., as appropriate;

(b) The approximate volume of waste to be disposed of on a daily and yearly basis;

(c) The source of the wastes and a description of the processes which generated the waste;

(d) Special handling and disposal procedures, to be incorporated into the Special Waste Management Plan pursuant to subsection (3)(j) of this rule.

(3) [Renumbered from 340-61-040(1)(d)] Operations Plan. Each permittee shall maintain a detailed operations plan which describes the proposed method of operation and progressive development of trenches and/or landfill lifts or cells. Said plan shall include at least the following:

(a) A description of the types and quantities of waste materials that will be received (estimated maximum daily and average annual quantities);

(b) A program for detecting and preventing the disposal at the facility of regulated hazardous wastes and polychlorinated biphenyl wastes and any other unacceptable wastes as determined by the Department;

(c) Methods of waste unloading, placement, compaction and covering;

(d) Areas and/or procedures to be used for disposal of waste materials during inclement weather;

(e) Types and weights of equipment to be used for site operation;

(f) Detailed description of any salvaging or resource recovery operations to take place at the facility;

(g) Such measures for the collection, containment, treatment or disposal of leachate as may be required;

(h) Provisions for managing surface drainage;

(i) Measures to be used for the control of fire, dust, decomposition gases, birds, disease vectors, scavenging, access, flooding, erosion, and blowing debris, as pertinent; and

(j) [Renumbered from 340-61-040(17):] A Special Waste Management Plan if certain wastes are received, which due to their unique characteristics, require special handling. Such wastes may present personnel safety hazards, create odor and vector problems, generate excessive leachate, lead to excessive settlement, puncture or tear the landfill liner, pose a fire hazard, or increase the toxicity of landfill leachate. The Special Waste Management Plan shall describe special acceptance, waste characterization, handling, storage, recordkeeping and disposal procedures for those materials. Wastes [~~requiring~~] to be included in a special Waste Management Plan include:

(A) Cleanup materials contaminated with hazardous substances pursuant to OAR 340-93-170;

(B) Wastes requiring special management pursuant to OAR 340-93-190(1);

(C) Additional wastes authorized for disposal by the Department pursuant to section (2) of this rule; and

(D) Large dead animals, sewage sludges and grit, septage, industrial solid wastes and other materials which may be hazardous or difficult to manage by virtue of their character or large volume, unless special provisions for such disposal are otherwise approved by the Department.

(4) [Renumbered from 340-61-040(2):] Open Burning. No person shall conduct the open burning of solid waste at a non-municipal land disposal site. The Department may authorize the infrequent burning of land-clearing debris such as tree stumps and limbs, brush[~~, timbers, lumber~~] and other wood waste, except that open burning of industrial wood waste is prohibited.

(5) [Renumbered from 340-61-040(3):] Leachate. Any person constructing, operating or maintaining a non-municipal land disposal site shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department.

(6) [Renumbered from 340-61-040(5):] Surface Water:

(a) No person shall cause a discharge of pollutants from a non-municipal land disposal site into public waters including wetlands, in violation of any applicable state or federal water quality rules or regulations;

(b) Each non-municipal land disposal site permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters.

(7) [Renumbered from 340-61-040(9):] Surface Drainage Control. Each permittee shall ensure that:

(a) The non-municipal land disposal site is maintained so that drainage will be diverted around or away from active and completed operational areas;

(b) The surface contours of the non-municipal land disposal site are maintained such that ponding of surface water is minimized.

(8) Endangered Species. No person shall operate a non-municipal land disposal site in a manner that will affect endangered species in any of the ways specified in OAR 340-95-010(2).

(9) Gas Control.

(a) No person shall operate or maintain a non-municipal land disposal site except in conformance with the provisions for gas control in OAR 340-95-030(4).

(b) [Renumbered from 340-61-040(6):] Monitoring:

(A) Where the Department finds that a non-municipal land disposal site's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells to determine the effects of the site on the concentration of methane gas in the soil;

(B) If the Department determines that monitoring wells are required at a non-municipal land disposal site, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(C) Where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of gas, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(D) The Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(10) [Renumbered from 340-61-040(10):] Floodplains. No permittee of a non-municipal land disposal site located in a floodplain shall allow the facility to restrict the flow of the base flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human life, wildlife or land or water resources.

(11) [Renumbered from 340-61-040(11):] Cover Material. Each permittee shall provide adequate quantities of cover material of a type approved by the Department for the covering of deposited solid waste at a non-municipal land disposal site in accordance with the approved operations plan, and permit conditions and OAR Chapter 340 Divisions 93 and 95. [~~these rules.~~]

(12) [Renumbered from 340-61-040(12):] Cover Frequency. Each permittee shall place a compacted layer of at least six inches of approved cover material over the compacted wastes in a non-municipal land disposal site at intervals specified in the permit. An applicant may propose and the Department may approve alternative cover designs or procedures which are equally protective. In evaluating such a proposal for alternative cover design, procedures or frequency, the Department may consider such factors as the volume and types of waste received, hydrogeologic setting of the facility, climate, proximity of residences or other occupied buildings, site screening, availability of

equipment and cover material, any past operational problems and any other relevant factor.

(13) [Renumbered from 340-61-040(13):] Access Roads. Each permittee shall ensure that roads from the non-municipal land disposal site property line to the active operational area and roads within the operational area are constructed and maintained so as to minimize traffic hazards, dust and mud and to provide reasonable all-weather access for vehicles using the site.

(14) [Renumbered from 340-61-040(14):] Access Control. Each permittee shall insure that the non-municipal land disposal site has a perimeter barrier or topographic constraints adequate to restrict unauthorized entry.

(15) [Renumbered from 340-61-040(15):] Site Screening. To the extent practicable, each permittee shall screen the active non-municipal land disposal site area from public view by trees, shrubbery, fence, stockpiled cover material, earthen berm, or other appropriate means.

(16) [Renumbered from 340-61-040(16):] Fire Protection:

(a) Each non-municipal land disposal site permittee shall make arrangements with the local fire control agency to immediately acquire their services when needed and shall provide adequate on-site fire protection as determined by the local fire control agency;

(b) In case of accidental fires at the site, the operator shall be responsible for initiating and continuing appropriate fire-fighting methods until all smoldering, smoking and burning ceases;

(c) No operator shall permit the dumping of combustible materials within the immediate vicinity of any smoldering, smoking or burning conditions at a non-municipal land disposal site, or allow dumping activities to interfere with fire-fighting efforts.

(17) [Renumbered from 340-61-040(18):] Signs. Each permittee of a <u>non-municipal</u> land disposal site open to the public shall post a clearly visible and legible sign or signs at the entrance to the disposal site specifying the name of the facility, the hours and days the site is open to the public, an emergency phone number and listing the general types of materials which either will be accepted or will not be accepted.

(18) [Renumbered from 340-61-040(19):] Truck Washing Facilities. Each permittee shall ensure that any truck washing areas at a non-municipal land disposal site are hard surfaced and that any on-site disposal of wash waters is accomplished in a manner approved by the Department.

(19) [Renumbered from 340-61-040(20):] Sewage Disposal. Each non-municipal land disposal site permittee shall ensure that any on-site disposal of sewage is accomplished in a manner approved by the Department.

(20) [Renumbered from 450-61-040(21):] Salvage: A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the non-municipal land disposal site only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan.

(21) [Renumbered from 340-61-040(22):] Litter:

(a) Each permittee shall ensure that effective measures such as compaction, the periodic application of cover material or the use of portable fencing or other devices are taken to minimize the blowing of litter from the active working area of the non-municipal land disposal site;

(b) Each non-municipal land disposal site operator shall collect windblown materials from the disposal site and adjacent property and properly dispose of same at sufficient frequency to prevent aesthetically objectionable accumulations.

(22) [Renumbered from 340-61-040(23):] Vector and Bird Control:

(a) Each permittee shall ensure that effective means such as the periodic application of earth cover material or other techniques as appropriate are taken at the non-municipal land disposal site to control or prevent the propagation, harborage, or attraction of flies, rodents, or other vectors and to minimize bird attraction;

(b) No permittee of a non-municipal land disposal site disposing of putrescible wastes that may attract birds and which is located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport used by only piston-type aircraft shall allow the operation of the landfill to increase the likelihood of bird/aircraft collisions.

(23) [Renumbered from 340-61-040(24):] Weighing. The Department may require that non-municipal land disposal site permittees provide scales and weigh incoming loads of solid waste, to facilitate solid waste management planning and decision making.

(24) [Renumbered from 340-61-040(25):] Records. The Department may require records and reports it considers reasonably necessary to ensure compliance with conditions of a permit, OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] or provisions of OAR Chapter 340, Divisions 90 and 91. All records must be kept for a minimum of five years.

DESIGN CRITERIA
340-95-030

(1) Except as otherwise provided in OAR Chapter 340, Division 95, any person who designs, constructs, expands or modifies any non-municipal land disposal site must do so in conformance with the design requirements of this rule.

(2) [Renumbered from 340-61-040(1):] Plan Design Requirements. Unless an exemption has been granted under OAR 340-93-070(4), in addition to the requirements of OAR 450-93-070, detailed plans and specifications for non-municipal land disposal sites shall include but not be limited to:

(a) Topographic maps which show natural features of the site; the location and design of all pertinent existing and proposed structures, such as berms, dikes, surface drainage control devices, access and on-site roads, water and waste water facilities, gas control devices, monitoring wells, fences, utilities, maintenance facilities, shelter and buildings; legal boundaries and property lines,

and existing contours and projected finish grades. Unless otherwise approved by the Department, the scale of the plan drawings shall be no greater than one inch equals 200 feet, with contour intervals not to exceed five feet. Horizontal and vertical controls shall be established and tied to an established bench mark located on or near the site. Where the Department deems it essential to ensure compliance with OAR Chapter 340 Divisions 93 and 95, [~~these rules, The~~] the bench mark shall be referenced to the Oregon State Plane Coordinate System, Lambert Projection;

(b) If a landfill, a minimum of two perpendicular cross section drawings through the non-municipal land disposal site. Each cross section shall illustrate existing grade, excavation grade, proposed final grade, any additions for groundwater protection, water table profile and soil profile. Additional cross sections shall be provided as necessary to adequately depict underlying soils, geology and landfill contours, and to display the design of environmental protection devices or structures;

(c) A description of the design assumptions and methods used to forecast flows and to determine the sizing of pumps, pipes, ditches, culverts and other hydraulic equipment used for the collection, treatment and disposal of leachate and for the control of surface drainage;

(d) A detailed operations plan pursuant to OAR 340-95-020(3) and timetable which describes the proposed method of operation and progressive development of the non-municipal land disposal site, such as trenches and/or landfill lifts or cells.

(3) [Renumbered from 340-61-040(3):] Leachate. Any person designing or constructing a non-municipal land disposal site shall ensure that leachate production is minimized. Where required by the Department, leachate shall be collected and treated or otherwise controlled in a manner approved by the Department. Leachate storage treatment impoundments shall be located, designed, constructed and monitored, at a minimum, to the same level of environmental protection as the land disposal site.

(4) [Renumbered from 340-61-040(8):] Gas Control. No person shall establish, expand or modify a non-municipal land disposal site such that:

(a) The concentration of methane (CH_4) gas at the landfill exceeds twenty-five (25) percent of its lower explosive limit in facility structures (excluding gas control or gas recovery system components) or its lower explosive limit at the property boundary;

(b) Malodorous decomposition gases become a public nuisance.

(5) [Renumbered from 340-61-040(9):] Surface Drainage Control. Each permittee shall ensure that the non-municipal land disposal site is designed and constructed so that drainage will be diverted around or away from active and completed operational areas.

~~[(6) [Renumbered from 340-61-040(4)(a)] Groundwater Protection. Each non-municipal land disposal site permittee shall ensure that:~~

~~(a) The introduction of any substance from the non-municipal land disposal site into an underground drinking water source does not result in a violation of any applicable federal or state drinking water rules or regulations beyond the solid~~

~~waste boundary of the landfill or an alternative boundary specified by the Department;~~

~~(b) The introduction of any substance from the non-municipal land disposal site into an aquifer does not impair the aquifer's recognized beneficial uses, beyond the solid waste boundary of the landfill or an alternative boundary specified by the Department, consistent with OAR Chapter 340, Division 40 and any applicable federal or state rules or regulations.~~]

GROUNDWATER MONITORING AND CORRECTIVE ACTION

340-95-040

(1) [Renumbered from 340-61-040(4):] Groundwater:

(a) Each non-municipal land disposal site permittee shall ensure that:

(A) The introduction of any substance from the land disposal site into an underground drinking water source does not result in a violation of any applicable federal or state drinking water rules or regulations beyond the solid waste boundary of the land disposal site or an alternative boundary specified by the Department;

(B) The introduction of any substance from the land disposal site into an aquifer does not impair the aquifer's recognized beneficial uses, beyond the solid waste boundary of the land disposal site or an alternative boundary specified by the Department, consistent with OAR Chapter 340, Division 40 and any applicable federal or state rules or regulations.

(b) Where monitoring is required, monitoring wells shall be placed at Department-approved locations between the solid waste boundary and the property line if adequate room exists;

(c) The Department may specify an alternative boundary based on a consideration of all of the following factors:

(A) The hydrogeological characteristics of the facility and surrounding land;

(B) The volume and physical and chemical characteristics of the leachate;

(C) The quantity and directions of flow of groundwater;

(D) The proximity and withdrawal rates of groundwater users;

(E) The availability of alternative drinking water supplies;

(F) The existing quality of the groundwater including other sources of contamination and their cumulative impacts on the groundwater; and

(G) Public health, safety, and welfare effects.

(2) [Renumbered from 340-61-040(6):] Monitoring:

(a) Where the Department finds that a non-municipal land disposal site's location and geophysical condition indicate that there is a reasonable probability of potential adverse effects on public health or the environment, the Department may require a permittee to provide monitoring wells at Department-approved locations and depths to determine the effects of the non-municipal land disposal site on groundwater;

(b) If the Department determines that monitoring wells are required at a non-municipal land disposal site, the permittee shall provide and maintain the wells at the locations specified by the Department and shall submit a copy of the geologic log and record of well construction to the Department within 30 days of completion of construction;

(c) Where the Department determines that self-monitoring is practicable, the Department may require that the permittee collect and analyze samples of surface water and/or groundwater, at intervals specified and in a manner approved by the Department, and submit the results in a format and within a time frame specified by the Department;

(d) The Department may require permittees who do self-monitoring to periodically split samples with the Department for the purpose of quality control.

(3) Corrective action. Notwithstanding OAR 340-93-030(19), the Department may require action to remediate releases of constituents above the levels specified in OAR Chapter 340 Division 40. This authority is in addition to any other authority granted by law.

CLOSURE AND POST-CLOSURE CARE: CLOSURE PERMITS

340-95-050 [Renumbered from 340-61-028; incorporates part of 340-61-020]

(1) [Renumbered from 340-61-020(7):] Closure Permit:

(a) At least five years prior to anticipated closure of a non-municipal land disposal site, the person holding the disposal site permit shall apply to renew the permit to cover the period of time remaining for site operations, closure of the site, and all or part of the time that active post-closure site maintenance is required by the Department;

(b) The person who holds or last held the non-municipal land disposal site permit, or, if that person fails to comply, then the person owning or controlling a non-municipal land disposal site that is closed and no longer receiving solid waste after January 1, 1980, must continue or renew the disposal site permit after the site is closed for the duration of the period in which the Department continues to actively supervise the site, even though solid waste is no longer received at the site.

(2) [Renumbered from 340-61-028] Applications for closure permits must include but are not limited to:

(a) A closure plan prepared in accordance with OAR 340-95-060;

(b) A financial assurance plan prepared in accordance with OAR 340-95-090 unless exempted by the Department pursuant to section (3) of this rule;

(c) If the permittee does not own and control the property, the permittee shall demonstrate to the Department that the permittee has access to the non-municipal land disposal site property after closure to monitor and maintain the site and operate any environmental control facilities;

(d) If any person other than the permittee assumes any responsibility for any closure or post-closure activities, that responsibility shall be evidenced by a written contract between the permittee and each person assuming any responsibility.

(3) The Department may exempt from the financial assurance requirements any non-municipal land disposal site including but not limited to demolition waste sites and industrial waste sites. To be eligible for this exemption, the applicant shall demonstrate to the satisfaction of the Department that the site meets all of the following criteria and that the site is likely to continue to meet all of these criteria until the site is closed in a manner approved by the Department:

(a) The non-municipal land disposal site poses no significant threat of adverse impact on groundwater or surface water;

(b) The non-municipal land disposal site poses no significant threat of adverse impact on public health or safety;

(c) No system requiring active operation and maintenance is necessary for controlling or stopping discharges to the environment;

(d) The area of the non-municipal land disposal site that has been used for waste disposal and has not yet been properly closed in a manner acceptable to the Department is less than and remains less than two acres or complies with a closure schedule approved by the Department.

(4) In determining if the applicant has demonstrated that a non-municipal land disposal site meets the financial assurance exemption criteria, the Department will consider existing available information including, but not limited to, geology, soils, hydrology, waste type and volume, proximity to and uses of adjacent properties, history of site operation and construction, previous compliance inspection reports, existing monitoring data, the proposed method of closure and the information submitted by the applicant. The Department may request additional information if needed.

(5) An exemption from the financial assurance requirement granted by the Department will remain valid only so long as the non-municipal land disposal site continues to meet the exemption criteria in section (3) of this rule. If the site fails to continue to meet the exemption criteria, the Department may modify the closure permit to require financial assurance.

(6) While a closure permit is in effect, the permittee shall submit a report to the Department within 90 days of the end of the permittee's fiscal year or as otherwise required in writing by the Department, which contains but is not limited to:

(a) An evaluation of the approved closure plan discussing current status, unanticipated occurrences, revised closure date projections, necessary changes, etc.;

(b) An evaluation of the approved financial assurance plan documenting an accounting of amounts deposited and expenses drawn from the fund, as well as its current balance. This evaluation must also assess the adequacy of the financial assurance and justify any requests for changes in the approved plan;

(c) Other information requested by the Department to determine compliance with the rules of the Department.

(7) The Department shall terminate closure permits for non-municipal land disposal sites not later than [~~ten~~] 30 years after the site is closed unless the Department finds there is a need to protect against a significant hazard or risk to public health or safety or the environment.

(8) Any time after a non-municipal land disposal site is closed, the permit holder may apply for a termination of the permit, a release from one or more of the permit requirements or termination of any applicable permit fee. Before the Department grants a termination or release under this section, the permittee must demonstrate and the Department must find that there is no longer a need for:

(a) Active supervision of the site;

(b) Maintenance of the site; or

(c) Maintenance or operation of any system or facility on the site.

(9) The Department or an authorized governmental agency may enter a non-municipal land disposal site property at reasonable times to inspect and monitor the site as authorized by ORS 459.285.

(10) The closure permit remains in effect and is a binding obligation of the permittee until the Department terminates the permit according to section (7) or (8) of this rule or upon issuance of a new closure permit for the site to another person following receipt of a complete and acceptable application.

Stat. Auth.: ORS Ch.
Hist.: DEQ 2-1984, f. & ef. 1-16-84

CLOSURE AND POST-CLOSURE CARE: CLOSURE PLANS

340-95-060 [Renumbered from 340-61-033]

(1) A closure plan must specify the procedures necessary to completely close the non-municipal land disposal site at the end of its intended operating life. The plan must also identify the post-closure activities which will be carried on to properly monitor and maintain the closed non-municipal land disposal site. At a minimum, the plan shall include:

(a) Detailed plans and specifications consistent with the applicable requirements of OAR 340-93-140 and 340-95-030(2), unless an exemption is granted as provided in OAR 340-93-070(4);

NOTE: If some of this information has been previously submitted, the permittee shall review and update it to reflect current conditions and any proposed changes in closure or post-closure activities.

(b) A description of how and when the non-municipal land disposal site will be closed. If a landfill, the description shall, to the extent practicable, show how the landfill will be closed as filling progresses to minimize the area remaining to be closed at the time that the site stops receiving waste. A time schedule for completion of closure shall be included;

(c) Details of how leachate discharges will be minimized and controlled and treated if necessary;

(d) Details of any non-municipal land disposal site gas control facilities, their operation and frequency of monitoring;

(e) Details of final closure. If a landfill, the cover including soil texture, depth and slope;

(f) Details of surface water drainage diversion;

(g) A schedule of monitoring the site after closure;

(h) A projected frequency of anticipated inspection and maintenance activities at the site after closure, including but not limited to repairing, recovering and regrading settlement areas, cleaning out surface water diversion ditches, and re-establishing vegetation;

(i) Other information requested by the Department necessary to determine whether the non-municipal land disposal site will comply with all applicable rules of the Department.

(2) Approval of Closure Plan. After approval by the Department, the permittee shall implement the closure plan within the approved time schedule.

(3) Amendment of Plan. The approved closure plan may be amended at any time during the active life of the non-municipal land disposal site or during the post-closure care period as follows:

(a) The permittee must amend the plan whenever changes in operating plans or facility design, or changes in OAR Chapter 340 Divisions 93 through 97, [~~these rules,~~] or events which occur during the active life of the landfill or during the post-closure care period, significantly affect the plan. The permittee must also amend the plan whenever there is a change in the expected year of closure. The permittee must submit the necessary plan amendments to the Department for approval within 60 days after such changes or as otherwise required by the Department;

(b) The permittee may request to amend the plan to alter the closure requirements, to alter the post-closure care requirements, or to extend or reduce the post-closure care period based on cause. The request must include evidence demonstrating to the satisfaction of the Department that:

(A) The nature of the non-municipal land disposal site makes the closure or post-closure care requirements unnecessary; or

(B) The nature of the non-municipal land disposal site supports reduction of the post-closure care period; or

(C) The requested extension in the post-closure care period or alteration of closure or post-closure care requirements is necessary to prevent threat of adverse impact on public health, safety or the environment.

(c) The Department may amend a permit to require the permittee to modify the plan if it is necessary to prevent the threat of adverse impact on public health, safety or the environment. Also, the Department may extend or reduce the post-closure care period or alter the closure or post-closure care requirements based on cause.

Stat. Auth.: ORS Ch.
Hist.: DEQ 2-1984, f. & ef. 1-16-84

CLOSURE REQUIREMENTS

340-95-070 [Renumbered from 340-61-042]

(1) When solid waste is no longer received at a non-municipal land disposal site, the person who holds or last held the permit issued under ORS 459.205 or, if the person who holds or last held the permit fails to comply with this section, the person owning or controlling the property on which the disposal site is located, shall close and maintain the site according to the requirements of ORS Chapter 459, all applicable rules adopted by the Commission under ORS 459.045 and all requirements imposed by the Department as a condition to renewing or issuing a non-municipal land disposal site permit.

(2) Unless otherwise approved or required in writing by the Department, no person shall permanently close or abandon a non-municipal land disposal site, except in the following manner:

(a) All areas containing solid waste not already closed in a manner approved by the Department shall be covered with at least three feet of compacted soil of a type approved by the Department graded to a minimum two percent and maximum 30 percent slope unless the Department authorizes a lesser depth or an alternative final cover design. In applying this standard, the Department will consider the potential for adverse impact from the disposal site on public health, safety or the environment, and the ability for the permittee to generate the funds necessary to comply with this standard before the disposal site closes. A permittee may request that the Department approve a lesser depth of cover material or an alternative final cover design based on the type of waste, climate, geological setting, or degree of environmental impact;

(b) Final cover material shall be applied to each portion of a landfill within 60 days after said portion reaches approved maximum fill elevation, except in the event of inclement weather, in which case final cover shall be applied as soon as practicable;

(c) The finished surface of the closed areas shall consist of soils of a type or types consistent with the planned future use and approved by the Department. Unless otherwise approved by the Department, a vegetative cover of native grasses shall be promptly established over the finished surface of the closed site;

(d) All surface water must be diverted around the area of the non-municipal land disposal site used for waste disposal or in some other way prevented from contacting the waste material;

(e) All systems required by the Department to control or contain discharges to the environment must be completed and operational.

(3) Closure of non-municipal land disposal sites shall be in accordance with detailed plans approved in writing by the Department pursuant to OAR 340-95-060.

(4) Closure approval:

(a) When closure is completed, the permittee shall submit a written request to the Department for approval of the closure;

(b) Within 30 days of receipt of a written request for closure approval, the Department shall inspect the facility to verify that closure has been effected in accordance with the approved closure plan and the provisions of OAR Chapter 340 Divisions 93 and 95; [~~these rules;~~]

(c) If the Department determines that closure has been properly completed, the Department shall approve the closure in writing. Closure shall not be considered complete until such approval has been made. The date of approval notice shall be the date of commencement of the post-closure period.

Stat. Auth.: ORS Ch.
Hist.: DEQ 2-1984, f. & ef. 1-16-84

POST-CLOSURE REQUIREMENTS

340-95-080 [Renumbered from 340-61-043]

(1) Post-closure requirements:

(a) Upon completion or closure of any non-municipal land disposal site where waste remains on-site, a detailed description of the site including a plat should be filed with the appropriate county land recording authority by the permittee. The description should include the general types and location of wastes deposited, depth of waste and other information of probable interest to future land owners;

(b) During the post-closure care period, the permittee must, at a minimum:

(A) Maintain the approved final contours and drainage system of the site;

(B) Consistent with final use, ensure that a healthy vegetative cover is established and maintained over the site;

(C) Operate and maintain each leachate and gas collection, removal and treatment system present at the site;

(D) Operate and maintain each groundwater and surface water monitoring system present at the site;

(E) Comply with all conditions of the closure permit issued by the Department.

(2) Post-closure care period. Post-closure care must continue for 30 [~~ten~~] years after the date of completion of closure of any non-municipal land disposal site where waste remains on-site, unless otherwise approved or required by the Department according to OAR 340-95-050(7) and (8).

Stat. Auth.: ORS Ch.
Hist.: DEQ 2-1984, f. & ef. 1-16-84

FINANCIAL ASSURANCE CRITERIA

340-95-090 [Renumbered from 340-61-034]

(1) Financial Assurance Required. The owner or operator of a non-municipal land disposal site shall maintain detailed written cost estimates of the amount of financial assurance that is necessary and provide evidence of financial assurance for the costs of:

(a) Closure of the non-municipal land disposal site;

(b) Post-closure maintenance of the non-municipal land disposal site;

(c) Any corrective action required by the Department to be taken at the non-municipal land disposal site, pursuant to OAR 340-95-040(3).

(2) Schedule for provision of financial assurance.

(a) Evidence of the required financial assurance for closure and post-closure maintenance of the non-municipal land disposal site as determined in the financial assurance plan required by OAR 340-95-050(2)(b) shall be provided to the Department on the following schedule:

(A) For a new non-municipal land disposal site: no later than the time the solid waste permit is issued by the Department and prior to first receiving waste; or

(B) For a non-municipal land disposal site operating under a solid waste permit on November 4, 1993: by April 9, 1995, or at the time a financial assurance plan is required by OAR 340-95-050(2)(b), whichever is sooner.

(b) Evidence of financial assurance for corrective action shall be provided to the Department before beginning corrective action.

(3)[~~(1)~~] Financial assurance plans required by OAR 340-95-050(2)(b) shall include but not be limited to:

(a) A written estimate of the third-party costs of:

(A) Closing the non-municipal land disposal site;

(B) Installing, operating and maintaining any environmental control system required on the non-municipal land disposal site;

(C) Monitoring and providing security for the non-municipal land disposal site; and

(D) Complying with any other requirement the Department may impose as a condition of renewing the permit.

(b) A detailed description of the form of the financial assurance;

(c) A method and schedule for providing for or accumulating any required amount of funds which may be necessary to meet the financial assurance requirement;

(d) A proposal to the Department for disposing of any excess moneys received or interest earned on moneys received for financial assurance. To the extent practicable, the applicant's provisions for disposing of the excess moneys received or interest earned on moneys shall provide for:

(A) A reduction of the rates a person within the area served by the non-municipal land disposal site is charged for solid waste collection service as defined by ORS 459.005; or

(B) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received.

(4)[~~(2)~~] Amount of Financial Assurance Required. The amount of financial assurance required shall be established based upon the estimated closure and post-closure care costs included in the approved closure plan. This required amount may be adjusted as the plan is amended:

(a) In reviewing the adequacy of the amount of financial assurance proposed by the applicant, the Department shall consider the following:

(A) Amount and type of solid waste deposited in the site;

(B) Amount and type of buffer from adjacent land and from drinking water sources;

(C) Amount, type, availability and cost of required cover;

(D) Seeding, grading, erosion control and surface water diversion required;

(E) Planned future use of the disposal site property;

(F) Type, duration of use, initial cost and maintenance cost of any active system necessary for controlling or stopping discharges;

(G) The portion of the site property closed before final closure of the entire site;

(H) Any other conditions imposed on the permit relating to closure or post-closure of the site;

(I) The financial capability of the applicant.

(b) After reviewing the proposed amount of financial assurance, the Department may either:

(A) Approve the amount proposed by the applicant; or

(B) Disapprove the amount and require the applicant to submit a revised amount consistent with the factors considered by the Department.

(5)[~~(3)~~] Form of Financial Assurance. The financial assurance may be in any form proposed by the applicant if it is approved by the Department:

(a) The Department will approve forms of financial assurance to cover the ongoing closure activities occurring while the non-municipal land disposal site is still receiving solid waste where the applicant can prove to the satisfaction of the Department that all of the following conditions can be met:

(A) That financial assurance moneys in excess of the amount approved by the Department will not be set aside or collected by the disposal site operator. The Department may approve an additional amount of financial assurance during a review conducted in conjunction with a subsequent application to amend or renew the non-municipal land disposal site permit or a request by the owner or operator of a disposal site to extend the useful life of the site. Nothing in this subsection shall prohibit a site operator from setting aside an additional reserve from funds other than those collected from rate payers specifically for closure and post-closure and such a reserve shall not be part of any fund or set aside required in the applicable financial assurance plan;

(B) That the use of financial assurance is restricted so that the financial resources can only be used to guarantee that the following activities will be performed or that the financial resources can only be used to finance the following activities and that the financial resources cannot be used for any other purpose:

(i) Close the non-municipal land disposal site according to the approved closure plan;

(ii) Install, operate and maintain any required environmental control systems;

(iii) Monitor and provide security for the non-municipal land disposal site;

(iv) Comply with conditions of the closure permit.

(C) That, to the extent practicable, all excess moneys received and interest earned on moneys shall be disposed of in a manner which shall provide for:

(i) A reduction of the rates a person within the area served by the non-municipal land disposal site is charged for solid waste collection service (as defined by ORS 459.005); or

(ii) Enhancing present or future solid waste disposal facilities within the area from which the excess moneys were received; or

(iii) Where the non-municipal land disposal site is operated and exclusively used to dispose of solid waste generated by a single business entity, excess moneys and interest remaining in the financial assurance reserve shall be released to that business entity at the time that the permit is terminated.

(b) If the permittee fails to adequately perform the ongoing closure activities in accordance with the closure plan and permit requirements, the permittee shall provide an additional amount of financial assurance in a form meeting the requirements of subsection [~~(3)(e)~~] (5)(c) of this rule within 30 days after service of a Final Order assessing a civil penalty. The total amount of financial assurance must be sufficient to cover all remaining closure and post-closure activities;

(c) The Department will approve only the following forms of financial assurance for the final closure and post-closure activities which will occur after the non-municipal land disposal site stops receiving solid waste:

(A) A closure trust fund established with an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The wording of the trust agreement must be acceptable to the Department. The purpose of the closure trust fund is to receive and manage any funds that may be paid by the permittee and to disburse those funds only for closure or post-closure maintenance activities which are authorized by the Department. Within 60 days after receiving itemized bills for closure activities, the Department will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified and, if so, will send a written request to the trustee to make reimbursements;

(B) A surety bond guaranteeing payment into a closure trust fund issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The wording of the surety bond must be acceptable to the Department. A standby closure trust fund must also be established by the permittee. The purpose of the standby closure trust fund is to receive any funds that may be paid by the permittee or surety company. The bond must guarantee that the permittee will either fund the standby closure trust fund in an amount equal to the penal sum of the bond before the site stops receiving waste or within 15 days after an order to begin closure is issued by the Department or by a court of competent jurisdiction; or that the permittee will provide alternate

financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby closure trust account;

(C) A surety bond guaranteeing performance of closure issued by a surety company listed as acceptable in Circular 570 of the U.S. Department of the Treasury. The wording of the surety bond must be acceptable to the Department. A standby closure trust fund must also be established by the permittee. The purpose of the standby closure trust fund is to receive any funds that may be paid by the surety company. The bond must guarantee that the permittee will either perform final closure and post-closure maintenance or provide alternate financial assurance acceptable to the Department within 90 days after receipt of a notice of cancellation of the bond from the surety. The surety shall become liable on the bond obligation if the permittee fails to perform as guaranteed by the bond. The surety may not cancel the bond until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. If the permittee has not provided alternate financial assurance acceptable to the Department within 90 days of the cancellation notice, the surety must pay the amount of the bond into the standby closure trust account;

(D) An irrevocable letter of credit issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. The wording of the letter of credit must be acceptable to the Department. A standby closure trust fund must also be established by the permittee. The purpose of the standby closure trust fund is to receive any funds deposited by the issuing institution resulting from a draw on the letter of credit. The letter of credit must be irrevocable and issued for a period of at least one year unless the issuing institution notifies both the permittee and the Department at least 120 days before the current expiration date. If the permittee fails to perform closure and post-closure activities according to the closure plan and permit requirements, or if the permittee fails to provide alternate financial assurance acceptable to the Department within 90 days after notification that the letter of credit will not be extended, the Department may draw on the letter of credit;

(E) A closure insurance policy issued by an insurer who is licensed to transact the business of insurance or is eligible as an excess or surplus lines insurer in one or more states. The wording of the certificate of insurance must be acceptable to the Department. The closure insurance policy must guarantee that funds will be available to complete final closure and post-closure maintenance of the site. The policy must also guarantee that the insurer will be responsible for paying out funds for reimbursement of closure and post-closure expenditures after notification by the Department that the expenditures are in accordance

with the closure plan or otherwise justified. The policy must provide that the insurance is automatically renewable and that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may not terminate the policy until at least 120 days after the notice of cancellation has been received by both the permittee and the Department. Termination of the policy may not occur and the policy must remain in full force and effect if: the Department determines that the land disposal site has been abandoned; or the Department has commenced a proceeding to modify the permit to require immediate closure; or closure has been ordered by the Department, Commission or a court of competent jurisdiction; or the permittee is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the premium due is paid. The permittee is required to maintain the policy in full force and effect until the Department consents to termination of the policy when alternative financial assurance is provided or when the permit is terminated;

(F) Corporate guarantee. A private corporation meeting the financial test may provide a corporate guarantee that closure and post-closure activities will be completed according to the closure plan and permit requirements. To qualify, a private corporation must meet the criteria of either subparagraph[s] (i) or (ii) of this paragraph:

(i) Financial Test. To pass the financial test, the permittee must have:

(I) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;

(II) Net working capital and tangible net worth each at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(ii) Alternative Financial Test. To pass the alternative financial test, the permittee must have:

(I) A current rating of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or [~~Bbb~~] Baa as issued by Moody's;

(II) Tangible net worth at least six times the sum of the current closure and post-closure cost estimates;

(III) Tangible net worth of at least $10 million; and

(IV) Assets in the United States amounting to at least 90 percent of its total assets or at least six times the sum of the current closure and post-closure cost estimates.

(iii) The permittee shall demonstrate that it passes the financial test at the time the financial assurance plan is filed and reconfirm that annually 90 days after the end of the corporation's fiscal year by submitting the following items to the Department:

(I) A letter signed by the permittee's chief financial officer that provides the information necessary to document that the permittee passes the financial test; that guarantees that the funds to finance closure and post-closure activities according to the closure plan and permit requirements are available; that guarantees that the closure and post-closure activities will be completed according to the closure plan and permit requirements; that guarantees that the standby closure trust fund will be fully funded within 30 days after either service of a Final Order assessing a civil penalty from the Department for failure to adequately perform closure or post-closure activities according to the closure plan and permit, or service of a written notice from the Department that the permittee no longer meets the criteria of the financial test; that guarantees that the permittee's chief financial officer will notify the Department within 15 days any time that the permittee no longer meets the criteria of the financial test or is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; and that acknowledges that the corporate guarantee is a binding obligation on the corporation and that the chief financial officer has the authority to bind the corporation to the guarantee;

(II) A copy of the independent certified public accountant's report on examination of the permittee's financial statements for the latest completed fiscal year;

(III) A special report from the permittee's independent certified public accountant (CPA) stating that the CPA has compared the data which the letter from the permittee's chief financial officer specifies as having been derived from the independently audited year end financial statements for the latest fiscal year with the amounts in such financial statement, and that no matters came to the CPA's attention which caused the CPA to believe that the specified data should be adjusted;

(IV) A trust agreement demonstrating that a standby closure trust fund has been established with an entity which has authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The wording of the trust agreement must be acceptable to the Department.

(iv) The Department may, based on a reasonable belief that the permittee no longer meets the criteria of the financial test, require reports of the financial condition at any time from the permittee in addition to the annual report. If the Department finds, on the basis of such reports or other information, that the permittee no longer meets the criteria of the financial test, the permittee shall fully fund the standby closure trust fund within 30 days after notification by the Department.

(G) Alternative forms of financial assurance where the applicant can prove to the satisfaction of the Department that the level of security is equivalent to paragraphs (A) through (F) of this subsection and that the criteria of subsection (5)(a) [~~(3)(a)~~] of this rule are met.

(6)[~~(4)~~] Accumulation and use of any financial assurance funds:

(a) The applicant shall set aside funds in the amount and at the frequency specified in the financial assurance plan approved by the Department. The total amount of financial assurance required shall be available in the form approved by the Department at the time that solid waste is no longer received at the site;

(b) The financial assurance plan shall contain adequate accounting procedures to insure that the disposal site operator does not collect or set aside funds in excess of the amount approved by the Department or use the funds for any purpose other than required by paragraph (5)(a)(B) [~~(3)(a)(B)~~] of this rule;

(c) The permittee is subject to audit by the Department (or Secretary of State) and shall allow the Department access to all records during normal business hours for the purpose of determining compliance with this rule;

(d) If the Department determines that the permittee did not set aside the required amount of funds for financial assurance in the form and at the frequency required by the approved financial assurance plan, or if the Department determines that the financial assurance funds were used for any purpose other than as required in paragraph (5)(a)(B) [~~(3)(a)(B)~~] of this rule, the permittee shall, within 30 days after notification by the Department, deposit a sufficient amount of financial assurance in the form required by the approved financial assurance plan along with an additional amount of financial assurance equal to the amount of interest that would have been earned, had the required amount of financial assurance been deposited on time or had it not been withdrawn for unauthorized use.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

DIVISION 96
SOLID WASTE: SPECIAL RULES FOR SELECTED SOLID WASTE DISPOSAL SITES

SPECIAL RULES PERTAINING TO INCINERATION

340-96-010 [Renumbered from 340-61-045]

(1) Applicability. This rule applies to all energy recovery facilities and incinerators receiving solid waste delivered by the public or by a solid waste collection service. Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Division 93 and applicable provisions in OAR Chapter 340, Divisions 95 and 97.

(2) Detailed Plans and Specifications:

(a) All incineration equipment and air pollution control appurtenances thereto shall comply with air pollution control rules and regulations and emission standards of this Department or the regional air pollution control authority having jurisdiction;

(b) Detailed plans and specifications for incinerator disposal sites shall include, but not be limited to, the location and physical features of the site, such as contours, drainage control, landscaping, fencing, access and on-site roads, solid waste handling facilities, truck washing facilities, ash and residue disposal and design and performance specifications of incineration equipment and provisions for testing emissions therefrom.

(3) Incinerator Design and Construction:

(a) Ash and Residue Disposal. Incinerator ash and residues shall be disposed in an approved landfill unless handled otherwise in accordance with a plan approved in writing by the Department;

(b) Waste Water Discharges. There shall be no discharge of waste water to public waters except in accordance with a permit from the Department, issued under ORS 468B.050;

(c) Access roads. All weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(d) Drainage. An incinerator site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(e) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department and in compliance with pertinent state and local fire regulations;

(f) Fences. Access to the incinerator site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(g) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(h) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Incinerator Operations:

(a) Storage:

(A) All solid waste deposited at the site shall be confined to the designated dumping area;

(B) Accumulation of solid wastes and undisposed ash residues shall be kept to minimum practical quantities.

(b) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the disposal site only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(B) [~~(A)~~] Salvaging shall be controlled so as to not interfere with optimum disposal operation and to not create unsightly conditions or vector harborage;

(C) [~~(B)~~] All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations[~~al~~] plan. [~~approved in writing by the Department;~~]

[~~(C) Food products, hazardous materials, containers used for hazardous materials, or furniture and bedding with concealed filling shall not be salvaged from a disposal site.~~]

(c) Nuisance Conditions:

(A) Blowing debris shall be controlled such that the entire disposal site is maintained free of litter;

(B) Dust, malodors and noise shall be controlled to prevent air pollution or excessive noise as defined by ORS Chapters 467 and 468 and rules and regulations adopted pursuant thereto.

(d) Health Hazards. Rodent and insect control measures shall be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals shall be controlled;

(e) Air Quality. The incinerator shall be operated in compliance with applicable air quality rules (OAR 340-25-850 through 340-25-905);

(f) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340 Divisions 93 through 97. [~~these rules.~~]

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

SPECIAL RULES PERTAINING TO COMPOSTING FACILITIES

340-96-020 [Renumbered from 340-61-050]

(1) Applicability. This rule applies to all composting facilities, except as exempted in OAR 340-93-050(2)(c) and (d). Composting facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable.

(2) Detailed Plans and Specifications shall include but not be limited to:

(a) Location and design of the physical features of the site and composting plant, surface drainage control, waste water facilities, fences, residue disposal, odor control and design and performance specifications of the composting equipment and detailed description of methods to be used;

(b) A proposed plan for utilization of the processed compost including copies of signed contracts for utilization or other evidence of assured utilization of composted solid waste.

(3) Compost Plan Design and Construction:

(a) Non-compostable Wastes. Facilities and procedures shall be provided for handling, recycling or disposing of solid waste that is non-biodegradable by composting;

(b) Odors. The design and operational plan shall give consideration to keeping odors to lowest practicable levels. Composting operations, generally, shall not be located in odor sensitive areas;

(c) Drainage Control. Provisions shall be made to effectively collect, treat, and dispose of leachate or drainage from stored compost and the composting operation;

(d) Waste Water Discharges. There shall be no discharge of waste water to public waters, except in accordance with a permit from the Department, issued under ORS 468.740;

(e) Access Roads. All-weather roads shall be provided from the public highway or roads to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(f) Drainage. A composting site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(g) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department in compliance with pertinent state and local fire regulations;

(h) Fences. Access to the composting site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(i) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(j) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Composting Plant Operation:

(a) Supervision of Operation:

(A) A composting plant shall be operated under the supervision of a responsible individual who is thoroughly familiar with the operating procedures established by the designer;

(B) All compostable waste shall be subjected to complete processing in accordance with the equipment manufacturer's operating instructions or patented process being utilized.

(b) Removal of Compost. Compost shall be removed from the composting plant site as frequently as possible, but not later than one year after treatment is completed;

(c) Use of Composted Solid Waste. Composted solid waste offered for use by the general public shall contain no pathogenic organisms, shall be relatively odor free and shall not endanger the public health or safety;

(d) Storage:

(A) All solid waste deposited at the site shall be confined to the designated dumping area;

(B) Accumulation of solid wastes and undisposed residues shall be kept to minimum practical quantities.

(e) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the disposal site only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(B) [~~(A)~~] Salvaging shall be controlled so as to not interfere with optimum disposal operation and to not create unsightly conditions or vector harborage;

(C) [~~(B)~~] All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations[~~al~~] plan. [~~approved in writing by the Department;~~]

(f) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340 Divisions 93 through 97. [~~these rules.~~]

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

SPECIAL RULES PERTAINING TO SLUDGE AND LAND APPLICATION DISPOSAL SITES

340-96-030 [Renumbered from 340-61-055]

(1) Applicability.

(a) This rule applies to all land used for the spreading, deposit, lagooning or disposal of sewage sludge, septage and other sludges. Such land and facilities are defined as disposal sites by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable, including the requirements for obtaining a permit from the Department in accordance with OAR 340-93-050 and 340-93-070;

(b) Disposal of sewage sludges resulting from a sewage treatment facility that is operating under a current and valid Waste Discharge Permit, issued under ORS 468B.050, is exempted from obtaining a solid waste disposal permit, provided that said sewage sludge disposal is adequately covered by specific conditions of the Waste Discharge Permit. Such sewage sludge disposal operations and sites shall comply with all other provisions of OAR Chapter 340 Divisions 93 through 97 [~~these rules~~] and other laws, rules and regulations pertaining to solid waste disposal.

(2) Plans and Specifications for Sludge Disposal Sites:

(a) Detailed plans and specifications for sludge disposal lagoons shall include, but not be limited to, location and design of the physical features of the site, such as berms, dikes, surface drainage control, access and on-site roads, waste water facilities, inlet and emergency overflow structures, fences, utilities and truck washing facilities, topography with contours not to exceed five foot contour intervals, elevations, legal boundaries and property lines, and land use;

(b) Plans and specifications for land application units shall include, but not be limited to, physical features of the site, such as, surface drainage, access and on-site roads, fences, truck washing facilities, topography with contours not to exceed five foot contour intervals, rates and frequency of sludge application, legal boundaries and property lines and land use.

(3) Prohibited Methods of Sludge Disposal:

(a) Septage and raw sewage sludge shall not be permitted to be disposed of by land spreading, unless it is specifically determined and approved in writing by the Department or state or local health agency having jurisdiction, that such disposal can be conducted with assured, adequate protection of public health and safety and the environment;

(b) Except for "heat-treated" sewage sludges, sewage sludges including septage, raw, non-digested and digested sewage sludges, shall not be:

(A) Used as fertilizer on root crops, vegetables, low growing berries or fruits that may be eaten raw;

(B) Applied to land later than one year prior to planting where vegetables are to be grown;

(C) Used on grass in public parks or other areas at a time or in such a way that persons could unknowingly come in contact with it;

(D) Given or sold to the public without their knowledge as to its origin.

(c) Sludges shall not be deposited in landfills except in accordance with operations plans that have been submitted to and approved by the Department in accordance with OAR 340-94-060(2)(d) or 340-95-030(2)(d).

(4) Sludge Lagoon and Land Application Unit Design, Construction and Operation:

(a) Location:

(A) Sludge lagoons shall be located a minimum of 1/4 mile from the nearest residence other than that of the lagoon operator or attendant;

(B) Sludge shall not be spread on land where natural run-off could carry a residue into public waters;

(C) If non-digested sludge is spread on land within 1/4 mile of a residence, community or public use area, it shall be plowed under the ground, buried or otherwise incorporated into the soil within five days after application.

(b) Fences:

(A) Public access to a lagoon site shall be controlled by man-proof fencing and gates which shall be locked at all times that an attendant is not on duty;

(B) Public access to land application units shall be controlled by complete perimeter fencing and gates capable of being locked as necessary.

(c) Signs. Signs shall be posted at land application units as required. Signs which are clearly legible and visible shall be posted on all sides of a sludge lagoon, stating the contents of the lagoon and warning of potential hazard to health;

(d) Drainage. A sludge disposal site shall be so located, sloped or protected such that surface drainage will be diverted around or away from the operational area of the site;

(e) Type of Sludge Lagoon. Lagoons shall be designed and constructed to be nonoverflow and watertight;

(f) Lagoon Freeboard. A minimum of 3.0 feet of dike freeboard shall be maintained above the maximum water level within a sludge lagoon unless some other minimum freeboard is specifically approved by the Department;

(g) Lagoon Emergency Spillway. A sludge lagoon shall be provided with an emergency spillway adequate to prevent cutting-out of the dike, should the water elevation overtop the dike for any reason;

(h) Sludge Removal from Lagoon. Water or sludge shall not be pumped or otherwise removed from a lagoon, except in accordance with a plan approved in writing by the Department;

(i) Monitoring Wells. Lagoon sites located in areas having high groundwater tables or potential for contaminating usable groundwater resources may be required to provide groundwater monitoring wells in accordance with plans approved in writing by the Department. Said monitoring wells shall be sufficient to detect the movement of groundwater and easily capable of being pumped to obtain water samples;

(j) Truck Washing. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction;

(k) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340 Divisions 93 through 97. [~~these rules.~~]

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

TRANSFER STATIONS AND MATERIAL RECOVERY FACILITIES

340-96-040 [Renumbered from 340-61-065; incorporates part of 340-61-045]

(1) Applicability. This rule applies to all transfer stations and material recovery facilities (except composting facilities). Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable.

(2) Plans and Specifications. Plans and specifications for a fixed or permanent transfer station or material recovery facility shall include, but not be limited to, the location and physical features of the facility such as contours, surface drainage control, access and on-site roads, traffic routing, landscaping, weigh stations, fences and specifications for solid waste handling equipment, truck and area washing facilities and wash water disposal, and water supply and sanitary waste disposal.

(3) Design and Construction:

(a) Waste Water Discharges. There shall be no discharge of waste water to public waters except in accordance with a permit from the Department, issued under ORS 468B.050;

(b) Access roads. All weather roads shall be provided from the public highways or roads, to and within the disposal site and shall be designed and maintained to prevent traffic congestion, traffic hazards and dust and noise pollution;

(c) Drainage. The site shall be designed such that surface drainage will be diverted around or away from the operational area of the site;

(d) Fire Protection. Fire protection shall be provided in accordance with plans approved in writing by the Department and in compliance with pertinent state and local fire regulations;

(e) Fences. Access to the site shall be controlled by means of a complete perimeter fence and gates which may be locked;

(f) Solid Waste Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the Department or state or local health agency having jurisdiction;

(g) Truck Washing Facilities. Truck washing areas, if provided, shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the Department or state or local health agency having jurisdiction.

(4) Operations:

(a) Storage:

(A) All solid waste deposited at the site shall be confined to the designated dumping area;

(B) Accumulation of solid wastes shall be kept to minimum practical quantities.

(b) Salvage:

(A) A permittee may conduct or allow the recovery of materials such as metal, paper and glass from the disposal site only when such recovery is conducted in a planned and controlled manner approved by the Department in the facility's operations plan;

(B) [~~(A)~~] Salvaging shall be controlled so as to not interfere with optimum disposal operation and to not create unsightly conditions or vector harborage;

(C) [~~(B)~~] All salvaged material shall be stored in a building or enclosure until it is removed from the disposal site in accordance with a recycling program authorized in the operations[~~al~~] plan. [~~approved in writing by the Department;~~]

[~~(C) Food products, hazardous materials, containers used for hazardous materials, or furniture and bedding with concealed filling shall not be salvaged from a disposal site.~~]

(c) Nuisance Conditions:

(A) Blowing debris shall be controlled such that the entire disposal site is maintained free of litter;

(B) Dust, malodors and noise shall be controlled to prevent air pollution or excessive noise as defined by ORS Chapters 467 and 468 and rules and regulations adopted pursuant thereto.

(d) Health Hazards. Rodent and insect control measures shall be provided, sufficient to prevent vector production and sustenance. Any other conditions which may result in transmission of disease to man and animals shall be controlled;

(e) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340 Divisions 93 through 97. [~~these rules.~~]

Stat. Auth.: ORS Ch. 459
Hist.: DEQ 41, f. 4-5-72, ef. 4-15-72

SOLID WASTE TREATMENT FACILITIES

340-96-050

(1) Applicability. This rule applies to all solid waste treatment facilities. Such facilities are disposal sites as defined by ORS Chapter 459, and are also subject to the requirements of OAR Chapter 340, Divisions 93, 95 and 97 as applicable.

(2) Plans and Specifications. Plans and specifications for a solid waste treatment facility shall include, but not be limited to, the location and physical features of the facility such as contours, surface drainage control, access and on-site roads, traffic routing, landscaping, weigh stations, fences and specifications for solid waste handling equipment, truck and area washing facilities and wash water disposal, and water supply and sanitary waste disposal.

(3) Air Quality. A permittee shall ensure that all solid waste treatment facilities comply with air pollution control rules and regulations and emission standards of this Department or the regional air pollution control authority having jurisdiction.

(4) Bioremediation Facilities. Facilities that propose to biologically treat petroleum contaminated soil must design the operation to prevent contamination of the area and minimize the possibility of contaminants leaching to groundwater. Such facilities shall in general comply with regulations in OAR Chapter 340, Division 95, "Land Disposal Sites Other than Municipal Solid Waste Landfills," for location restrictions, operating criteria and design criteria. The following requirements also apply:

(a) To prevent leaching, design criteria must include either:

(A) A landfill-type liner with a leachate removal system. A concrete slab is not considered a liner. An applicant must demonstrate that the proposed liner is compatible with the waste; or

(B) A vadose zone monitoring system, pursuant to 40 CFR 264, Subpart M.

(b) Groundwater. The Department may require groundwater monitoring depending on the facility's cover, run-on controls and irrigation;

(c) Operating criteria:

(A) Each permittee shall ensure that surface runoff and leachate seeps are controlled so as to minimize discharges of pollutants into public waters;

(B) The permittee must ensure that the facility is operated in a manner such that the liner is not damaged;

(C) The permittee must provide a monitoring plan to demonstrate completion of the biodegradation process.

(d) Financial assurance. An application for a bioremediation solid waste treatment facility shall include a financial assurance plan sufficient to cover costs for a third party to remove the waste to a thermal desorption facility if it is deemed necessary by the Department.

(5) Records. The Department may require such records and reports as it considers are reasonably necessary to ensure compliance with conditions of a permit or OAR Chapter 340 Divisions 93 through 97. [~~these rules.~~]

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Department of Environmental Quality.]

DIVISION 97
SOLID WASTE: PERMIT FEES

APPLICABILITY

340-97-001

OAR Chapter 340, Division 97 applies to persons owning or operating, or applying to the Department to own or operate, a municipal solid waste landfill, a non-municipal land disposal site, an energy recovery facility or an incinerator receiving solid waste delivered by the public or by a solid waste collection service, a composting facility, a sludge disposal site, a land application disposal site, a transfer station, a material recovery facility, a solid waste treatment facility or any other solid waste disposal site required to obtain a solid waste permit from the Department. It also applies to persons who transport solid waste out of Oregon to a disposal site that receives domestic solid waste.

SOLID WASTE PERMIT AND DISPOSAL FEES

340-97-110 [Renumbered from 340-61-115]

(1) Each person required to have a Solid Waste Disposal Permit shall be subject to the following fees:

(a) An application processing fee for new facilities[~~. The amount equal to the application processing fee~~, which shall be submitted [~~as a required part of any~~] with the application for a new permit as specified in OAR 340-097-120(2);

(b) [~~An annual~~] A solid waste permit compliance fee as listed in OAR 340-97-120(3); and

(c) The 1991 Recycling Act [~~annual~~] permit fee as listed in OAR 340-97-120(4).

(2) [~~In addition, e~~] Each disposal site receiving domestic solid waste shall be subject to the per-ton solid waste disposal fees on domestic solid waste as specified in OAR 340-97-120(5).

(3) Out-of-state solid waste. [~~In addition, e~~] Each disposal site or regional disposal site receiving solid waste generated out-of-state shall pay a per-ton solid waste disposal fee as specified in OAR 340-97-120(6) or a surcharge as specified in OAR 340-97-120(7).

(4) Oregon waste disposed of out-of-state. A person who transports solid waste that is generated in Oregon to a disposal site located outside of Oregon that receives domestic solid waste shall pay the per-ton solid waste disposal fees as specified in OAR 340-97-120(5).

(a) For purposes of this rule and OAR 340-97-120(5), a person is the transporter if the person transports or arranges for the transport of solid waste out of Oregon for final disposal at a disposal site that receives domestic solid waste, and is:

(A) A solid waste collection service or any other person who hauls, under an agreement, solid waste out of Oregon;

(B) A person who hauls his or her own industrial, commercial or institutional waste or other waste such as cleanup materials contaminated with hazardous substances;

(C) An operator of a transfer station, when Oregon waste is delivered to a transfer station located in Oregon and from there is transported out of Oregon for disposal;

(D) A person who authorizes or retains the services of another person for disposal of cleanup materials contaminated with hazardous substances; or

(E) A person who transports infectious waste.

(b) Notification requirement:

(A) Before transporting or arranging for transport of solid waste out of the State of Oregon to a disposal site that receives domestic solid waste, a person shall notify the Department in writing on a form provided by the Department. The persons identified in subsection (4)(a) of this rule are subject to this notification requirement.

(B) The notification shall include a statement of whether the person will transport the waste on an on-going basis. If the transport is on-going, the person shall re-notify the Department by January 1 of each year of his or her intention to continue to transport waste out-of-state for disposal.

(c) As used in this section, "person" does not include an individual transporting the individual's own residential solid waste to a disposal site located out of the state.

(5) [~~Annual p~~] Permit fees: The [~~annual~~] solid waste permit compliance fee [~~and, if applicable, the 1991 Recycling Act annual fee~~] must be paid for each year a disposal site is in operation or under permit. [~~The fee period shall be the state's fiscal year (July 1 through June 30) and shall be paid annually:~~] The 1991 Recycling Act permit fee, if applicable, must be paid for each year the disposal site is in active operation. The fee period shall be prospective and is as follows:

(a) New sites:

(A) Any new disposal site [~~placed into operation after January 1 shall not owe an annual solid waste permit fee or a 1991 Recycling Act annual fee until July 1 of the following year~~] shall owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, 30 days after the end of the calendar quarter in which solid waste is received at the facility, except as specified in paragraph (5)(a)(B), (5)(a)(C) or (5)(a)(D) of this rule;

(B) For a new disposal site receiving less than 1,000 tons of solid waste a year. For the first year's operation, the full permit compliance fee shall apply if the facility is placed into operation on or before September 1. Any new facility placed into operation after September 1 shall not owe a permit compliance fee until the following January 31. An application for a new disposal site receiving less than 1,000 tons of

solid waste a year shall include the applicable permit compliance fee for the first year of operation;

(C) For a new industrial solid waste disposal site, sludge or land application disposal site or solid waste treatment facility receiving more than 1,000 but less than 20,000 tons of solid waste a year. These facilities shall owe a solid waste permit compliance fee and 1991 Recycling Act permit fee, if applicable, on January 31 following the calendar year in which the facility is placed into operation;

(D) [~~(B)~~] For a new transfer station or material recovery facility. For the first year's operation, the full [~~annual~~] permit compliance fee shall apply if the facility is placed into operation on or before April 1. Any new facility placed into operation after April 1 shall not owe a[~~n annual~~] permit compliance fee until the Department's annual billing for the next fiscal year. An application for a new transfer station or material recovery facility shall include the applicable [~~annual~~] permit compliance fee for the first year of operation.

(b) Existing sites. Any existing disposal site that is in operation or receives solid waste in a calendar year must pay the [~~annual~~] solid waste permit compliance fee and 1991 Recycling Act [~~annual~~] permit fee, if applicable, for that year as specified in OAR 340-97-120(3)(a) and (b), and 340-97-120(4); [~~for the fiscal year which begins on July 1 of the following calendar year;~~]

(c) Closed sites. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the permittee shall pay the solid waste permit compliance fee for the "year of closure" as specified in OAR 340-97-120(3)(c)(A) as well as the permit compliance fee paid quarterly by the permittee based on the waste received in the previous calendar quarters. [~~If no solid waste was received in the previous calendar year and~~] If a land disposal site has permanently ceased receiving waste and the site is closed, a solid waste permittee shall pay the [~~annual~~] solid waste permit compliance fee for closed sites as specified in OAR 340-97-120(3)(c)(B);

(d) The Director may alter the due date for the [~~annual~~] solid waste permit compliance fee and, if applicable, the 1991 Recycling Act [~~annual~~] permit fee upon receipt of a justifiable request from a permittee.

(6) Tonnage reporting. Beginning on July 31, 1994, the permit compliance fee, 1991 Recycling Act permit fee if applicable, and per-ton solid waste disposal fees if applicable shall be submitted together with a form approved by the Department. Information reported shall include the amount and type of solid waste and any other information required by the Department to substantiate the tonnage or to calculate the state material recovery rate.

(7) [~~(6)~~] Calculation of tonnages. Permittees are responsible for accurate calculation of solid waste tonnages. For purposes of determining appropriate fees under OAR 340-97-120(3) through (7), annual tonnage of solid waste received shall be calculated as follows:

(a) Municipal solid waste facilities. Annual tonnage of solid waste received at municipal solid waste facilities, including demolition sites, receiving 50,000 or more tons annually shall be based on weight from certified scales after

January 1, 1994. If certified scales are not required or not available, estimated annual tonnage for municipal solid waste will be based upon 300 pounds per cubic yard of uncompacted waste received, 700 pounds per cubic yard of compacted waste received, or, if yardage is not known, one ton per resident in the service area of the disposal site, unless the permittee demonstrates a more accurate estimate. For other types of wastes received at municipal solid waste sites and where certified scales are not required or not available, the conversions and provisions in subsection (b) of this section shall be used;

(b) Industrial facilities. Annual tonnage of solid waste received at off-site industrial facilities receiving 50,000 or more tons annually shall be based on weight from certified scales after January 1, 1994. If certified scales are not required, or at those sites receiving less than 50,000 tons a year if scales are not available, industrial sites shall use the following conversion factors to determine tonnage of solid waste disposed of:

(A) Asbestos: 500 pounds per cubic yard;

(B) Pulp and paper waste other than sludge: 1,000 pounds per cubic yard;

(C) Construction, demolition and landclearing wastes: 1,100 pounds per cubic yard;

(D) Wood waste: 1,200 pounds per cubic yard;

(E) Food waste, manure, sludge, septage, grits, screenings and other wet wastes: 1,600 pounds per cubic yard;

(F) Ash and slag: 2,000 pounds per cubic yard;

(G) Contaminated soils: 2,400 pounds per cubic yard;

(H) Asphalt, mining and milling wastes, foundry sand, silica: 2,500 pounds per cubic yard;

(I) For wastes other than the above, the permittee shall determine the density of the wastes subject to approval by the Department;

(J) As an alternative to the above conversion factors, the permittee may determine the density of their own waste, subject to approval by the Department.

(8) [~~(7)~~] The application processing fee may be refunded in whole or in part, after taking into consideration any costs the Department may have incurred in processing the application, when submitted with an application if either of the following conditions exist:

(a) The Department determines that no permit will be required;

(b) The applicant withdraws the application before the Department has granted or denied preliminary approval or, if no preliminary approval has been granted or denied, the Department has approved or denied the application.

(9) [~~(8)~~] Exemptions.

(a) Persons treating petroleum contaminated soils shall be exempt from the application processing and renewal fees for a Letter Authorization if the following conditions are met:

(A) [~~(a)~~] The soil is being treated as part of a site cleanup authorized under ORS 465 or 466; and

(B) [~~(b)~~] The Department and the applicant for the Letter Authorization have entered into a written agreement under which costs incurred by the Department for oversight of the cleanup and for processing of the Letter Authorization must be paid by the applicant.

(b) Persons to whom a Letter Authorization has been issued are not subject to the solid waste permit compliance fee or the 1991 Recycling Act permit fee.

(10) [~~(9)~~] All fees shall be made payable to the Department of Environmental Quality.

(11) [~~(10)~~] Submittal schedule.

(a) The [~~annual~~] solid waste permit compliance fee shall be billed by the Department to the holder of the following permits: transfer station, material recovery facility and closed solid waste disposal site. [~~to the permittee by the Department, and~~] The fee period shall be the state's fiscal year (July 1 through June 30), and the fee is due annually by the date indicated on the invoice. Any "year of closure" pro-rated fee shall be billed to the permittee of a closed site together with the site's first regular billing as a closed site;

(b) For holders of solid waste disposal site permits other than those in subsection (9)(a) of this rule, beginning on July 1, 1994 the solid waste permit compliance fee and the [~~The~~] 1991 Recycling Act [~~annual~~] permit fee, if applicable, [~~shall be~~] are not billed to the permittee by the Department[~~, and is due annually by the date indicated on the invoice;~~]. These fees shall be self-reported by the permittee to the Department, pursuant to sections (5) and (6) of this rule. The fee period shall be either the calendar quarter or the calendar year, and the fees are due to the Department as follows:

(A) For municipal solid waste disposal sites (including incinerators, energy recovery facilities and composting facilities), construction and demolition landfills: on the same schedule as specified in subsection (11)(c) of this rule. The July 31, 1994 submittal for solid waste disposal sites receiving less than 1,000 tons of solid waste a year shall be for the half-year fee period of July 31, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A);

(B) For industrial solid waste disposal sites, sludge or land application disposal sites and solid waste treatment facilities:

(i) For sites receiving over 20,000 tons of waste a year: quarterly, on the 30th day of the month following the end of the calendar quarter; or

(ii) For sites receiving less than 20,000 tons of waste a year; annually, on the 31st day of January beginning on January 31, 1995. A July 31, 1994 submittal shall be paid for the half-year fee period of July 1, 1994 through December 31, 1994, and shall be for half of the amount stated in OAR 340-97-120(3)(a)(A) or based on the tonnage received from January 1 through June 30, 1994, whichever is more;

(iii) A site which has received less than 20,000 tons of waste in past years but exceeds that amount in a given year, will in general be granted a one-year delay from the Department before the site is required to begin submitting permit fees on a quarterly basis. If the site appears likely to continue to exceed the 20,000 annual ton limit, then the Department will require the site to report tonnages and submit applicable permit fees on a quarterly basis.

(c) The per-ton solid waste disposal fees on domestic and out-of-state solid waste and the Orphan Site Account fee are not billed by the Department. They are due on the following schedule:

(A) Quarterly, on the 30th day of the month following the end of the calendar quarter; or

(B) ~~[On the same schedule as the waste volume reports required in the disposal permit, whichever is less frequent.]~~ Annually, on the 31st day of January beginning in 1995, for holders of solid waste disposal site permits for sites receiving less than 1,000 tons of solid waste a year. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994.

(d) The surcharge on disposal of solid waste generated out-of-state is not billed by the Department. It is due on the same schedule as the per-ton solid waste disposal fees above.

(e) The fees on Oregon solid waste disposed of out of state are due to the Department quarterly on the 30th day of the month following the end of the calendar quarter, or on the schedule specified in OAR 340-97-120(5)(e)(C). The fees shall be submitted together with a form approved by the Department, which shall include the amount of solid waste, type, county of origin of the solid waste, and state to which the solid waste is being transported for final disposal.

Stat. Auth.: ORS Ch. 459.297, 459.298 & 468
Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92

PERMIT FEE SCHEDULE

340-97-120 [Renumbered from 340-61-120]

(1) For purposes of OAR Chapter 340, Division 97:

(a) A "new facility" means a facility at a location not previously used or permitted, and does not include an expansion to an existing permitted site;

(b) An "off-site industrial facility" means all industrial solid waste disposal sites other than a "captive industrial disposal site";

(c) A "captive industrial facility" means an industrial solid waste disposal site where the permittee is the owner and operator of the site and is the generator of all the solid waste received at the site.

(2) Application Processing Fee. An application processing fee shall be submitted with each application for a new facility, including application for preliminary approval pursuant to OAR 340-93-090. The amount of the fee shall depend on the type of facility and the required action as follows:

(a) A new municipal solid waste landfill facility, incinerator, energy recovery facility, composting facility for mixed solid waste, solid waste treatment facility, off-site industrial facility or sludge disposal facility:

(A) Designed to receive over 7,500 tons of solid waste per year: $10,000;

(B) Designed to receive less than 7,500 tons of solid waste per year: $5,000;

(b) A new captive industrial facility (other than a transfer station or material recovery facility): $1,000;

(c) A new transfer station or material recovery facility:

(A) Receiving over 50,000 tons of solid waste per year: $500;

(B) Receiving between 10,000 and 50,000 tons of solid waste per year: $200;

(C) Receiving less than 10,000 tons of solid waste per year: $100;

(d) Letter A[~~a~~]uthorization (pursuant to OAR 340-93-060): [~~$500;~~]

(A) New site: $500;

(B) Renewal: $500;

(e) Permit Exemption Determination (pursuant to OAR 340-93-080(2)): $500;

(f) [~~(e)~~] Before June 30, 1994: Hazardous substance authorization (Any permit or plan review application which seeks new or significant modification in authorization to landfill cleanup materials contaminated by hazardous substances). A permittee who applies to increase his or her hazardous substance

authorization from one category to a higher category shall pay the difference in fees between the two categories:

(A) Authorization to receive 100,000 tons or more of designated cleanup material per year $50,000;

(B) Authorization to receive at least 50,000 but less than 100,000 tons of designated cleanup material per year $25,000;

(C) Authorization to receive at least 25,000 but less than 50,000 tons of designated cleanup material per year $12,500;

(D) Authorization to receive at least 10,000 but less than 25,000 tons of designated cleanup material per year $ 5,000;

(E) Authorization to receive at least 5,000 but less than 10,000 tons of designated cleanup material per year $ 1,000;

(F) Authorization to receive at least 1,000 but less than 5,000 tons of designated cleanup material per year $ 250.

(3) [~~Annual~~] Solid Waste Permit Compliance Fee. The Commission establishes the following fee schedule including base per-ton rates to be used to determine the [~~annual~~] solid waste permit compliance fee beginning with fiscal year 1993. The per-ton rates are based on the estimated solid waste to be received at all permitted solid waste disposal sites and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this fee schedule. To determine the [~~annual~~] solid waste permit compliance fee, the Department may use the base per-ton rates, or any lower rates if the rates would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the base rates must be fixed by rule by the Commission. (In any case where a facility fits into more than one category, the permittee shall pay only the highest fee):

(a) All facilities accepting solid waste except transfer stations and material recovery facilities:

(A) $200, if the facility receives less than 1,000 tons of solid waste a year; or

(B) A [~~n annual~~] solid waste permit compliance fee based on the total amount of solid waste received at the facility in the previous calendar quarter or year, as applicable, at the following rate:

(i) All municipal landfills, demolition landfills, off-site industrial facilities, sludge disposal facilities, incinerators and solid waste treatment facilities: $.21 per ton;

(ii) Captive industrial facilities: $.21 per ton;

(iii) Energy recovery facilities: $.13 per ton;

(iv) Composting facilities receiving mixed solid waste: $.10 per ton.

(C) If a disposal site (other than a municipal solid waste facility) is not required by the Department to monitor and report volumes of solid waste collected, the [~~annual~~] solid waste permit compliance fee may be based on the estimated tonnage received in the previous quarter or year.

(b) Transfer stations and material recovery facilities:

(A) Facilities accepting over 50,000 tons of solid waste per year: $1,000;

(B) Facilities accepting between 10,000 and 50,000 tons of solid waste per year: $500;

(C) Facilities accepting less than 10,000 tons of solid waste per year: $50.

(c) Closed Disposal Sites:

(A) Year of closure. If a land disposal site stops receiving waste before April 1 of the fiscal year in which the site permanently ceases active operations, the Department shall determine a pro-rated permit compliance fee for those quarters of the fiscal year not covered by the permit compliance fee paid on solid waste received at the site. The pro-rated fee for the quarters the site was closed shall be based on the calculation in paragraph (B) of this subsection.

(B) Each [~~landfill~~] land disposal site which closes after July 1, 1984:. . . . . $150, or the average tonnage of solid waste received in the three most active years of site operation multiplied by $.025 per ton, whichever is greater; but the maximum [~~annual~~] permit compliance fee shall not exceed $2,500.

(4) 1991 Recycling Act [~~annual~~] permit fee:

(a) A 1991 Recycling Act [~~annual~~] permit fee shall be submitted by each solid waste permittee which received solid waste in the previous calendar quarter or year, as applicable, except transfer stations, material recovery facilities and captive industrial facilities. The Commission establishes the 1991 Recycling Act [~~annual~~] permit fee as $.09 per ton for each ton of solid waste received in the subject calendar quarter or year; quarter;

(b) The $.09 per-ton rate is based on the estimated solid waste received at all permitted solid waste disposal sites subject to this fee [~~in the previous calendar year~~] and on the Department's Legislatively Approved Budget. The Department will review annually the amount of revenue generated by this rate. To determine the 1991 Recycling Act [~~annual~~] permit fee, the Department may use this rate, or any lower rate if the rate would generate more revenue than provided in the Department's Legislatively Approved Budget. Any increase in the rate must be fixed by rule by the Commission;

(c) [~~The Department shall bill the permittee for the amount of this fee together with the annual solid waste permit fee in section 3 of this rule.~~] This fee is in addition to any other permit fee and per-ton fee which may be assessed by the Department.

(5) Per-ton solid waste disposal fees on domestic solid waste. Each solid waste disposal site that receives domestic solid waste (except transfer stations, material recovery facilities, solid waste treatment facilities and composting facilities), and each person transporting solid waste out of Oregon for disposal at a disposal site that receives domestic solid waste except as excluded under OAR 340-97-110(4)(c), shall submit to the Department of Environmental Quality the following fees for each ton of domestic solid waste received at the disposal site:

(a) A per-ton fee of 50 cents;

[~~(b) From January 1, 1992 to December 31, 1993, an additional per-ton fee of 35 cents;~~]

(b) [~~(c) Beginning January 1, 1994 the~~] An additional per-ton fee [~~established in subsection (5)(b) of this rule shall be reduced to~~] of 31 cents;

(c) [~~(d)~~] Beginning January 1, 1993, an additional per-ton fee of 13 cents for the Orphan Site Account.

(d) [~~(e)~~] Submittal schedule:

(A) These per-ton fees shall be submitted to the Department quarterly[~~, or on the same schedule as the waste volume reports required in the disposal permit, whichever is less frequent~~]. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter;

(B) Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually on July [~~1~~] 31, beginning in [~~1991.~~] 1994, and on January 31, beginning in 1995. The January 1995 submittal for the per-ton solid waste disposal fee and Orphan Site Account fee shall cover waste received from July 1 through December 31, 1994. If the disposal site is not required by the Department to monitor and report volumes of solid waste collected, the fees shall be accompanied by an estimate of the population served by the disposal site;

(C) For solid waste transported out of state for disposal, the per-ton fees shall be paid to the Department quarterly. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter in which the disposal occurred. If the transportation is not on-going, the fee shall be paid to the Department within 60 days after the disposal occurs.

(e) [~~(f)~~] As used in this rule and in OAR 340-97-110, the term "domestic solid waste" does not include:

(A) Source separated recyclable material, or material recovered at the disposal site; or

(B) Domestic solid waste which is not generated within this state.

(f) [~~(g)~~] For solid waste delivered to disposal facilities owned or operated by a metropolitan service district, the fees established in this section shall be levied on the district, not on the disposal site.

(6) Per-ton solid waste disposal fee on solid waste generated out-of-state. Each solid waste disposal site or regional disposal site that receives solid waste generated out-of-state shall submit to the Department a per-ton solid waste disposal fee. The per-ton solid waste disposal fee shall be the sum of the per-ton fees established for domestic solid waste in subsections (5)(a), (b)[~~,~~] and (c) [~~and (d)~~] of this rule:

(a) The per-ton fee solid waste disposal fee shall become effective on the dates specified in section (5) of this rule and shall apply to all solid waste received after July 1, 1991;

(b) This per-ton solid waste disposal fee shall apply to each ton of out-of-state solid waste received at the disposal site, but shall not include source separated recyclable materials, or material recovered at the disposal site;

(c) Submittal schedule: This per-ton solid waste disposal fee shall be submitted to the Department quarterly[~~, or on the same schedule as the waste volume reports required in the disposal permit, whichever is less frequent~~]. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter. Disposal sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually on July 31, beginning in 1994, and on January 31, beginning in 1995;

(d) This per-ton solid waste disposal fee on out-of-state solid waste shall be collected at the first disposal facility in Oregon receiving the waste, including but not limited to a solid waste land disposal site, transfer station or incinerator, and remitted directly to the Department on the schedule specified in this rule;

(e) If, after final appeal, the surcharge established in section (7) of this rule is held to be valid and the state is able to collect the surcharge, the per-ton fee on solid waste generated out-of-state established in this section shall no longer apply, except for any per-ton fee established pursuant to ORS 459.236, and the person responsible for payment of the surcharge may deduct from the amount due any fees paid to the Department on solid waste generated out-of-state under section (6) of this rule. The amount paid for any per-ton fee established pursuant to ORS 459.236 shall not be included in the amount to be deducted from the amount of surcharge due.

(7) Surcharge on disposal of solid waste generated out-of-state. Each solid waste disposal site or regional solid waste disposal site that receives solid waste generated out-of-state shall submit to the Department of Environmental Quality a per-ton surcharge of $2.25. This surcharge shall apply to each ton of out-of-state solid waste received at the disposal site:

(a) This per-ton surcharge shall apply to all solid waste received after January 1, 1991;

(b) Submittal schedule: This per-ton surcharge shall be submitted to the Department quarterly [~~, or on the same schedule as the waste volume reports required in the disposal permit, whichever is less frequent~~]. Quarterly remittals shall be due on the 30th day of the month following the end of the calendar quarter. Disposal

sites receiving less than 1,000 tons of solid waste per year shall submit the fees annually on July 1, beginning in 1991, and on January 31, beginning in 1995;

(c) This surcharge shall be in addition to any other fee charged for disposal of solid waste at the site;

(d) This surcharge on out-of-state solid waste shall be collected at the first disposal facility in Oregon receiving the waste, including but not limited to a solid waste land disposal site, transfer station or incinerator, and remitted directly to the Department on the schedule specified in this rule.

Stat. Auth.: ORS Ch. 459.045(1) & (3), 459.235(2), 459.297, 459.298, 459.420 & 468.065
Hist.: DEQ 3-1984, f. & ef. 3-7-84; DEQ 12-1988, f. & cert. ef. 6-14-88; DEQ 14-1990, f. & cert. ef. 3-22-90; DEQ 45-1990, f. & cert. ef. 12-26-90; DEQ 12-1991(Temp), f. & cert. ef. 8-2-91; DEQ 28-1991, f. & cert. ef. 12-18-91; DEQ 8-1992, f. & cert. ef. 4-30-92

Attachment B

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:
March 3, 1994	2:00 p.m.	Department of Environmental Quality Conference Room 3A 811 SW 6th Portland, Oregon
March 8, 1994	2:00 p.m.	Adult and Family Services Ash Building 545 SW 2nd Avenue, Suite B Corvallis, Oregon
March 8, 1994	10:00 a.m.	Hoke College Center, Room 201 Eastern Oregon State College LaGrande, Oregon
March 10, 1994	10:00 a.m.	Hitchcock Auditorium, Pioneer Building Central Oregon Community College 2600 NW College Way Bend, Oregon

HEARINGS OFFICER(s): Deanna Mueller-Crispin (Portland), Charles W. Donaldson, (Corvallis); Tim Davison (LaGrande); other to be announced.

STATUTORY AUTHORITY: ORS 459.045; ORS 468.020; Senate Bill 42, 1993 Legislature; Senate Bill 1012, 1993 Legislature; Senate Bill 1037, 1993 Legislature.

ADOPT: OAR 340-93-063

AMEND: OAR 340-90-010, OAR 340-90-030, OAR 340-90-040, OAR 340-90-060, OAR 340-91-030, OAR 340-91-080, OAR 340-93-030, OAR 340-93-050, OAR 340-93-060, OAR 340-93-070, OAR 340-93-080, OAR 340-93-090, OAR 340-93-110, OAR 340-93-120, OAR 340-93-130, OAR 340-93-140, OAR 340-93-150, OAR 340-93-160, OAR 340-93-170, OAR 340-93-190, OAR 340-93-250, OAR 340-94-001, OAR 340-94-010, OAR 340-94-030, OAR 340-94-040, OAR 340-94-060, OAR 340-94-080, OAR 340-94-100, OAR 340-94-110, OAR 340-94-120, OAR 340-94-130, OAR 340-94-140, OAR 340-95-010, OAR 340-95-020, OAR 340-95-030, OAR 340-95-040, OAR 340-95-050, OAR 340-95-060, OAR 340-95-070, OAR 340-95-080, OAR 340-95-090, OAR 340-96-010, OAR 340-96-020, OAR 340-96-030,

OAR 340-96-040, OAR 340-96-050, OAR 340-97-001, OAR 340-97-110, and OAR 340-97-120.

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 proposed rules would implement changes in the management of solid waste required and/or allowed by 1993 Legislation, along with other changes identified by the Department to promote improved solid waste program operation. The proposed rules would establish dates for provision of financial assurance for land disposal sites; change the length of post-closure care for land disposal sites; change the collection of some solid waste permit fees from an annual billing to self-reporting; establish a new permit category for Special Soil Treatment Permits; establish two new solid waste permit fees; and establish as permanent rule the effective dates for certain federal solid waste regulations adopted on October 29, 1993 by temporary rule.

LAST DATE FOR COMMENT: March 14, 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: Deanna Mueller-Crispin
ADDRESS: Waste Management and Cleanup Division
811 S. W. 6th Avenue
Portland, Oregon 97204
TELEPHONE: (503) 229-5808
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.

Deanna Mueller-Crispin
Signature

1/14/94
Date

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Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Solid Waste Rule Revisions:
Permit Fees and Other Revisions Required by 1993 Legislation

Date Issued:	1/28/94
Public Hearings:	3/3/94
	3/8/94 (La Grande)
	3/8/94 (Corvallis)
	3/10/94
Comments Due:	3/14/94

WHO IS AFFECTED:

Owners and operators of solid waste disposal sites (including municipal, construction & demolition and industrial landfills); local governments which operate solid waste disposal sites; persons needing to treat/dispose of petroleum-contaminated soils; persons disposing of solid waste under a Department Letter Authorization; persons requesting a determination from the Department that a given waste is inert and no solid waste permit is needed for its disposal.

WHAT IS PROPOSED:

The proposed rules would implement changes in the management of solid waste required and/or allowed by 1993 Legislation (Senate Bill 42, Senate Bill 1012 and Senate Bill 1037), along with other changes identified by the Department to promote improved solid waste program operation.

WHAT ARE THE HIGHLIGHTS:

The proposed rules would:

1. Establish April 9, 1995 as the date by which most land disposal sites must provide financial assurance for closure and post-closure care;

2. Incorporate a new statutory requirement for financial assurance for corrective action for land disposal sites;

3. Establish 30 years as the time period for post-closure care for all land disposal sites;

4. Change the collection of solid waste permit fees (for all permit categories except transfer stations, material recovery facilities and closed

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

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

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facilities) from an annual billing by the Department to self-reporting on a quarterly or annual basis;

5. Establish a new permit category for Special Soil Treatment Permits ($2,500 fee);

6. Establish two new solid waste permit fees; and

7. Establish as permanent rule the effective dates for certain federal solid waste regulations ("Subtitle D") adopted on October 29, 1993 as a DEQ temporary rule.

HOW TO COMMENT:

Public Hearings to provide information and receive public comment are scheduled as follows:

Department of Environmental Quality
Conference Room 3A
811 SW 6th Avenue
Portland, Oregon
March 3, 1994
2:00 p.m.

Adult and Family Services
Ash Building
545 SW 2nd Avenue, Suite B
Corvallis, Oregon
March 8, 1994
2:00 p.m.

Eastern Oregon State College
Hoke College Center, Room 201
La Grande, Oregon
March 8, 1994
10:00 a.m.

Central Oregon Community College
Hitchcock Auditorium, Pioneer Building
2600 NW College Way
Bend, Oregon
March 10, 1994
10:00 a.m.

Written comments must be received by 5:00 p.m. on March 14, 1994 at the following address:

Department of Environmental Quality
Waste Management and Cleanup Division
811 S. W. 6th Avenue
Portland, Oregon, 97204
Attention: Deanna Mueller-Crispin

This packet contains the complete staff report on this rulemaking, including the proposed rule. If you have questions on the proposed rule, please contact Deanna Mueller-Crispin at (503) 229-5808.

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.

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Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste Rule Revisions:
Permit Fees
and Other Changes Required by 1993 Legislation

Rulemaking Statements

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

1. Legal Authority

ORS 459.045, ORS 468.020, 1993 Senate Bill 42, 1993 Senate Bill 1012, 1993 Senate Bill 1037

2. Need for the Rule

This rule implements changes required and/or allowed by 1993 Legislation (Senate Bills 42, 1012 and 1037), along with other changes identified by the Department as promoting improved program operation. The proposed rule changes certain definitions pursuant to SB 42; incorporates changes in dates for provision of financial assurance and in length of post-closure care for land disposal sites pursuant to SB 1012; and changes the collection of some solid waste permit fees from an annual billing to self-reporting either quarterly or annually depending on size of the facility, as intended by the passage of SB 1037. The rule also establishes a new permit category for Special Soil Treatment Permits, and two other new solid waste permit fees. In addition, the Environmental Quality Commission adopted temporary rules on October 29, 1993 delaying effective dates for the federal Subtitle D criteria for municipal solid waste landfills. This rule adopts those dates as permanent rule.

3. Principal Documents Relied Upon in this Rulemaking

(1) OAR Chapter 340 Divisions 90 and 91, and 93 through 97

(2) ORS Chapters 459 and 459A
(3) 40 CFR Parts 257 and 258, Solid Waste Disposal Facility Criteria; Final Rule (Federal Register, October 9, 1991)
(4) 40 CFR Parts 257 and 258, Solid Waste Disposal Facility Criteria; Delay of Compliance and Effective Dates; Final Rule (Federal Register, Federal Register, October 1, 1993)
(5) Department Memo to Solid Waste Permit Fee Work Group, November 18, 1993 (Background Material for December 2 Meeting)
(6) 1993 Senate Bill 42
(7) 1993 Senate Bill 1012
(8) 1993 Senate Bill 1037

These documents are available for review during normal business hours at the Department's Headquarters office, 811 S.W. 6th Avenue, Portland, Oregon.

4. Advisory Committee Involvement

The Solid Waste Permit Fee Work Group (originally established in 1991 to assist the Department with solid waste permit fee revisions) met on December 2, 1993 to consider alternatives for changing the way the solid waste permit fee is collected by the Department and separate new fees proposed by the Department. The Solid Waste Advisory Committee (SWAC) considered the Work Group's recommendations and the entire proposed rule at its December 16, 1993 meeting. The Department took the Work Group's and SWAC's comments into consideration in drafting the rule.

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Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste Rule Revisions:
Permit Fees;
and Other Changes Required by 1993 Legislation

Fiscal and Economic Impact Statement

Introduction

The following elements of this rulemaking proposal would have fiscal and economic impacts:

1. Delay in implementation dates of federal Subtitle D criteria for municipal solid waste landfills.

2. Financial assurance requirements: a) for closure and post-closure care for new land disposal sites at the time a solid waste permit is issued for the new facility; b) financial assurance for closure and post-closure care by a date certain for existing land disposal sites (April 9, 1995 for most facilities) rather than five years before the estimated closure date; and c) financial assurance for corrective action.

3. Requirement for 30 years of post-closure care at all land disposal sites.

4. Requirement to pay the solid waste permit fee on a quarterly basis for certain larger facilities, rather than being billed annually by the Department for the fee.

5. New Special Soil Treatment Permit with a $2,500 permit application processing fee.

6. Establishment of a provision allowing a one-time renewal for Letter Authorization permits, and associated $500 renewal fee.

7. New $500 Permit Exemption Determination fee for disposal of inert materials.

Following is a discussion of the fiscal impacts of the above.

1. Delay in implementation of federal criteria (40 CFR Part 258, or "Subtitle D") effective dates. The original date established by the Environmental Protection Agency (EPA) by which municipal solid waste landfills were to comply with these federal criteria was October 9, 1993. This date was adopted as part of the Department's rule amendments on March 5, 1993 incorporating federal criteria into DEQ rules. The EPA later (October 1, 1993) delayed implementation dates for certain smaller municipal solid waste landfills. The delayed dates allow "small" landfills (those receiving less than 100 tons of solid waste a day) until April 9, 1994 -- an extra six months -- to comply with the Subtitle D criteria. This delay has no fiscal impact under the current rule, as it will already have expired. "Very small" landfills meeting the small community exemption in 40 CFR §258.1(f)(1) have until October 9, 1995 -- two extra years -- to meet the federal criteria. Many of these very small facilities intend to close rather than have to comply with the new federal criteria, but in many cases communities will have to seek alternative ways to dispose of their municipal solid waste. This delay will allow these very small facilities additional time to operate under existing state criteria, to develop plans for future waste management, and to gather additional funds (through tipping fees) for their future closure.

   Tipping fees range from $0 to about $40 per ton of waste received. Because the two-year delay is limited to certain very small landfills, the maximum amount of tonnage collected in the two extra years would be about 14,600. At $40 a ton, that would be $584,000 in additional revenue. In fact, most facilities in this category receive much less than 20 tons a day (median: ~3 tons/day), and the great majority have tipping fees in the range of $0 to ~$10/ton. A more "typical" facility might, then, receive around $22,000 in additional gross revenue during the two-year extension. There are 56 "very small" facilities potentially eligible for this delay.

2. Financial Assurance requirements. These are federal and state requirements for municipal solid waste landfills, and state requirements for all land disposal sites. The amount of financial assurance to be provided must cover third-party costs of closure and 30 years of post-closure care (unless a shorter time is approved by the Department). The closure cost estimate must cover closure at the time when it would be most expensive. Financial assurance for corrective action must be provided when corrective action is required by the Department. This rule does not cause an additional financial impact for municipal solid waste landfills, since it just implements financial assurance requirements already established in federal regulations.

   Senate Bill 1012, and therefore these rules which implement that legislation, create the following financial impacts for *non-municipal land disposal sites*: for new facilities, up-front demonstration of financial assurance for closure and post-closure care; for existing facilities, requiring demonstration of financial assurance for closure and post-closure care by April 9, 1995, instead of five years before closing; and for

any facility requiring corrective care, provision of financial assurance for such activities. That is, the rule moves the date forward for a permittee to provide financial assurance for closure and post-closure care, rather than creating a new requirement. However, non-municipal land disposal sites sometimes close with little or no notice in response to economic factors. This has impeded the Department's ability to require financial assurance for closure within the "five years before closure" timeframe. The effect of the new statute and rule may be that some of these facilities which would otherwise have closed without providing a closure/post-closure fund will now have to do this by a date certain (April 9, 1995). The Department may exempt non-municipal land disposal sites from the closure and post-closure financial assurance requirements if the site poses no significant threat of adverse impact on ground- or surface water, or to public health. Financial assurance for corrective action will be required only if groundwater quality standards are violated by the facility and the Department requires corrective action (persons responsible for polluting groundwater are in any case responsible for remediation).

The cost of closing a land disposal site depends on the type of site and how large it is. Non-municipal land disposal sites subject to the above requirements include the following: six construction and demolition landfills; about 70 wood waste landfills; about seven pulp and paper landfills; about 15 "other" industrial landfills; and about 15 sludge disposal or landspreading sites. The Department has specifically exempted some of these sites from financial assurance requirements. Others will need to comply. In general, closure costs for non-municipal land disposal sites are likely to be somewhat less than for municipal solid waste landfills since stringent federal requirements do not apply. The closure cost for a moderate-size woodwaste landfill may amount to $500,000. Post-closure maintenance costs depend on many factors, including site-specific hydrogeology and number of monitoring wells required. For a relatively straightforward site, annual post-closure maintenance costs could reach $10,000. A large, complex site might incur annual maintenance costs of up to $50,000.

3. Requirement for 30 years post-closure care. This is a federal requirement for municipal solid waste landfills. It is a new state requirement for non-municipal land disposal sites, pursuant to SB 1012. The former state requirement was for 10 years post-closure care (although the Department could lengthen that period if it found a need to protect against a significant risk to public health or the environment). However, a permittee may request termination of the permit any time after closure is completed. The Department may grant this request, terminating the requirement for post-closure maintenance, if it finds that there is no longer a need for active supervision of the site. A permittee will incur additional costs for every additional year of post-closure maintenance, ranging up to perhaps $50,000 annually (see paragraph 2 above). There is no way to estimate how many additional years of post-closure care may be necessary, nor the number of facilities involved.

4. Quarterly payment and self-reporting of permit fees for some permittees. No changes in the annual permit fee schedule are proposed, only changes in the schedule and way the permit fee (including the 1991 Recycling Act fee) is collected. Larger facilities (those municipal solid waste landfills receiving over 1,000 tons of solid waste a year, and non-municipal sites receiving over 20,000 tons a year) would self-report these fees on a quarterly basis, 30 days after the end of each calendar quarter. Smaller facilities would self-report annually, on January 31 of each year.

Municipal sites already submit quarterly or annual Solid Waste Disposal Report/Fee Calculation forms. These forms would be modified to include an additional amount for the permit fees, involving no additional administrative costs for the permittees. This would offer a fiscal advantage to those permittees reporting quarterly, as they would pay their "annual" permit fee in four installments, over the year, rather than receiving an annual invoice from DEQ and paying the whole amount at the beginning of the fiscal year. Collectively they would enjoy the interest (or avoid having to borrow) on $700,000 for one quarter, $475,000 for two quarters and $240,000 for three quarters.

Those municipal permittees now submitting the Solid Waste Disposal Report/Fee Calculation annually on July 31 would go through a one-time six-month transition period to submit the report (with the self-reported permit fees of $200) on a calendar year basis, i.e. January 31 of each year. These sites would pay $100 on July 31, 1994 (permit compliance fee for the remaining half of calendar year 1994), and then $200 on January 31, 1995 for the permit compliance fee for calendar year 1995. Likewise they would pay the remaining half of their annual per-ton solid waste disposal fees for the past calendar year on January 31, 1995. This would in effect move up by six months the date by which permit fees and per-ton solid waste disposal fees are paid to put permittees on a calendar year reporting basis. There would be some transaction costs involved with this transition period, perhaps one person day of administrative time, or about $240.

Non-municipal land disposal sites do not submit a quarterly or annual Solid Waste Disposal Report/Fee Calculation form. Most of them are required to report tonnages either quarterly or annually. The form requires waste disposed of to be reported in tonnages. Non-municipal land disposal permittees often report in cubic yards or in gallons rather than in tons. A permittee using the form to self-report the permit fee would be required to convert waste to tons, using various factors developed by the Department. Currently the Department does this conversion. These permittees would need to familiarize their staff with the new form, and incorporate the quarterly (or annual) reporting into their business procedures. They would incur some transition costs, perhaps 12 hours to set up the system, and 6 - 8 hours quarterly (or annually) thereafter to do the reporting and write the permit fee checks. (Permittees are already required to track tonnages disposed of.) At $30 an hour for staff, that would amount to $360 initially, and $180 - $240 per reporting period thereafter.

5. New Special Soil Treatment Permit and associated $2,500 fee. This new permit would allow limited duration treatment/disposal of petroleum contaminated soils (PCS) which requires more than one year but less than three years. In some instances (such as contamination with heavy oils such as diesel) on-site soil cleanup may require more than the one year allowed under a Letter Authorization (with the new one-time renewal). The new permit would accommodate such cleanups, which under Department rule are preferred to landfill disposal. There are many costs other than the permit fee involved in soil treatment such as consultant's fees, berming, soil tilling, etc., totalling about $30 a cubic yard (roughly a ton). The alternative to treatment is to use a more expensive disposal option, such as thermal desorption ($45-57/ton plus transportation) or disposal at a permitted landfill (~$40-60/ton). An average treatment/disposal might consist of 300 to 800 cubic yards. In the last two years DEQ has issued about 40 Letter Authorizations for PCS cleanups. The Department estimates that from 15 to 30 sites a year might take advantage of the new permit.

6. New renewal of Letter Authorizations and associated $500 fee. Allowing a one-time six-month renewal for a Letter Authorization would facilitate completion of some disposal actions, such as remediation by on-site aeration of certain PCS contaminated with lighter petroleum products. Such cleanups can sometimes not be completed within the six months now allowed under a Letter Authorization ($500 fee, regardless of the size of the remediation). See preceding paragraph for cleanup costs. A $500 renewal fee would amount to about $1 per ton of soils remediated in an average cleanup of 300 to 800 cubic yards. The Department estimates that perhaps one quarter of the annual number of PCS Letter Authorizations (10) might request renewals.

7. New $500 fee for permit exemption determination. The permit exemption determination is requested by industries that want to dispose of inert materials on-site. The Department issues from five to ten permit exemption determinations a year, mostly for materials similar to foundry sand and glass. The permit exemption allows an industry to dispose of the specified materials indefinitely. These materials would otherwise have to be disposed of at a permitted solid waste landfill at a cost of at least $20 a ton.

General Public

There would be no direct effect on the general public. The additional administrative costs identified for municipal solid waste landfills are small enough that they would likely be absorbed.

Small Business

Some municipal solid waste landfill operators are small businesses. They would incur the costs and benefits identified above in sections 1, 2, 3 and 4. Any operator of an non-municipal solid waste land disposal site would be subject to the costs identified in sections 2, 3 and 4 above for such facilities. Some small businesses have to dispose of petroleum-contaminated soils, and may want to do so by on-site aeration. If so, the costs and benefits identified in sections 5 or 6 would apply. Any industry that was also a small business wanting a permit exemption determination would incur a $500 cost pursuant to section 7.

Large Business

Large businesses would be affected in the same way as small businesses. Large businesses are more likely than small businesses to operate larger industrial landfills, so they would more likely be affected by the costs associated with industrial facilities identified in sections 2, 3 and 4 above.

Local Governments

Local governments operate both large and small landfills. However, small landfills are much more likely to be operated by local governments than by private businesses. As such, they will benefit from the delays in "Subtitle D" effective dates discussed in section 1. As operators of small municipal landfills, they would incur the administrative costs involved in the transition from fiscal year to calendar year permit fee payment identified in section 4. A very small local government might experience budget difficulties because of the six-month "advance" in the permit fee and per-ton fee payments. Local governments may also operate construction and demolition landfills. As such, they would be affected by the costs for non-municipal land disposal sites identified in sections 2, 3 and 4. A local government may need to implement a PCS cleanup using a Special Soil Treatment Permit or Letter Authorization; if so, it could be affected by the costs and benefits discussed in sections 5 or 6 above.

State Agencies

- DEQ

Workload:

The Department will need to devote increased resources to reviewing financial assurance. The extent to which the Department's workload will be increased will depend in part on specific criteria for financial assurance to be developed in subsequent rulemaking. The amount of financial assurance for closure and post-closure care must be based upon a current site-specific closure plan

prepared by the land disposal site permittee. Within the next year (by April 1995) approximately 40 municipal solid waste landfills and 100 non-municipal land disposal sites will have to submit financial assurance (or receive an exemption, in the case of non-municipal facilities). The site project officer (either engineer, hydrogeologist or environmental specialist) will have to review closure plans. This work will be absorbed by existing staff.

To move to self-reporting of permit fees, the Department will need to develop fact sheets and new reporting forms and to inform permittees of the new procedures. The Department's data base will also require revision to track submittal of permit fees. The accounting system will require related revision as some classes of permittee (e.g. transfer stations) will still be invoiced for the permit fee, while other permittees will self-report. In a year or two DEQ's workload should decrease as permittees become familiar with the self-reporting system.

Application procedures will need to be developed and followed for the Special Soil Treatment Permit. It is anticipated that from 15 to 30 applications will be submitted annually.

Revenues:

The Special Soil Treatment Permit may generate from $37,500 to $75,000 annually (15 to 30 permits).

The Letter Authorization renewal fee may generate $5,000 a year in additional fees (10 renewals).

The permit exemption determination may generate $5,000 a year in additional fees (assumes 10 determinations).

Expenses:

The Special Soil Treatment Permit fee is designed to cover the Department's expenses in reviewing the permit application, issuing the permit and overseeing the cleanup.

The Letter Authorization renewal fee is designed to approximately cover the Department's costs in issuing a permit renewal and overseeing the site for an additional six months, including additional site inspection(s).

The permit exemption determination fee is designed to capture some of the Department's current expenses in issuing these determinations. This entails

much of the same work as in issuing a permit (site visit, review of location criteria, review of test results on the material to be disposed of).

- Other Agencies

Other agencies would not be directly affected. No state agency holds a solid waste disposal permit.

fiscal.cat
1/14/94

Attachment B

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste Rule Revisions:
Permit Fees;
and Other Changes Required by 1993 Legislation

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

This rule implements changes required and/or allowed by 1993 Legislation (Senate Bills 42, 1012 and 1037), along with other changes identified by the Department as promoting improved program operation. The proposed rule changes certain definitions pursuant to SB 42; incorporates changes in provision of financial assurance and length of post-closure care for land disposal sites pursuant to SB 1012; and changes the collection of some solid waste permit fees from an annual billing to self-reporting either quarterly or annually depending on size of the facility, as intended by the passage of SB 1037. In addition, the Environmental Quality Commission adopted temporary rules on October 29, 1993 delaying effective dates for the federal Subtitle D criteria for municipal solid waste landfills. This rule adopts those dates as permanent rule.

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:

Solid waste permits: provision of financial assurance for closure, post-closure care and corrective action; length of post-closure care; adopt as permanent rule a delay in effective dates for meeting federal criteria on siting, design and operation of municipal solid waste landfills; permits for on-site treatment/disposal of petroleum-contaminated soils. The current SAC Program requires a local government to approve a land use compatibility statement before a solid waste permit is processed by the Department.

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):

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.

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 1/11/94

landuse.cat

ATTACHMENT C

State of Oregon
Department of Environmental Quality Memorandum

Date: March 15, 1994

To: Environmental Quality Commission

From: Deanna Mueller-Crispin

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: March 3, 1994, beginning at 2:00 p.m.
Hearing Location: Conference Room 3A, DEQ Headquarters, 811 SW Sixth Avenue, Portland, Oregon

Title of Proposal: Proposed Amendments to Solid Waste Rules to Incorporate Changes REquired for Federal Subtitle D Implementation, Changes in "Annual" Permit Fees and Other Housekeeping Changes

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.

Six people were in attendance, one person signed up to give testimony.

Prior to receiving testimony, Deanna Mueller-Crispin 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.

Chris Wohlers of ATEC Associates (and chair of the legislative affairs committee of the Oregon Petroleum Marketers Association) supported extension of the Letter Authorization. He noted that petroleum jobbers have been buffeted by many environmental concerns in the last few years, and that costs are a concern. He said he understood that the Special Soil Treatment Permit in the proposed rule does not meet DEQ's needs and probably not those of the OPMA either. He said

that sometimes soil treatment requires more than one year, and the current option (regular solid waste permit, $5,000 fee) is not appropriate for petroleum-contaminated soils. He supported and would participate in a Department process to devise an approach to address Department and industry concerns. (Mr. Wohlers submitted written testimony for the record.)

No one else presented oral or written comments.

There was no further testimony and the hearing was closed at about 2:25 p.m.

Attachments:

Written Testimony Submitted for the Record.

pdxhrg.cat

State of Oregon
Department of Environmental Quality Memorandum

Date: March 17, 1994

To: Environmental Quality Commission

From: Tim Davison, Eastern Region-Pendleton Office

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: March 8, 1994 beginning at 10:00 am

Hearing Location: Room 201
Hoke College Center
Eastern Oregon State College
La Grande, OR

Title of Proposal: Rulemaking Proposal - Solid Waste Rule Revisions: Permit Fees and Other Changes Required by 1993 Legislation (OAR Chapter 340 Divisions 90, 91 and 93 through 97)

The rulemaking hearing on the above titled proposal was convened at 10:10 am. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Two people were in attendance. No one signed up to give testimony.

Prior to receiving testimony, Deanna Mueller-Crispin briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

People were then invited to testify.

No oral testimony or written comments were submitted.

The hearing was closed at 10:30 am.

8mar94.hrg

State of Oregon
Department of Environmental Quality Memorandum

Date: March 10, 1994

To: Environmental Quality Commission

From: Chuck Donaldson, Manager, Western Region Solid Waste Program, Presiding Officer

Subject: Presiding Officer's Report of Public Rulemaking Hearing - Corvallis, Oregon - March 8, 1994

Title of Proposal: Solid Waste Rule Revisions: Permit Fees and Other Changes Required by 1993 Legislation

Two individuals presented testimony concerning the proposed rules. Summaries of their comments follow:

Mike Sherlock, Representing the Oregon Gasoline Dealers Association.

Mr. Sherlock stated that the Oregon Gasoline Dealers Association supported DEQ in its attempt to develop a streamlined process to allow remediation of Petroleum Contaminated Soils. He indicated that the proposed special permit for 1-3 years was a desirable thing to have. He concurred in DEQ staff's evaluation that the rules as proposed were probably not workable for off-site locations and supported DEQ's proposal to withdraw the proposed special permit rule and work with industry to seek a better solution to the problem.

Ronald Kreskey, International Paper Company - Gardiner Mill.

Mr. Kreskey made the following points:

1. Industrial landfills have too much regulation already.

2. The proposed new rules will add costs to the operation of industrial landfills.

3. To close a site currently costs about $100,000 per acre and adding 30 years of post closure care will add much more to the cost.

4. The 30 year post closure care requirement is onerous.

5. Financial assurance requirements are vague and need further explanation. If financial assurance can be covered under a blanket corporate guarantee or policy, the test will be much easier to meet and very desirable from his perspective.

No written testimony was submitted.

A total of four persons attended the hearing which lasted from 2:00 p.m. to approximately 3:15 p.m. The majority of the time was spent in responding to informal questions about the rules and discussion of solid waste regulation in general.

hearing.rpt

State of Oregon
Department of Environmental Quality Memorandum

Date: March 16, 1994

To: Environmental Quality Commission

From: Patricia Vernon, Solid Waste Policy and Program Manager PV

Subject: Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: March 10, 1994, beginning at 10:10 A.M.

Hearing Location: Bend, Oregon

Title of Proposal: Permit Fees and Other Revisions Required by 1993 Legislature

The rulemaking hearing on the above titled proposal was convened at 10:10 A.M.. An overview of the rule package was presented. 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.

2 people were in attendance, 0 people signed up to give testimony and no written comments were submitted. The hearing was closed at 10:15 A.M.

Agenda Item G
April 22, 1994
Attachment D

Attachment D

RULEMAKING REGARDING:

Revisions to Solid Waste Rules: Amendments to Solid Waste Rules
to Incorporate Changes Required for Federal Subtitle D Implementation,
Changes in "Annual" Permit Fees and
Other Chousekeeping Changes

INDEX TO WRITTEN COMMENTS

Summaries of all comments received on the proposed rule amendments and Department responses are contained in Attachment E. The following people submitted written comments on the proposed rules:

1. Robert H.B. Long, Golder Associates Inc., 4104-148th Avenue, NE, Redmond, WA 98052, February 3, 1994.

2. Marc A. Aprea, Browning-Ferris Industries, Western Region, 915 L Street, Suite 1140, Sacramento, CA 95814, February 22, 1994.

3. Christopher C. Wohlers, ATEC Environmental Consultants, 11825 S.W. Greenburg Road, Suite 2B, Tigard, OR 97223, March 3, 1994.

4. Rob Forrest, Truax Harris Energy Company, 25115 S.W. Parkway, Post Office Box 607, Wilsonville, OR 97070-0607, March 4, 1994.

5. Christopher C. Wohlers, ATEC Environmental Consultants, 11825 S.W. Greenburg Road, Suite 2B, Tigard, OR 97223, March 9, 1994.

6. Kent C. Mayer, Finley Buttes Landfill Company, P.O. Box 61726, Vancouver, WA 98666, March 10, 1994.

7. Del J. Fogelquist, Western States Petroleum Association, 2201 Sixth Avenue, Suite 1105, Seattle, WA 98121-1832, March 14, 1994.

wrcomlst.cat

Attachment E

State of Oregon
Department of Environmental Quality Memorandum

Date: March 15, 1994

To: Environmental Quality Commission

From: E. Patricia Vernon, Manager, Solid Waste Policy and Programs

Subject: Department's Evaluation and Response to Public Comments Regarding Proposed Amendments to Solid Waste Rules to Incorporate Changes Required for Federal Subtitle D Implementation, Changes in "Annual" Permit Fees and Other Housekeeping Changes

The Department received oral testimony from three persons and seven written comments (see Attachment D) and responds as follows:

1. **Financial Assurance**

Two comments were received.

Marc A. Aprea of Browning-Ferris Industries provided comments discussing the need to develop a cost-effective self-assurance demonstration mechanism for private municipal solid waste landfills. He had noted the mention in the staff report of a subsequent rulemaking to clarify criteria for financial assurance. His comments present a proposed self-assurance mechanism or financial test for private owners or operators of municipal solid waste landfills which he proposed be adopted in the forthcoming rulemaking for financial assurance.

Ronald Kreskey of International Paper Company noted that the financial assurance requirements are vague and need further explanation. Allowing a blanket corporate guarantee or policy would be desirable.

Department response: Department rule currently allows a corporate financial test to satisfy the financial assurance requirement. But further changes to current rules on financial assurance are needed to implement changes required by SB 1012. The Solid Waste Advisory Committee advised the Department to convene a work group to consider the entire financial assurance rule as part of a separate rulemaking. This process is now underway. The Department will consider the above comments including the proposed financial test in the context of the financial assurance rulemaking.

2. **Regulations for Industrial Landfills**

One person provided testimony. Ronald Kreskey of International Paper said that the proposed new rules will add costs to the operation of industrial landfills, especially citing the new 30-year post-closure care requirement. He mentioned closure costs of $100,000 per acre.

Department response: Senate Bill 1012 requires financial assurance for closure and post-closure care of all solid waste land disposal sites. It also requires 30 years of post-closure care. However, it allows the Commission to exempt classes of sites (other than municipal solid waste landfills) from the financial assurance requirement. Current rule allows the Department to exempt a site from financial assurance if certain criteria are met (e.g. the site poses no significant threat of adverse impact on groundwater). Both statute and rule also allow a permittee of a closed site to apply for a termination of the permit and post-closure maintenance at any time (prior to 30 years), again if the site can meet certain criteria. Since current rule already contains flexibility in these two areas, no changes are proposed by the Department.

3. **Special Soil Treatment Permit.**

Six comments were received from five persons (one person submitted two separate letters).

Robert H.B. Long of Golder Associates agreed with the goal of the proposal, as it would allow landowners to choose the most cost-effective treatment technology for petroleum-contaminated soils (PCS) and minimize landfill disposal. But he noted that the proposed timeframe of three years is insufficient to accommodate on-site treatment of heavy petroleum hydrocarbons, where five to 10 years is not unusual. He recommends that either the permit be greater than three years, or that permit extensions be allowed if the Department's goal of greater flexibility is to be achieved.

Christopher Wohlers of ATEC Environmental Consultants (in two separate letters) supported the creation of a special soil treatment permit of up to three years, citing the need for members of the Oregon Petroleum Marketers Assoc. to have an "intermediate permitting approach" (less stringent than the existing solid waste facility permitting). If the rule as proposed cannot be incorporated, he urged the formation of an industry-DEQ work group to produce a proposed rules package that would accomplish their goals of establishing a mechanism for longer-term (e.g. three years) treatment at reasonable cost and with limited paperwork. He also recommended the fee be set at $1,500 rather than $2,500, mentioning rapid increases in cost burdens on the petroleum industry. He also urged DEQ's support in the modification of Metro's existing policy on transport of petroleum-impacted soil (which prohibits off-site treatment), noting that it appears to encourage less than optimal environmental

decision-making.

Rob Forrest of Truax Harris Energy Company supported the concept of a separate and new permit category to deal with on-site PCS treatment as long as the required information and processing time are similar to the Letter Authorization procedure. He recommended a fee of $1,200 rather than $2,500; the latter fee seems excessive for a cost recovery agreement controlled by a Letter Authorization. He also supported allowing soil to be moved from one location to another under this permit in order to consolidate the number of piles needing regulatory oversight.

Mike Sherlock representing the Oregon Gasoline Dealers Association (OGDA) indicated that the special permit for 1-3 years of soil treatment was desirable. The OGDA supports DEQ's proposal to withdraw the proposed special permit rule and work with industry to seek a better solution and develop a streamlined process for remediation of petroleum-contaminated soils

Del J. Fogelquist of the Western States Petroleum Association (WSPA) commented that WSPA supports the Department's recommendation for a proposed "Model Ordinance for Petroleum Contaminated Soils." This is a separate procedure from the current rulemaking proposal, and his comments are being passed on to Department staff involved in that process.

> Department response: The Department developed the Special Soil Treatment Permit contained in its proposed draft rule as a result of comment by the Solid Waste Advisory Committee (SWAC) at its December 16, 1993 meeting. Since then, on-going in-house review of the proposed language suggests that this option, as written, would not meet the needs of either the regulated community or the Department. As a solid waste permit, the new Special Soil Treatment Permit would be subject to the full solid waste permit issuing process including engineering and hydrogeologic analyses, and public notice requirements. The Department lacks staff resources to administer these permits in an expedited manner; an applicant could wait six months to a year for the permit process to be completed. Staff has concluded that this "solution" to the problems mentioned by the commenters is really one in appearance only. Therefore, the Department has removed the Special Soil Treatment Permit from the proposed rule adoption package. Instead, the Department will meet with the regulated community to explore other ways of dealing with the issue. The comments received in testimony will be taken into consideration at that time.

4. **Renewal of Letter Authorization**

One comment was received. Christopher Wohlers of ATEC Environmental Consultants strongly supported the proposed six-month renewal option for Letter Authorizations, noting several advantages (help assure complete treatment of PCS,

and avoid costs of expensive alternatives such as landfilling). He recommended that the renewal not be subject to the proposed $500 fee, citing skyrocketing regulatory costs for petroleum dealers.

Department response: The $500 fee application fee for a Letter Authorization approximately covers the Department's costs in administering the Letter Authorization. The Department will incur additional costs in renewing a Letter Authorization and providing oversight of the site for an additional six months. The $500 renewal fee will also encourage sites which can to finish the cleanup within the original six month framework. Department believes a $500 renewal fee is appropriate, but notes that such a fee is not applicable to sites conducting a Letter Authorization under a cost recovery agreement with DEQ.

5. **Construction Certification Report**

One comment was received. Kent Mayer of Finley Buttes Landfill Company commented on the proposed new provision which specifies that waste may be placed in a new landfill unit only after the Department has accepted a construction certification report (OAR 340-93-150(3)). The proposal would allow the permittee to proceed to use the new unit for waste disposal if the Department does not respond to a construction certification report within 30 days of its receipt **and** the permittee has received prior written Department approval of a fill plan. Mr. Mayer commented that the rule should include a timeframe (e.g. 60 days) for Department approval of the fill plan also, since a permittee cannot use the new unit until both documents are approved. Another option would be for the rule to offer an alternative to the fill plan approval process (e.g. procedures in the facility Operations and Maintenance manual, slope stability analysis in the construction documents).

Department response: The Department views all landfill engineering plan approvals as important. However the construction certification report documenting compliance with the construction quality assurance (CQA) plan is particularly critical. Therefore, because of its great importance, Department review of this element has been singled out in rule as a specific requirement before a new unit is placed into operation. In turn, the Department has agreed to a specified turnaround time.

Not only the fill plan but also many other engineering plans must in practice be reviewed by the Department as part of approving the design, construction and operation of a landfill unit. Thus it is logical to remove from the proposed rule specific reference to an approved fill plan, since these other plans are not spelled out in rule. The Department proposes to remove reference to the approved fill plan from the rule.

Attachment F

SOLID WASTE PERMIT FEE WORK GROUP MEMBERSHIP

Name	Affiliation
Paul Hribernick, Chair	Black, Helterline
Lauri Aunan	OSPIRG
Bill Webber	Valley Landfills (Corvallis)
Doug Coenen	Oregon Waste Systems
Steve Richardson (for Wes Hickey)	Columbia Resource Co. (Finley Buttes Landfill)
Bruce McIntosh	Hillsboro Landfill
Craig Lewis (for Bob Martin)	METRO
Craig Starr	Lane County Public Works
Rich Barrett	Willamette Industries
(Commissioner Rick Allen - absent	Jefferson County Courthouse)

Attachment G

SOLID WASTE ADVISORY COMMITTEE MEMBERS

Gail Achterman, (Chair)
Stoel, Rives, Boley, Jones
and Grey

DanielKearns, (Vice-Chair)
Oregon Environmental Council

Susan Keil
City of Portland
LOC

Bob Martin
Metropolitan Service District

Rick Paul
Association of Oregon Recyclers

Kathy Thomas
Thomas Wright Inc.

Peter Truitt
Truitt Brothers, Inc.

Lauri Aunan
OSPIRG

Bruce Bailey
Bend Garbage & Recycling Company
OSSI

Sandra Bishop
Public

Doug Coenen
Oregon Waste Systems, Inc.

Craig Starr
Lane County Public Works
AOC

Robert Emrick
Riverbend Landfill

Pamela Brown
Christianson Electric

John Drew
Far West Fibers

Richard Barrett
Willamette Industries

Attachment H

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Solid Waste Rule Adoption: Permit Fees and Other Revisions
Required by 1993 Legislation

Rule Implementation Plan

Summary of the Proposed Rule

The proposed rule establishes new dates by which existing land disposal sites have to provide financial assurance for closure and post-closure care; requires self-reporting and quarterly payments of the solid waste "annual" permit fee and 1991 Recycling Act fee for larger facilities; establishes a $500 renewal fee for Letter Authorizations; and sets a new $500 permit exemption determination fee. It will affect all permittees of solid waste land disposal sites, persons using Letter Authorizations for disposal/treatment of petroleum-contaminated soils and other solid wastes, and persons seeking a determination that they are exempt from the requirement for a solid waste permit.

Proposed Effective Date of the Rule

The rule goes into effect upon filing with the Secretary of State. However, it establishes various later effective dates for:

1. Compliance with federal "Subtitle D" criteria for municipal solid waste landfills (April 9, 1994 and October 9, 1995).

2. Provision of financial assurance for closure, post-closure care and corrective action: April 9, 1995 (or October 9, 1995 for very small landfills meeting certain federal criteria).

3. Initiation of self-reporting for the "annual" solid waste permit fee: July 31, 1994.

Proposal for Notification of Affected Persons

All solid waste permittees and other persons who asked to receive information on the subject will be notified by mail of the rule adoption. The notice will spell out the specific dates established by the rule. A general press release will be prepared, which will also be sent to organizations whose members may be affected. The action will be summarized in the Department's Beyond Waste publication.

Proposed Implementing Actions

Fact sheets will be developed for the new self-reporting solid waste permit fee. A fact sheet will also be prepared outlining the implementation dates for financial assurance. New reporting forms for various types of permittee will be developed for use in submitting tonnage reports, per-ton solid waste disposal fees (when applicable) and solid waste permit fees. Special attention will be devoted to informing industrial permittees who have not had to submit this form of report in the past.

Information and assistance will need to be given to small municipal solid waste permittees whose reporting will change from a fiscal to a calendar year. The DEQ data base will need to be changed to incorporate self-reporting instead of an annual billing for all types of permittees except transfer stations, material recovery facilities and closed facilities.

The regulated community will move from a system of being billed by DEQ for the annual permit fee, to a self-reporting system. They will have to establish procedures to comply with the new self-reporting requirements. DEQ staff may need to provide fairly intensive technical assistance to industrial permittees for the first few reporting periods to help them understand and comply with the new reporting.

All permittees of land disposal sites will have to obtain financial assurance for closure and post-closure care by the implementation dates (April and October, 1995). (Further guidance on provision of financial assurance will occur in a separate DEQ rulemaking now being prepared.)

The solid waste permit templates will need to be revised to incorporate new financial assurance, post-closure care periods and permit fee payment procedures.

Proposed Training/Assistance Actions

The new provisions will need to be explained to DEQ regional staff so they can assist permittees. The fact sheets and sample forms will be distributed to DEQ Regional and Headquarters staff. Solid Waste staff will work with Information Systems staff to revise data base programs to track payment of permit fees on a quarterly basis, as well as change the permit fee billing system. The Department will seek opportunities at appropriate forums

such as trade and professional association meetings to inform potentially affecter persons about the new requirements.

imppln.cat

Golder Associates Inc.

4104-148th Avenue, NE
Redmond, WA 98052
Telephone (206) 883-0777
Fax (206) 882-5498

Golder Associates

February 1, 1994 Our Ref. 773-1910

Oregon Department of Environmental Quality
Waste Management and Cleanup Division
811 S. W. 6th Avenue
Portland, OR 97204

ATTENTION: Ms. Deanna Mueller-Crispin

RE: SOLID WASTE RULE REVISIONS: PERMIT FEES AND OTHER REVISIONS

Dear Ms. Mueller-Crispin:

I recently received the ODEQ's public notice of the Permit Fees and Other Revisions, dated 1/28/94, which are being considered to the Solid Waste Rules. This letter consists of my formal response and comments to these proposed rule changes. As indicated in the notice, written comments were to be directed to you.

As an environmental consultant, I was most interested in the rule changes dealing with new Special Soil Treatment Permit which would allow limited duration on-site treatment/disposal of petroleum contaminated soils. Currently, such treatment is permitted only under the Letter of Authorization process which allows for time periods up to six months for completion of the soil treatment. The new permit is intended to accommodate on-site treatment of soils contaminated with heavy petroleum hydrocarbons, diesel, bunker C, etc. which may be relatively recalcitrant to biological degradation and which can require extended time periods to effectively treat. These types of compounds may require years before soil concentrations are lowered to below regulatory levels. I generally agree with the goal of the new permit since it enhances the flexibility of site landowners to choose the most cost effective soil treatment technology and also aims to minimize landfill disposal.

My concern is that the three year time period is arbitrary, and may be insufficient to attain adequate treatment for many sites and hydrocarbon mixtures. Biological treatment of soils contaminated with the heavy petroleum hydrocarbons can, in many cases, require longer time periods than three years. Five to ten years would not be considered particularly unusual.

Therefore, I would like to suggest that the maximum time period under the permit be extended to something greater than three years, or that appropriate allowances be included in the rules for permit extensions. Since the goal of the permit is to enhance flexibility, the time period allowed should not be so restrictive that this flexibility is diminished.

Thank you for providing me the opportunity to comment. Please contact me if you need more explanation or information.

Sincerely,

GOLDER ASSOCIATES INC.

Robert H. B. Long
Senior Hydrogeologist

RHBL/rhbl

BROWNING-FERRIS INDUSTRIES
WESTERN REGION

February 17, 1994

Deanna Mueller-Crispin
Oregon Department of Environmental Quality
Waste Management and Cleanup Division
811 S.W. 6th Avenue
Portland, Oregon 97204

Re: Proposed Solid Waste Rule Revisions

Dear Ms. Mueller-Crispin:

Browning-Ferris Industries, Inc. ("BFI") appreciates the opportunity to comment on the above-referenced proposal, which would implement Senate bills 42, 1012, and 1037. We support the promulgation of the proposed regulations. Because the background memorandum indicates, at page 10, that a "(s)ubsequent rulemaking (tentative rule adoption: August 26, 1994) will clarify) criteria for (the) provision of financial assurance", we take this opportunity to discuss the need to develop a cost-effective self-assurance demonstration mechanism for private municipal solid waste landfills.

As a preliminary matter, BFI notes that it strongly supports the promulgation of financial assurance requirements that are appropriately designed to ensure that responsible parties bear the costs of closure and post-closure or remediation activities, and not shift those costs to third parties (i.e., the general public). In these comments, BFI describes the role of the financial assurance mechanisms under United States environmental laws, and examines the importance of a cost-effective "self-assurance" mechanism, the "financial test". The history of the financial test under the Federal legislation pertaining to waste disposal is also addressed. Finally, BFI sets forth a proposed financial test for use by private owners or operators of municipal solid waste landfills.

The Basic Provisions of the Financial Responsibility Requirements of Federal Environmental Laws and Regulations.

Financial responsibility requirements have frequently been imposed by Federal environmental laws. For example, the Clean Water Act, 33 U.S.C. Section 1321(p)(1), the Deepwater Port Act, 33 U.S.C. Section 1517(l), the Surface Mining Control and Reclamation Act, 30 U.S.C. Section 1257(f), the Comprehensive Environmental Response, Compensation, and Recovery Act, 42 U.S.C. Section 9608(a)-(b), the

Price-Anderson Act, 42 U.S.C. Section 2210, the Motor Carrier Act of 1980, 49 U.S.C. Section 10927, and the Federal Aviation Act, 49 U.S.C. Sections 1531-1542, all include financial responsibility requirements.

When the U.S. Congress enacted the Resource Conservation and Recovery Act ("RCRA") in 1976, it likewise sought to ensure that funds would be available for the proper maintenance of solid and hazardous waste disposal facilities and to compensate tort claimants for injuries to persons or property resulting from the treatment, storage, or disposal of waste. Moreover, by requiring the responsible parties themselves to bear third-party liability and site closure, post-closure, and cleanup costs, the RCRA financial responsibility requirements are designed to prevent insolvency from undermining the deterrent effects of ordinary liability rules.

The EPA first implemented regulations containing financial responsibility requirements in the case of hazardous waste treatment, storage, and disposal facilities. Section 3004 of RCRA requires the EPA to establish "such performance standards" for owners of hazardous waste facilities "as may be necessary to protect human health and the environment." These standards, according to the statute, should include requirements regarding "financial responsibility as may be necessary or desirable." RCRA Section 3004(a)(6), 42 U.S.C. Section 6924(a)(6). The statute provides that evidence of financial responsibility may be established by "any one of any combination of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer." RCRA Section 3004(t)(1), 42 U.S.C. Section 6924(t)(1). Although trust funds and equivalent, state-required mechanisms are not specifically referred to in the statute, the EPA has consistently endorsed their use. See, e.g., 50 Fed. Reg. 28,702, 28,734 (July 15, 1985).

Under the RCRA program, owners and operators of both solid and hazardous waste disposal facilities are required to demonstrate a level of financial assurance equal to the estimated cost of closing the facility pursuant to an approved closure plan. The recently promulgated "Subtitle D rules", found at 40 C.F.R. Part 258, establish the requirements applicable to municipal solid waste (i.e., household waste) disposal sites.

The Subtitle D rules require that owners/operators must provide a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest and/or most expensive area of all MSWLF units requiring a final cover. Then, they must establish continuous financial assurance for closure of this area using one of the methods specified in Section 258.74 until released by demonstrating compliance with Sections 258.60 (h) and (i). The cost estimate and corresponding financial assurance must be adjusted yearly for inflation as well as for any changes in

landfill conditions or the closure plan that would increase the maximum cost.

The owner can reduce the closure cost estimate and the amount of financial responsibility if the cost estimate exceeds the maximum cost at any time during the remaining site life. The owner must notify the State Director that the justification for the amount of financial responsibility and the demonstration of responsibility has been placed in the operating record.

The EPA rules also provide that owners/operators must provide a detailed written estimate, in current dollars, of the cost of hiring a third party to perform post-closure care. The costs must cover the entire post-closure care period and reflect the most expensive costs. Then, owners/operators must establish continuous financial assurance for post-closure care using one of the methods specified in Section 258.74 until released through the demonstration of compliance with Section 258.61 (e). The cost estimate and corresponding financial assurance must be adjusted yearly during the active site life as well as during the post-closure care period for inflation as well as for any changes in landfill conditions or the post-closure plan that would increase the maximum cost.

The owner may reduce the post-closure care estimate and the amount of financial responsibility if the cost estimate exceeds the maximum cost at any time during the remaining financial responsibility period. The owner must notify the State Director that the justification and amount of financial responsibility has been placed in the operating record. In addition, owners/operators must provide financial responsibility for corrective action (for known releases only) until released.

Ten different mechanisms for the demonstration of financial responsibility are allowed under the Part 258 rules. Owners/operators of facilities can choose any mechanism, or mix of mechanisms, to demonstrate financial responsibility. The mechanisms endorsed by the EPA are the following:

1. Trust fund
2. Surety bond
3. Letter of Credit
4. Insurance
5. Corporate Financial Test
6. Local Government Financial Test
7. Corporate Guarantee

8. Local Government Guarantee

9. State Approved Mechanism

10. State Assumption of Financial Responsibility

The Part 258 mechanisms are similar to those developed by the EPA for use by hazardous waste treatment, storage, and disposal facilities. The EPA plans to develop a corporate financial test specifically for municipal solid waste landfills. Indeed, the Agency recently postponed the Federal effective date of the Part 258 financial assurance requirements from April 9, 1994 to April 9, 1995 in order to promulgate financial tests for use by local governments and corporations:

> The Agency, in setting the original April 9, 1994 effective date for the financial assurance requirements, believed that this date would allow adequate time to promulgate a financial test for local governments and another test for corporations (see 56 FR 50978). However, the Agency currently estimates that neither financial test will be promulgated within the time frame anticipated. However, the Agency currently estimates that neither financial test will be promulgated within the time frame anticipated.

58 Fed. Reg. 51,536, 51,541 (Oct. 1, 1993).

The Importance of a Self-Assurance (Financial Test) Mechanism for the Demonstration of Financial Responsibility by Private Owners/Operators and the Inadequacy of the Subtitle C-Based Financial Test.

While BFI supports the goals of financial assurance programs, our support should not be viewed as an endorsement of the means (i.e., the mechanisms) currently utilized by the U.S. EPA and by many States. Indeed, it is clear that overly stringent financial responsibility requirements can have profoundly adverse consequences. For example, inflexible or unavailable financial responsibility mechanisms could conceivably prompt firms to abandon facilities before closing them or may unnecessarily restrict the availability of needed waste management capacity. Likewise, firms that, because of their size or the nature of the their operations, cannot utilize a financial/self-assurance test to satisfy their financial responsibility obligations often cannot build new, environmentally protective state-of-the-art facilities.

Moreover, unnecessarily restrictive financial responsibility rules may discourage private-firm ownership of waste management facilities or encourage the use of financial assurance mechanisms that have long build-up periods. The final report of the Keystone Center Financial Responsibility Project, March, 1989, recognized

that while owners and operators of waste management facilities should be forced through financial assurance programs to "internalize costs of clean-ups and third-party damages", financial responsibility requirements should "not be counterproductive to the overall goals and objectives of responsible waste management." Id. at 4. As the EPA recognized in proposing a local government financial test:

> Because an owner or operator using a financial test does not have to secure a third-party instrument, availability of a financial test decreases the cost of financial assurance to the regulated community. In order to decrease the financial assurance costs associated with MSWLFs, the Agency wishes to make the. . .financial test available to as many owners and operators as possible.

58 Fed. Reg. at 68,355.

In an effort to meet these goals, the EPA has promulgated, first through Subtitle C of RCRA (the section of the Federal legislation applicable to hazardous waste treatment, storage, and disposal facilities), financial responsibility requirements for the costs of conducting closure and post-closure care. Owners and operators can satisfy the responsibility requirements by several means, including the establishment of a trust fund, see 40 C.F.R. Sections 264.143(a) and (b) (closure), 264.145(a) and (b) (post-closure); 40 C.F.R. Sections 265.143(a), 265.145(a), obtaining a surety bond from a company listed as acceptable in U.S. Treasury Circular 570, 40 C.F.R. Sections 264.143(c) (closure), 264.145(c) (post-closure); 40 C.F.R. Sections 265.143(b), 265.145(b), obtaining an irrevocable standby letter of credit from a state or federally "regulated and examined" institution, i.e., a bank, 40 C.F.R. Sections 264.143(d) (closure), 264.145(d) (post-closure); 40 C.F.R. Sections 265.143(c), 265.145(c), by purchasing insurance from an insurance or surplus lines company, 40 C.F.R. Sections 264.143(2) (closure), 264.145(e) (post-closure); 40 C.F.R. Sections 265.143(d), 265.145(d), or by "self-insurance" (i.e., a financial test) if certain financial criteria can be satisfied.

To meet the requirements of the Subtitle C financial test, a company must either have: (1) a net worth of $10 million, net worth and tangible net worth both at least six times the amount of coverage sought, satisfaction of one of three financial ratios, and at least 90% of assets (or six times the amount of liability coverage) located in the United States; or (2) a current investment quality bond rating, net worth of at least $10 million and six times the amount of liability coverage located in the United States. 40 C.F.R. Sections 264.143(f) (closure), 264.145(f) (post-closure); 40 C.F.R. Sections 265.143(e), 265.145(e).

The financial responsibility program established under Subtitle C has served as a template for fashioning similar types of

requirements mandated for owners/operators of storage tanks, underground injection wells and for CERCLA related activities. EPA has announced its intention to develop a financial test for use by non-hazardous (i.e., municipal solid waste) landfill owners/operators under the Part 258 Subtitle D rules.

The EPA is currently in the process of revising its corporate financial test under Subtitle C of RCRA. See 56 Fed. Reg. 30,201 (July 1, 1991) (proposed revised Subtitle C financial test). The National Solid Wastes Management Association ("NSWMA"), in a rulemaking petition filed with the Agency in 1990, prompted the EPA's action by noting that the currently-utilized Subtitle C test requires an excessive margin of safety, and acts as an unnecessary constraint on fiscally-sound firms. The Association proposed a new financial test that would apply to both Subtitle C and D facilities. The petition also pointed out that certain modifications should be made to the trust fund and letter of credit mechanisms in order to make them truly cost-effective alternatives.

In response, the EPA proposed, on July 1, 1991, a revised financial test that represents a significant improvement over the present approach. See 56 Fed. Reg. 30,201 (July 1, 1991). Because the EPA has reserved the financial test under the Subtitle D rule for further rulemakings, it is possible that the new test developed under Subtitle C will be referred to in the D rules as well. In any event, it is clear that the corporate financial test that will be developed by the EPA for use at Subtitle D facilities <u>will not be as stringent as the current Subtitle C test</u>.

BFI's comments to the EPA on the Agency's proposed revisions to the Subtitle C test voiced general support for the Subtitle C revision proposal; the company particularly strongly supported the Agency's determination to delete currently utilized "six times" multiplier for net worth and net working capital. The six times multiple requirement has proven to be not only expensive but inefficient. It has forced financially secure firms such as BFI to provide assurance for highly improbable levels of contingent costs. It has compelled excessive "internalization" of costs and has needlessly restricted the ability of financially secure firms to expand or to maintain existing waste management capacity.

BFI disagreed, however, with EPA's proposal to the extent that it would retain the requirement that the owner or operator demonstrate that it has assets in the United States that amount to at least 90% of total assets. BFI can discern no justification, either in theory or practice, for the inclusion of a restriction that inequitably and adversely affects multi-national firms. The "domestic assets" provision takes on additional importance given that, in light of several important (and appropriate) proposed changes to the financial test, the provision would stand as perhaps the most prohibitive aspect of the mechanism. BFI believes that retention of the current domestic asset provision in a Part 258 financial test

would lead to a significant reduction in the average level of financial responsibility obligations that multi-national firms can self-assure.

BFI also urged the Agency to give additional consideration to the financial test developed by NSWMA as an alternative to the EPA proposal. The company emphasized the fact that the NSWMA test, unlike the EPA's recommended approach, contains neither a bias against multi-national firms nor a prohibitive hurdle for small firms. The Agency recently noted that it was deferring a final Subtitle C rule on the subject because it is "continuing to evaluate comments received on the proposed revisions to the financial tests. . . ." 57 Fed. Reg. 42,832, 42,833 (September 16, 1992).

The need for a financial test that is cost-effective is--at least under the RCRA Part 258 rules--clear and uncontroverted. Indeed, two conclusions from the U.S. EPA's efforts to revise the current Subtitle C test and from the history of financial responsibility programs are evident. First, it is essential, as the EPA and others have noted, that states utilize a financial/self-assurance test as an option available to owners/operators. Second, the financial test must be an accurate and reliable indicator of financial strength and long-term viability. The final report of the Keystone Center Financial Responsibility Project, drawing upon the consensus of government, public, and public and private waste industry members, stressed that

> (t)he financial test provides certain significant advantages over the other mechanisms. First, the financial test is the most cost effective financial responsibility mechanism. It eliminates the need for a third party financial mechanism and the resultant tangible costs of transaction charges (premium for insurance policies, fees for letters of credit, etc.) as well as the intangible opportunity costs of funds (cash or collateral is tied up in a trust fund or letter of credit). Second, the financial test provides an option to the other financial mechanisms. This is particularly important because market constraints may have an adverse impact upon the availability of the other instruments (e.g., insurance).

Keystone Financial Responsibility Project, Final Report, March 1989, at 9. Likewise, the EPA has stressed the need for a financial test/self-assurance mechanism, pointing out that the failure to include such a mechanism would result in a "burdensome" program. See 56 Fed. Reg. at 30,202.

The wisdom of permitting privately owned or operated municipal solid waste landfills in Oregon to demonstrate financial capability through a reasonable, cost-effective self-assurance financial test is also demonstrated by the relative unavailability or restrictiveness of several of the other commonly acknowledged

mechanisms. It is widely recognized, for example, that trust funds are not a cost-effective mechanism for the demonstration of financial responsibility. The primary disadvantage of trust funds is that the trustee fee expense, as a percentage of the obligation assumed, is significantly greater for long-term obligations than for short-term ones. The utility of the letter of credit mechanism is similarly diminished because the mechanism typically does not permit firms to build-up assurance in a letter of credit over time. It is often difficult to obtain a surety bond guaranteeing a long-term obligation.

One of the best ways to ensure that the objectives of financial assurance--ensuring that funds are available to close waste management facilities properly, care for them after closure, undertake necessary corrective action, and compensate for releases from the facilities--are met by fiscally-sound companies is through the use of a cost-effective financial test/self-assurance option. BFI has set forth below a proposed financial test below. The proposed test is both cost-effective and fully protective of the Department's interest in facility financial responsibility.

In the preamble to the recently proposed Part 258 local government financial test, the EPA emphasized the wisdom of a bond ratings-based mechanism, noting that a

> bond rating incorporates an evaluation of the (owner/operator's) financial management practices. Bond ratings are widely used as a measure of credit risk associated with a long-term general obligation debt instrument. The Agency has included bond rating measures in financial tests under other RCRA programs, including financial assurance requirements for subtitle C TSDFs and subtitle I underground storage tanks.

58 Fed. Reg. 68,353, 68,356 (Dec. 27, 1993).

BFI'S Recommended Corporate Financial Test/Guarantee

BFI requests that the following amendments be adopted in the forthcoming financial assurance mechanism rulemaking. The financial test/guarantee mechanism described below would be able for use by qualifying private owners/operators of municipal solid waste landfills.

Financial test and corporate guarantee for closure, post closure or corrective action. (i) An owner or operator of a facility may satisfy the requirements of this subdivision by demonstrating that he passes a financial test as specified in this paragraph. To pass this test, the owner or operator must meet the following criteria. The owner or operator must have:

(1) tangible net worth of at least $10 million; and

(2) a current rating for his most recent bond insurance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's.

(ii) The phrase "current closure and post-closure cost estimates or remedial action cost estimates", as used in subparagraph (i) of this paragraph refers to the cost estimates required to be shown in paragraphs 1-3 of the letter from the owner's or operator's chief financial officer.

(iii) To demonstrate that he meets this test, the owner or operator must submit the following items:

(a) a letter signed by the owner's or operator's chief financial officer which attests to the accuracy of the information furnished;

(b) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(c) a special report from the owner's or operator's independent certified public accountant to the owner or operator, stating that:

(1) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(2) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(iv) After the initial submission of items specified in subparagraph (iii) of this paragraph, the owner or operator must send updated information within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in subparagraph (iii) of this paragraph.

(v) If the owner or operator no longer meets the requirements of subparagraph (i) of this paragraph, he must send notice of intent to establish alternate financial assurance through another method proposed by the owner or operator. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(vi) Based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph (i) of this paragraph, additional reports may be required regarding financial condition at any time from the owner or operator in addition to those specified in subparagraph (iii) of this paragraph. If it is found, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph (i) of this paragraph, the owner or operator must provide alternate financial assurance with 30 days after notification of such a finding.

(vii) The use of this test may be disallowed on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see clause [iii][b] of this paragraph). An adverse opinion or disclaimer of opinion may be cause for disallowance. The owner or operator must provide alternate financial assurance as specified in this subdivision with 30 days after notification of the disallowance.

(viii) The owner or operator is no longer required to submit the items specified in subparagraph (iii) of this paragraph when:

(a) an owner or operator substitutes alternate financial assurance as specified in this subdivision; or

(b) the owner or operator is released from the requirements of this subdivision.

(ix) An owner or operator of a facility may meet the requirements of this subdivision by obtaining a written guarantee, hereinafter referred to as "corporate guarantee." The guarantor must be either the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship"[1] with the owner or operator. The guarantor must meet the requirements for owners or operators in subparagraphs (i) through (vii) of this paragraph and must comply with the terms of the corporate guarantee. The corporate guarantee must accompany the items sent to the department as specified in subparagraph (iii) of this paragraph. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee. The terms of the corporate guarantee must provide that:

(a) If the owner or operator fails to perform final closure, post closure or corrective action of a facility covered by the corporate guarantee in accordance with the closure plan, post closure plan or corrective action plan and other permit requirements whenever required to do so, the guarantor will do so or make payments as directed in writing.

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[1] By "*substantial business relationship*" we mean the extent of a business relationship necessary under applicable Federal or Oregon law to make a guarantee contract issued incident to that relationship valid and enforceable. A substantial business relationship typically arises from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator exists.

(b) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail, return receipt requested, to the owner or operator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the owner or operator, as evidenced by a return receipt.

(c) If the owner or operator fails to provide alternate financial assurance as specified in this subdivision and obtain the written approval of such alternate assurance within 90 days after receipt by both the owner or operator of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

By Adopting our proposed rules, the Department would provide private owners/operators of solid waste landfills a cost-effective, bond-ratings based means of demonstrating financial responsibility. Our proposal sets forth an approach that is fully consistent with the Part 258 regulations. In addition, implementation of the rules proposed here would eliminate the potential for artificial and impracticable barriers to the ownership or operation of private solid waste landfills.

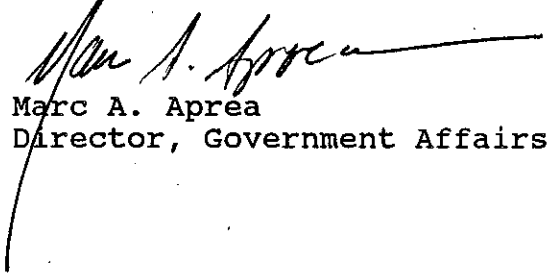
The proposed rules would provide that private owners or operators that meet stringent criteria relating to financial status be permitted to utilize a financial test and corporate guarantee for the demonstration of financial responsibility. The rules would afford the Department and the private waste industry a fair and workable standard for cost-effective implementation of the financial responsibility requirement.

We note that the test/corporate guarantee proposed here (as well as any self-assurance mechanism that may be developed for use by public owners/operators) must be consistent with, and as least as stringent as, any comparable mechanisms eventually developed by the EPA for use in Part 258 permitting programs. The test would need to be evaluated after the promulgation of Federal standards to ensure consistency with the EPA minimum criteria. But the need to reevaluate Oregon standards applicable to municipal solid waste landfills will exist whenever the EPA amends a Part 258 criterion. The need for the promulgation of rules that create a workable and fair self-assurance mechanism for private owners/operators is acute and deserving of prompt action.

CONCLUSION

BFI appreciates the opportunity to participate in this rulemaking. We congratulate the Department for the significant advances in environmental protection reflected in the proposal. We would be pleased to meet with you or your staff to discuss our recommendations in greater detail.

Very truly yours,



Marc A. Aprea
Director, Government Affairs

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March 2, 1994

Oregon Department of Environmental Quality
Waste Management & Cleanup Division
ATTN: Ms. Deanna Mueller-Crispin
811 S.W. Sixth Avenue
Portland, Oregon 97204

RE: Comments on Proposed Solid Waste Rules Revisions

Dear Ms. Mueller-Crispin:

Thank you for the opportunity to provide comments on the proposed revisions to the Oregon Department of Environmental Quality (DEQ) solid waste rules. ATEC Environmental Consultants ("ATEC") has reviewed the proposed revisions and we will comment specifically on revisions proposed to OAR 340-93-060 (renumbered from 340-61-027) and 340-93-063.

ATEC supports the need for a six-month renewal to the existing six-month letter of authorization. As a member of the Oregon Petroleum Marketers Association (OPMA), we recognize the limits of attempting to complete treatment of petroleum-impacted soil in a six-month period. Availability of a six-month renewal would: 1) help to assure complete treatment of impacted soil; 2) reduce costs by avoiding expensive alternative treatment/disposal (e.g., landfill, soil incineration); and 3) further protection of the environment. Thus, six-month renewal of the existing letter of authorization is much-needed, and we strongly support this revision.

Over the past five years, however, we have watched as regulatory costs (particularly environmentally-related) for OPMA petroleum dealers have skyrocketed. Here in Oregon, as many as 50% of the gasoline service stations that operated in 1988 will reported be out of business by the mid-1990s. Therefore, we encourage the DEQ to offer the six-month renewal of the letter of authorization without the attendant increase (i.e., $500 fee) in fees.

ATEC also supports the creation of a special soil treatment permit, as proposed in OAR 340-93-063. Soils impacted by heavy oils, in particular, will often require more than a full year of treatment. We strongly support the availability of a soil treatment permit with up to a three (3) years treatment period. It is imperative to OPMA and its members that an intermediate permitting approach (i.e., less stringent and process-intensive than existing solid waste facility permitting) is available.

If we cannot incorporate such an approach in the proposed solid waste rules, we strongly urge formation of an industry-DEQ work group to produce a proposed rules package that would accomplish our goals of longer-term treatment at reasonable cost and with **limited** processing/paperwork. This issue is of vital concern to ATEC, and OPMA and its members.

ATEC also recommends that the fee for the proposed three-year permit be established at $1,500. This permit fee would be significantly less burdensome than the proposed $2,500 permit fee, particularly on single-facility owners or mid-sized petroleum marketers with from 5 to 20 facilities. Again, the rapid increase in cost burdens on the petroleum industry (especially local businesspeople) necessitates controlling fee costs, wherever possible.

Finally, although not included in the proposed regulatory revision package, ATEC strongly urges modification of the existing Metro Service District policy on transport of petroleum-impacted soil (see Metro Ordinance 91-422B, attached). Since October 1991, Metro has prohibited transport of petroleum-impacted soil (generated in the service district) to anything but a licensed solid waste facility. This requirement denies the property owner the opportunity to transport impacted soil to a site more appropriate to soil treatment (e.g., from an inner city gasoline station to a larger parcel without residential/commercial neighbors). ATEC urges modification of Metro Ordinance 91-422B to allow sensible economic and environmental solutions to treatment/disposal of petroleum-impacted soil.

Treatment of petroleum-impacted soils by petroleum marketers serves a critical economic and environmental function by conserving scarce financial resources and preventing the release of petroleum contaminants into the environment. Every encouragement, including the regulatory process, should encourage this approach. ATEC strongly supports the proposed revisions to the existing solid waste rules, with the exceptions noted above.

Thank you again for the opportunity to comment on these proposed revisions, and we look forward to providing comment at the upcoming public hearings in March.

Sincerely,

ATEC ENVIRONMENTAL CONSULTANTS

Christopher C. Wohlers
Oregon/Washington District Manager

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Oregon Department of Environmental Quality
Waste Management and Cleanup Division
811 S.W. Sixth Avenue
Portland, Oregon 97204
Attn: Ms. Deanna Mueller-Crispin

March 1, 1994

Re: DEQ Changes to On-Site Treatment of Petroleum Soils

Dear Ms. Mueller-Crispin,

I would like to offer the following comments pertaining to the above proposed rule changes. Truax Harris Energy Company supports the direction taken in creating a separate and new permit category to deal with petroleum contaminated soil on site treatment. The amendments made will improve the viability of soil treatment as opposed to landfilling. We are in favor of permitting treatments that would exceed a one year time frame up to a maximum of three years.

An area of concern would be the size of the permit fee. We recommend that this fee should be set at $1,200.00, instead of $2,500.00. As the majority of these treatments (controlled by a DEQ Letter of Authorization) would be conducted under a Cost Recovery Agreement, we feel that this fee is excessive.

Another recommendation I would have is to permit the ability of moving soil from other locations to a given permitted location in order to optimize the use of the remediation equipment and to consolidate the number of soil piles needing regulatory review and inspection. This could be restricted to soil properties owned by the same person in order to prevent this activity from being a profit oriented activity rather than an effort to clean up the environment.

We support the spirit of the rule amendments proposed and feel that they will provide adequate control, as long as the required information and processing time remain similar to the existing Letter of Authorization procedure. This should provide for improved flexibility in site clean up options.

If you have any questions, please do not hesitate to call this office.

Yours truly,

Rob Forrest
Operations Manager

RF/bm

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Solid & Hazardous Waste Site Assessments
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Asbestos Surveys & Analysis
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Analytical Testing / Chemistry
Industrial Hygiene / Hazard Communication
Environmental Audits & Permitting
Exploratory Drilling & Monitoring Wells
Wastewater Treatment Systems

March 7, 1994

Oregon Department of Environmental Quality
Waste Management & Cleanup Division
ATTN: Ms. Deanna Mueller-Crispin
811 S.W. Sixth Avenue
Portland, Oregon 97204

RE: Comments on Proposed Solid Waste Rules Revisions Following Attendance at March 3, 1994 Public Hearing

Dear Ms. Mueller-Crispin:

Thank you for the opportunity to provide comments on the proposed revisions to the Oregon Department of Environmental Quality (DEQ) solid waste rules at the March 7 Public Hearing in Portland, Oregon. ATEC Environmental Consultants ("ATEC") supports the reconsideration of the special permit option for treatment of petroleum-impacted soil over an extended time period (e.g., 3 years). We hope that this option will be a stream-lined, low-cost approach that will be available to Oregon citizens and businesses in 1994. Chris Wohlers of ATEC hereby offers to assist in this endeavor.

As noted in my earlier comments dated March 3, 1994, OPMA and ATEC strongly urge the Oregon DEQ and other involved parties to assist our efforts to modify the current Metro prohibition on transport of petroleum-impacted soils. This regulatory restriction does not serve to further environmental protection or protection of human health; in fact, the Metro prohibition appears to encourage less than optimal environmental and human health decision making. We hope that our efforts to work with Metro to modify these regulations will be supported by DEQ.

Sincerely,

ATEC ENVIRONMENTAL CONSULTANTS

Christopher C. Wohlers
Oregon/Washington District Manager

cc: D. DeHaan, OPMA Executive Director

FINLEY BUTTES LANDFILL COMPANY

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206/695-4858
FAX 206/695-5091

March 8, 1994

Deanna Mueller-Crispin
Solid Waste Policy and Programs
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204

Dear Ms. Mueller-Crispin,

Finley Buttes Landfill Company appreciates the opportunity to comment on the proposed Solid Waste Rule Revisions. We have only one comment for your consideration.

The proposed rule, OAR 340-93-150(3), states: *"...If the Department does not respond to a certified construction certification report within 30 days of its receipt, and the permittee has received prior written Department approval of a fill plan, the permittee may proceed to use the unit for disposal of the intended solid waste."* We believe that if the Department requires both a fill plan and CQA report to be submitted and sets a time frame for approval for one of them, then a time frame should be set for the other, since we cannot operate until both documents are approved. In other words, either of the CQA or fill plan is equally restrictive, because either is capable of stopping a project. If the requirement for fill plan cannot be dropped, then an approval time limit of 60 days after receipt by the Department would be appropriate.

Another option would be to delete the addition and offer an alternative to the fill plan approval process. We believe the intent of the fill plan is basically a function of management and operations. We would like to suggest that if the requirement for a fill plan cannot be dropped, the details could be included in the Operations and Maintenance Manual for the landfill, or the slope stability analysis included in the construction documents, instead of requiring a separate submittal.

If you have any questions or comments, I would be happy to discuss them with you.

Respectfully,

Kent C. Mayer
Environmental Compliance Manager

WSPA
Western States Petroleum Association

Del J. Fogelquist
Northwest Regional Manager

March 14, 1994

Ms. Deanna Mueller-Crispin
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

VIA FAX

Dear Ms. Mueller-Crispin,

The Western States Petroleum Association (WSPA) is a trade association whose members conduct much of the producing, refining, transporting and marketing of petroleum and petroleum products in the western United States.

WSPA supports the recommendation of the Oregon Department of Environmental Quality for the proposed "Mode 1 Ordinance for Petroleum Contaminated Soils". We believe that this model will encourage better consistency and understanding throughout the State for both the regulated community and for the regulators, for the safe and effective assessment and clean-up of sites.

We would emphasize that the ordinance should provide owners of petroleum contaminated soils the flexibility to select various treatment options and treatment locations. Language should be included to clearly allow the temporary storage of contaminated soils without having to go through a local or state Solid Waste Letter of Authorization (SWLA) permitting process. (This allows for prompt assessment work.) It is our understanding that the DEQ allows soils to be stored on site up to 30 days without a SWLA. We support this policy.

Very truly yours,

DJF/lr
94236

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Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item H
April 21, 1994 Meeting

Title:

EQC Flexibility to Grant Exceptions to Standards

Summary:

In response to a subject raised at an EQC retreat in October, 1993, staff have reviewed three alternatives for the EQC to add flexibility to program rules and numerical standards which do not already have variance or exception procedures:

1) Variance or Appeal of Rule or Standard where the burden of proof is on the applicant,

2) Rule exception Process initiated by DEQ/EQC,

3) Narrative Limits, presumably in rules, to replace numerical standards

The Water Quality program is the least flexible in terms of variances, so that any change would likely impact the water quality program most. Water quality currently relies upon a statutory appeal process and/or, to a limited degree, emergency rule-making. Some standards allow an exception process.

Staff analysis finds the current structure of numerical standards, unequivocal policies, variances and appeals to generally be effective; no change to allow greater flexibility is recommended at this time.

Department Recommendation:

EQC Action: Accept Department's recommendation of no change to the current variance and appeals process or give Department direction as to pursuing one or more of the three suggested alternatives..

Report Author	Division Administrator	Director

†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: April 5, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item H: April 22, 1994, EQC Meeting

Potential Rule to Give EQC Flexibility to Gran Exceptions to Standards

Statement of the Issue

Last fall, the EQC and staff discussed options available to provide flexibility in the application of standards. On occasion, standards and rules appear to mandate a decision that is perceived to be unacceptable in its logic, in conflict with environmental goals, or inequitable in relation to control applied to similar sources.

That discussion did not reach a clear resolution or conclusion by the EQC. The question brought forward to the present is:

Should the EQC add procedural flexibility in decision making through a universal variance, exception or appeal process, or modify numerical standards to include exception criteria?

Background

The October 28, 1993, EQC retreat was an opportunity to informally discuss EQC uneasiness about narrowly-confined choices or absence of options upon which to deliberate and make a sensible decision. Useful background information was provided on rule development, legislative policy, federally- delegated programs and a review of current variance and rule exception authorities. Traditional approaches to retaining or adding flexibility in rules were evaluated. This information is referenced in the October 21, 1993, DEQ memorandum to the EQC and summarized in the discussion below.

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Discussion

Statutes provide the overall framework for environmental policy and authority for EQC actions. In recent years, the enabling statutes have become progressively more specific and thereby less flexible. The public and regulated community prefer rules which clearly lay out requirements and leave less to interpretation by the agency.

Objective standards are easier for staff to implement and administer. Periodic review, such as the Water Quality Triennial Standard Review process, help keep standards up to date and realistic in scope.

Enforcement activities were previously tempered by prosecutorial discretion where a hardship or other impracticalities made full compliance a burden. The EQC has since moved to consciously limit prosecutorial discretion by adopting enforcement rules which generally dictate action for every violation of a standard or permit.

Even if DEQ does not enforce a violation, the citizen suit provisions of federal legislation may subject the regulated community to litigation. EPA over-filing may also result from DEQ inaction on a known air, water, or hazardous waste violation.

Oregon statutes provide broad variance authorities in the Air Quality, Solid Waste, Onsite Sewage, Asbestos, Underground Storage Tanks, and Noise programs. An exception process exists for Superfund and Hazardous Waste programs. Each statute reads differently, but the overall effect is to provide flexibility that is comparable among these programs.

The applicant for a permit initiates the request that the EQC consider a variance or exception for specific circumstances. Justification may include inability to meet standards with available technology, conditions that exist beyond the control of the petitioner, or strict compliance that would create hardship or burdensome circumstances.

Public health, safety, welfare and the environment must be protected by the alternative proposal equal to or greater than the rule or standard. Oregon environmental policies and federal requirements must be fully achieved during the period of the variance. The duration of the variance can be fixed or indefinite at the discretion of the EQC.

In general, the Department believes the variance or exception process for these programs is workable and efficient. There is no present compelling need to look for embellishment of EQC variance authorities. The statutes are discussed in further detail in the October 21, 1993, DEQ memorandum.

The Water Quality program does not have explicit variance statutory authority. However the (EQC) Antidegradation Policy for Surface Waters can allow short-term and extended degradation of high-quality waters on a case-by-case basis after consideration of specific factors. These factors are akin to those considered during a variance request. The Antidegradation Policy for Surface Waters does not permit annulment of the applicable basin standard(s). OAR 340-41-026(1).

Where the Antidegradation Policy for Surface Waters does not apply, an appeal process or emergency rulemaking authority allow the applicant and the EQC respectively, to act to repeal or amend standards or procedural rules. Such action would be subject to EPA review and approval, and the anti-backsliding provisions of the Clean Water Act.

A few water quality standards, such as turbidity (e.g., OAR 340-41-205(2)(c)), can be temporarily waived in an exception process to protect public health or to conduct emergency activities. Judicious application of flexibility in the Water Quality program administrative rules is nearly always adequate to offset the lack of explicit statutory variance authority.

In 1990, EPA canvassed states with particular emphasis on water quality and determined most states have short-term pollutant-specific variance provisions. The Clean Water Act allows variances with EPA approval providing water quality continues to meet requirements and no degradation occurs.

Washington, Nevada, and California were contacted by staff in February, 1994. These states and EPA's 1990 survey report that variances are generally characterized by precepts which open up an abeyance to individual standards for periods ranging from one to five years; are based upon demonstrated need; adhere to overall maintenance of recognized uses; and are granted after public airing of issues and trade-offs. A variance can be revoked based on further findings.

Authority of the Commission with Respect to the Issue

EQC has authority by ORS 183, ORS 454, ORS 459, ORS 465, ORS 466, ORS 467, ORS 468, ORS 468A, ORS 468B and others.

Alternatives and Evaluation

The EQC has three general regulatory approaches to add flexibility to the program rules and numerical standards which do not already have a variance or exception procedure. These ideas are shown in conceptual form and at this point are not developed as possible EQC policy.

Fundamentally, each mechanism requires the applicant for permit or rule relief to carry the burden of proving compatibility with existing policy and rules, state and federal legislation; protection of the public health, safety and welfare; and the environment.

The general regulatory approaches are described below and are followed with an overview of probable implementation tradeoffs and potential environmental risk(s).

1. *Variance or Appeal of Rule or Standard*: Utilize a process by which a permit applicant could justify to the EQC to either set aside the requirement for the applicant (variance), or to temper the stringency of standard(s) by rule modification or abolishment (appeal).

2. *Rule Exception Process*: Add interpretive and discretionary criteria by which the EQC could soften or exclude individual numerical standards, or with a generic rule, to any, some or all numerical standards and rules applicable to the proposed source.

3. *Narrative Limits*: Replace selected or all numerical standards with narrative standards to be applied to applicant's pollution sources using appropriate interpretive and discretionary criteria.

Appeal Option

After the October 1993 EQC retreat, Commissioner Emery Castle drafted a possible variance/appeal process. The proposal illustrates an idea to use one or more factors to portray to the EQC that the rule limit was not appropriate for the instant case or in general. See Appendix 1 for the wording of this conceptual proposal by Commissioner Castle.

A comprehensive appeal process already exists in Oregon law. ORS 183.390. Any person may request the promulgation, amendment, or repeal of a rule. The EQC has 30 days to deny the petition or initiate rulemaking proceedings. However, this appeal process does not readily lend itself to the unique situation, and would tend to create rules that appear situation-based, rather than policy-based.

Additionally, any person may petition the EQC for a declaratory ruling as to the applicability of a statute or rule enforced by the EQC. ORS 183.410. This procedure can be a tool for an applicant to gain insight as to EQC resolve and latitude to administer a standard or rule in a particular way.

If applicants used the declaratory ruling process when faced with environmental standards that are a perceived block to an activity, the EQC would be able to provide leadership into possible controversial permit issues at an earlier point in the permitting process. This could be a time and resource drain on Department staff offset by fewer protracted controversies later on during review of the application.

The EQC could add a variance rule, possibly modelled to work in concert with or in addition to current variance authorities. For delegated programs and where federal standards are involved, EPA must approve the variance to make it federally enforceable. The state cannot implement the variance until EPA approval is granted. Approval could take one or more years. EPA oversight of a variance and the anti-backsliding provisions of federal legislation serve to lessen the flexibility of present variance authority in a manner that would carry on to any new variance provisions the EQC would adopt.

Rule Exception Process

This approach retains numerical standards and restrictive regulations but adds criteria by which a degree of discretion could be exercised in the applicability of individual standards. A key difference from the variance/appeal process above is that staff would apply the discretionary criteria. The criteria could be added to selected standards or the EQC could choose to have blanket coverage over one or more programs.

Criteria would be similar to that required by a variance or the EQC Antidegradation Policy for Surface Water. Upon sufficient demonstration by the applicant of meeting the criteria, the numerical limit or restrictive rule would become less stringent or possibly waived as an exception to the standard. As with a variance or appeal, the burden of proof would be with the applicant.

Due to its permanence, an exception to a standard, as compared to a variance, presents an increased risk in irreversible harm to public health, and degradation of the environment. In some cases, the environmental effects would be reversible if not a marked deviation from the standard or requirement.

An exception to a standard can also be accomplished by emergency rule adoption or revision of an existing rule. ORS 183.335(5). Emergency rules are effective for up to 180 days. Permanent rules can be adopted by the EQC during the period the emergency rule is in effect. Even temporary relaxation of standards under the best of motives could raise doubts by EPA and Oregonians to produce irreversible harm to our prestige and long-term focus on environmental challenges. In most but not all cases the environmental impacts due to an emergency rule are reversible.

Narrative Limits

This approach replaces numerical standards with narrative standards. Narrative limits leave more room for judgement to occur by establishing criteria by which the final limit is determined. Numerical limits tend to leave no discretion except where there is general variance authority or specific exception language which tempers the stringency of the standard.

With narrative standards, each activity or proposal would undergo a rigorous application process and scrutiny to assure that environmental goals are met and public health, welfare and safety are not adversely affected. The criteria followed would be similar to that required by a variance or the EQC Antidegradation Policy for Surface Water.

Narrative permit limits would likely create more uncertainty and potentially more expense for the regulated community compared to existing numerical standards. Prior to EQC approval, the narrative standard for a source would have to attain a significant degree of assurance that the limit would not conflict with Oregon's environmental anti-degradation policies, gain EPA approval and maintain parity with federally delegated programs, and protect the public health, welfare and safety.

The Department would incur an increase in staff resources to evaluate and process applications at a time Oregon is downsizing state government. We could expect rigorous EPA oversight of our federally based environmental programs and policies to assure equivalency; and a possible increase in third party suits to challenge permits or decisions on each narrative standard.

While narrative standards would add more flexibility than is available now, we do not advocate that the EQC further consider a limited or wholesale change away from present numerical limits. Permit applicants would have a significant added burden of proof in explaining impacts of proposed discharges or activities and would never be certain of the limit until the final decision.

Conclusions

This agenda item continues the EQC consideration of adding flexibility to decisions that involve numerical standards and unequivocal procedural rules. No direction has been given staff, and the EQC has not established that they desire to proceed any further.

Basic concepts for adding flexibility are the appeal/variance process such as suggested by Commissioner Castle; placing criteria within rules or a general rule providing for opportunity to excuse or soften the applicability of a requirement; and changing the philosophy of standard setting to include more or all narrative standards in place of numerical limits.

Oregon law does not consistently incorporate variance and exception authorities in each environmental program. A perception exists that it would be desirable to incorporate broad variance authority or other mechanism so the EQC would have a larger range of options when making decisions where no variance or exception authority exists.

Variance authorities for Air Quality, Solid Waste, Noise, and On-site Sewage, Asbestos and UST programs, and exception authorities for Superfund and Hazardous Waste programs create the desired flexibility across the majority of Oregon's environmental slate. Variances can be short term or be of indefinite duration. Long-term variances would be more prone to produce irreversible environmental effects.

Limited flexibility exists for the Water Quality program because most standards are numerically based. Oregon anti-degradation and federal anti-backsliding requirements further restrict revision of present standards even if more recent scientific information is available.

Water quality is among the programs that rely upon an existing statutory appeal process and/or, to a limited degree, emergency rulemaking authority for flexibility. Some standards allow an exception process to mold the applicable standard after examination of qualifying criteria. Most standards will not vary unless requirements change at the federal level. Anti-backsliding provisions in the Clean Water Act will block against loosening standards.

Oregon's present environmental programs are generally effective because of the clarity contained in the implementing rules. An applicant for a permit has access to appeal or declaratory ruling statutes to readily determine the precise applicability of a rule or to propose a change to an burdensome requirement.

Speaking generally, Oregon's current structure of numerical environmental standards, unequivocal policies, and appeal process is sound and successful. We are achieving continual progress towards attainment and maintenance of Oregon environmental policies, and enhancement of natural resources.

Department Recommendation

Staff believes the present statutory variance and appeal authorities are sufficiently broad in scope to manage Oregon's environmental programs. We do not recommend that the EQC take action to add further flexibility in making decisions that arise from implementing numerical standards and unequivocal procedural rules.

Attachments

1. Alternative Rule Language Prepared by Commissioner Castle, November, 1993

Reference Documents (available upon request)

1. National Assessment of State Variance Procedures, November, 1990, USEPA
2. Application of Standards, October 21, 1993, Hal Sawyer and Michael Huston
3. ORS 468A.075, Air Quality Variance
4. ORS 454.657, On-site Sewage Variance

5. ORS 459.225, Solid Waste Variance
6. ORS 466.780, Underground Storage Tanks Variance
7. ORS 468A.745, Asbestos Variance
8. OAR 340-41-026(1), Antidegradation Policy for Surface Waters
9. ORS 183.410, Declaratory Ruling
10. ORS 183.390, Appeal

Approved:

Section: SG for Dennis Belsky

Division: Stan Greenwood

Report Prepared By: Dennis Belsky

Phone: (503) 776-6010

Date Prepared: March 15, 1994

Attachment 1: Agenda Item H, April 22, 1994

Alternative Rule Language

Prepared by Commissioner Castle
(November, 1993)

Presented Only for Conceptual Review at This Time

When an appeal of standards is made to the Environmental Quality Commission as they apply in a particular case, the burden of proof will rest with the appellant to demonstrate:

(1) new information has arisen since the standards were adopted that makes them no longer applicable, or

(2) the standards are counter productive. This means beneficial use is not enhanced or is adversely affected by meeting or maintaining standards, or

(3) the standards are in conflict in contributing to beneficial use. Standards may be said to be in conflict if beneficial use is enhanced or not adversely affected if one standard is violated and another is enhanced.

If, in the judgment of the Commission, the appellant demonstrates successfully one of the above conditions applies in a particular case, the Commission will make a determination whether (a) an exception will be made in this particular case only, or (b) a rule change is needed to modify the general applicability of the standards under review.

Environmental Quality Commission

Agenda Item L

☒ Information Item

April 21, 1994 Meeting

Title:

NORTHERN MALHEUR COUNTY AND LOWER UMATILLA BASIN GROUNDWATER MANAGEMENT AREAS.

Summary:

The Groundwater Protection Act was enacted by the 1989 legislature to address area-wide groundwater contamination problems within the state, protect the resource from further contamination and to increase the awareness of the vulnerability of this resource to contamination. The Strategic Water Management Group (SWMG) has the responsibility for implementing the act and coordinating those agencies addressing groundwater issues. SWMG works through the state agencies to implement the requirements of the act with DEQ being assigned the lead agency role. Other agencies with major roles in the Act are the Water Resources Department (WRD), the Health Division and Department of Agriculture (ODA). Based on Oregon Groundwater Protection Act of 1989, groundwater Management Areas are declared in response to detection and confirmation of contaminant levels affecting area-wide regions. To date, two groundwater management areas have been declared.

NORTHERN MALHEUR COUNTY GWMA

The 115,000 acre Northern Malheur County GWMA covers three aquifer units including the Glens Ferry Formation or deeper aquifer, the upland gravel and the alluvial sand and gravel aquifer. Environmental agencies confirmed widespread groundwater nitrate contamination at levels over the health standard in the shallow alluvial sand and gravel aquifer which receives a large proportion of its recharge from canal leakage and irrigation water.

The type of irrigation methods and/or fertilizer application practices used in the area are the main source of the non-point-source contamination. As the irrigation water has percolated over time from the surface to groundwater it has carried with it soluble agricultural chemical residues that remain in the soil profile.

The Northern Malheur County Groundwater Management Committee, Technical Advisory Sub-committee and DEQ, ODA, WRD, OHD and OSU representatives concluded an 18-month cooperative effort with the approval of a work plan to reduce the county's groundwater quality contamination. This plan was approved by the NMC GWMA Citizen Committee on May 15, 1991 and by the Strategic Water Management Group, (SWMG) on August 26, 1991. The NMC GWMA Action plan is currently in the implementation stage.

LOWER UMATILLA BASIN GROUNDWATER MANAGEMENT AREA

The Lower Umatilla Basin was declared a Groundwater Management Area in 1990. The declaration was prompted by high levels of nitrate-nitrogen detected in groundwater samples collected and analyzed for pesticides and other agricultural chemicals between 1984 and 1987.

An interagency groundwater quality investigation began in August 1990; a local Groundwater Management Committee and a local Technical Advisory Committee began meeting in 1991. The groundwater quality investigation covers approximately 550 square miles in Morrow and Umatilla Counties. To date, the interagency groundwater investigation has focused on land use impact, groundwater flow, quality, and chemistry in the alluvial sediments. The investigation is near completion. A presentation to the local committees is scheduled. This work will provide a technical understanding of the alluvial groundwater system upon which a Groundwater Management Plan can be developed.

Department Recommendation:

It is recommended that the Commission accept this report, discuss the matter and provide advice and guidance to the Department as appropriate.

Report Author	Division Administrator	Director

[1]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: April 5, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item Northern Malheur County and Lower Umatilla Basin Groundwater Management Areas Status Update, EQC Meeting.

Statement of Purpose

This report provides an update narrative of the activities in the two groundwater management areas: Northern Malheur County and Lower Umatilla Basin Groundwater Management Areas.

Background

1989 Groundwater Protection Act

The Groundwater Protection Act was enacted by the 1989 legislature to address area-wide groundwater contamination problems within the state, protect the resource from further contamination and to increase the awareness of the vulnerability of this resource to contamination. The Strategic Water Management Group (SWMG) has the responsibility for implementing the act and coordinating those agencies addressing groundwater issues. SWMG works through the state agencies to implement the requirements of the act with DEQ being assigned the lead agency role. Other agencies with major roles in the Act are the Water Resources Department (WRD), the Health Division and Department of Agriculture (ODA).

With the passage of SB 1010 the Department expects the Department of Agriculture to assume the lead agency role for developing groundwater management action plans for agriculture-impacted groundwater management areas. The Department anticipates working cooperatively

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that the action plan will meet both the needs of the Groundwater Protection Act (SB 3515) and the SB 1010. Execution of the action plans will begin generally with a voluntary action plan and move to mandatory requirements if the implementation of the groundwater management action plans do not result in adequate reduction of the area-wide groundwater contamination problem.

The Act requires a number of activities to take place including public education, groundwater quality monitoring, establishment of Best Management Practices (BMP's) to prevent groundwater contamination, and the establishment of Groundwater Management Areas and Areas of Concern to address areas where groundwater contamination has already occurred.

The Department has been active on many fronts in implementing the Act. Holding public forms, promoting community involvement in protecting the resource, targeting grant resources to promote the development of BMP's and developing monitoring plans to assess groundwater quality.

Due to the significant effort in declaring groundwater management areas and the state's limited resources to address groundwater issues the Department has found it necessary to set priorities in addressing all the requirements in the act. The Strategic Water Management Group through its Groundwater Protection Advisory Committee has helped establish those priorities for DEQ and the other state agencies. Refer to APPENDIX I for the February 16, 1993 document: Groundwater Protection Act Implementation Task Force Recommendations to the Strategic Water Management Group.

One of these choices was not to declare further Groundwater Management Areas this biennium, but instead focus more on increasing the state's knowledge of groundwater quality through statewide groundwater quality assessments. The Department is pursuing this objective by targeting 32 areas in the state with suspected contamination problems (APPENDIX II) and through analysis of data presently available to us through the Health Division's real estate transaction data base and our volunteer nitrate testing program. This data shows that Oregon's greatest area-wide groundwater contamination problem is nitrates. A map showing some of the areas with suspected high nitrate contamination problems is included in APPENDIX III. Both of our

contamination problems is included in APPENDIX III. Both of our Groundwater declared Management Areas are due to contamination of groundwater by nitrates.

Groundwater Management Areas are declared when the Department determines groundwater contamination has occurred on an area-wide basis above an established trigger level and is at least in part due to non-point source activities. The steps taken in the Groundwater Management process are:

- Identification of an area-wide contamination problem through groundwater monitoring activities.
- DEQ declares Groundwater Management area.
- Strategic Water Management Group appoints local committee.
- Groundwater Technical Investigation is conducted to determine sources of contamination and the hydrogeological characteristics of the area.
- Action Plan is developed jointly by local committee and state agencies.
- Strategic Water Management Group approves action plan after public hearings are held.
- Action plan is implemented. Activities contributing to the groundwater contamination are modified such that contamination loading to the aquifer is reduced and is allowed to clean itself naturally over time to below the trigger level which originally caused the declaration to occur.
- Monitoring to determine effectiveness of Action Plan. Modify Action Plan as necessary.
- Area moves from a Groundwater Management Area to Area of Concern.

The Act requires that a Groundwater Management Committee of local interested citizens be formed to develop an action plan in cooperation with state agencies. The action plan is to identify the probable sources of contamination and recommend actions needing to be taken to reduce contamination from these sources and prevent further contamination of the groundwater. Once a plan is developed public hearings are held and then SWMG must accept the plan for it to be implemented. At present two Groundwater Management Areas have been declared within the state, one in Northern Malheur County and the other in the Lower Umatilla Basin.

Northern Malheur County Groundwater Management Area (NMC GWMA)

Groundwater contamination in the Ontario, Oregon area was first detected in 1983 through routine EPA monitoring of public water supplies. The results revealed elevated levels of nitrate in groundwater. Follow-up investigations confirmed area-wide groundwater contamination with nitrate exceeding the maximum contaminant level (MCL) of 10 mg/L in 35 of 105 wells. Dacthal, a grass herbicide used in onion production was identified at concentrations below the Health Advisory standard in 54 of 81 wells sampled for groundwater. A chronological overview of the Malheur County groundwater quality investigations is included in APPENDIX IV.

In 1987, the Oregon legislature funded a study, led by DEQ to develop monitoring plans and assess groundwater quality throughout the state. These studies in Malheur County helped the Department highlight the need to address area-wide contamination problems within the state and prompted the 1989 Legislature to pass the 1989 groundwater protection act.

Appointed by SWMG, The Northern Malheur County Groundwater Management Committee (APPENDIX V) chaired by Mr. Barry Fujishin, and assisted by DEQ, ODA, WRD, OHD and OSU representatives concluded an 18-month cooperative effort to develop a work plan for the reduction of groundwater contamination in Northern Malheur County. The plan was approved by the NMC GWMA Citizen's Committee on May 15, 1991 and by SWMG on August 26, 1991. The Action Plan describes the nature of Malheur County's groundwater quality contamination, identifying agricultural practices as the chief contributor and proposes to establish a

set of voluntary BMP's to help reduce the contamination. The Northern Malheur County Groundwater Management Area is in the implementation stage of the Action Plan.

Located in southeastern Oregon, Malheur County encompasses 6,352,000 acres, 260,000 of which are irrigated cropland, of these, 115,000 acres are within the NMC GWMA. A map of the Northern Malheur County Groundwater Management Area is presented in APPENDIX VI. Most groundwater used in North Malheur County is found in a shallow sand and gravel aquifer (APPENDIX VII) vulnerable to contamination. As irrigation water has percolated over time from the surface to groundwater it has carried with it soluble agricultural chemical residues remaining in the soil subsurface thereby contaminating the groundwater resources.

Since its declaration, the NMC GWMA has been the subject of attention through several avenues:

- grants for BMP research and development for groundwater quality protection (APPENDIX VIII), Approximate $700,000
- groundwater monitoring (on a bi-monthly basis for inorganic chemicals and Dacthal, and semi-annually full screen of pesticides[††]);
- support for a Water Quality Coordinator to oversee local implementation of the Action Plan;
- assigned as a Hydrological Unit Area, The Ontario Valley Hydrological Unit Area, FY 1990-1994 (President's Water Quality Initiative, USDA addressing water quality problems, Water Quality Management Plans).
- incentives in the form of cost share to implement agricultural practices, protective of water quality.

The Action Plan calls for agricultural producers to voluntary adopt environmentally viable alternatives. Best management practices are being

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[††] Because of unconfirmed findings of pesticides and VOC, the Action Plan was modified (1993) in the frequency of full screen pesticide/VOC sampling, from a every six months to a every two year period.

developed and farmers have begun to adopt and implement practices that should have positive effects on groundwater and surface water quality.

The main method of implementation of BMP's in Malheur County is through the adoption of a water quality plan addressing NMC GWMA concerns. A water quality plan consists of a set of agricultural practices intended to protect or improve water resources on an individual producer basis. The plans provide incentives for producers to adopt BMP's and are developed in conjunction with the farmer. The producer is presented with alternatives from which he/she selects, with the assistance of a Malheur County SCS field staff, the practice that will work best on their farm.

Approximately 35,000 acres are under BMP implementation in the NMC GWMA, including water quality plans and other farmland under BMP's without an actual water quality plan. Eighty-five water quality plans have been developed, accounting for about 22,400 acres, or 20% of the total acreage in the NMC GWMA. The goal is for 150-200 farmers to develop water quality plans covering 50,000 acres, or 43% of total acreage. The number of water quality plans developed to-date reflects on the success of implementation of the NMC GWMA Action Plan.

Groundwater quality projects funded in the NMC GWMA have focussed on BMP's research and development, public education, community involvement and groundwater quality assessment. Early groundwater projects in the NMC GWMA (1990-1992) emphasized research and identification of sources of contamination. The second stage (1993-) of implementation of the NMC GWMA Action Plan highlights field demonstration plots as a way of presenting BMP research-based information to growers, public awareness and promoting of BMP's protective of groundwater quality. An overview of groundwater quality projects in Malheur County, 1990-1993 is included in APPENDIX VIII. Total funding cost for these projects, for the years 1990-1993 is estimated at 1.95 million dollars, 58% of which include primarily state funds (such as SWMG grants and research and development funds), and 42% includes federal contribution (such as, EPA 319(h) non-point source grants and Ontario HUA cost-share incentives).

Success of the NMC GWMA Action Plan depends on the voluntary implementation of appropriate technology developed for groundwater protection. Agricultural producers have begun adopting BMP's on their

farm, including producers in the priority areas (APPENDIX VI), Willow Creek, (NW of Vale), Ontario Heights and the Cairo and Nyssa areas. Reduction of the nitrate contamination in the aquifers underlining the NMC GWMA as a result of implementation of BMP's will take time as groundwater is slow to clean up and there is a lag time between research and development of BMP's, demonstration/field trials, promotion and adoption of these practices. A summarized list of the BMP's and total acres as adopted by the agricultural producers in the NMC GWMA is presented in APPENDIX IX.

DEQ is optimistic that the voluntary approach to implementation of the Action Plan will prove successful and the BMP's developed will become the standard practices, on an area-wide basis. If however, these efforts are unsuccessful, the NMC GWMA Action Plan recommendations will need to be reviewed and modified to continue to address the contamination problem. At the present time, the data is inconclusive as to whether the present efforts are improving the groundwater quality.

Lower Umatilla Basin Groundwater Management Area (LUB GWMA)

The 550 square mile Lower Umatilla Basin (see map in APPENDIX X) was declared a Groundwater Management Area (GWMA) in July 1990. The declaration was made in response to elevated nitrate concentrations detected in groundwater in northern Morrow and Umatilla Counties during DEQ assessment work conducted in 1986 and 1987. Nitrate-nitrogen concentrations as high as 80 mg/L were detected. Information from several other sources such as point source groundwater monitoring, domestic well testing, and locally conducted surveys also indicated high nitrate levels are common in the area.

The Oregon Strategic Water Management Group appointed a Citizen Committee chaired by Mr. Henry Lorenzen and a Technical Advisory Committee (see APPENDIX XI) on November 21, 1990 as required by the 1989 Groundwater Protection Act (HB 3515). Members of both committees live and work within the Lower Umatilla Basin. The committees first met on February 12, 1991.

The primary activity to date has been conducting an interagency (DEQ, OWRD, OHD, ODA, OSU) technical groundwater investigation to provide

sufficient technical information for developing an effective Action Plan. The Technical investigation activities are listed in APPENDIX XII. A draft hydrogeology, groundwater chemistry, and land use report is near completion.

The hydrogeology in the Lower Umatilla Basin is complex. Groundwater within the alluvial aquifer system occurs in coarse grained catastrophic flood deposits, finer grained older alluvial deposits, or both depending upon location. The presence of alluvial groundwater at some locations may be the result of human activity. At other locations, groundwater in the alluvial aquifer system is directly connected with groundwater in one or more underlying basalt aquifers. Elsewhere, alluvial aquifer groundwater interacts with surface water along stream reaches. Groundwater flow within the alluvial aquifer system is not uniform. Alluvial groundwater in the western 70 percent of the basin tends to flow northwest toward the Columbia River. Alluvial groundwater in the eastern 30 percent of the basin tends to flow toward the Umatilla River from three subareas then north toward the Columbia River. Local pumping can alter groundwater flow.

Land uses that may be contaminating Lower Umatilla Basin groundwater is varied (see APPENDIX XIII) and their distribution is mingled. Many of these land uses are located close together, which makes determining likely and primary sources of groundwater contamination difficult.

The groundwater chemistry/quality in the Lower Umatilla Basin is also complex. It appears to reflect the varied land uses. The detection of pesticides in groundwater from the Lower Umatilla Basin is infrequent. The relationship between nitrate and other constituents is complex and sometimes inconsistent due to the variety of nitrogen sources and this has made necessary more intensive and sophisticated data analyses for groundwater contamination source identification.

The technical groundwater investigation confirms an area-wide groundwater quality problem exists within the Lower Umatilla Basin. Nitrate, total dissolved solids, arsenic, and sodium concentrations exceed the drinking water standard or recommended limit at different locations (see APPENDIX XIV). Atrazine, ethylene dibromide (EDB), dacthal/ dacthal metabolites, chloroform, and toluene have also been detected in groundwater samples (see APPENDIX XV). Explosives, semi-volatile

compounds and metals have been detected in some U.S Army Umatilla Depot Activity area groundwater samples collected and analyzed by Depot consultants.

Technical analyses indicate the primary source of groundwater contamination within the Lower Umatilla Basin appears to be irrigated agriculture, established food processing land application sites, and localized large scale animal feeding operations. Significant contamination sources exist within the Umatilla Army Depot, but the groundwater quality impacts appear limited to the source areas. Concentrated residential developments with on-site septic systems appear to have an adverse impact upon groundwater quality, but their impact appears secondary to other sources. Additional analyses indicate groundwater elevations respond quickly to water loading at land surface. A relationship between groundwater elevation and constituent concentration fluctuations in groundwater also exists.

Completing the first draft of the groundwater and land use technical investigation report in April 1994 makes possible the next activity phase of the LUB GWMA: Action Plan development. Developing an Action Plan will begin later this year.

Contrasting Technical Complexities

Time required for the technical investigation of the Groundwater Management Areas differed between LUB GWMA and NMC GWMA because:

- The Lower Umatilla Basin hydrogeology and groundwater chemistry in the Lower Umatilla Basin were very complex to understand. Groundwater occurrence and flow was less complicated in Northern Malheur County.

- Historic and current land use in the Lower Umatilla Basin included several potential sources, making the delineation of the chief contributors difficult. In the NMC GWMA there were few and related contributors and their distribution was relatively simple. Detection of Dacthal and nitrate in groundwater in the NMC GWMA made identifying agriculture as the primary source of groundwater

contamination relatively easy compared to identifying groundwater contamination sources in the Lower Umatilla Basin.

Authority of the Commission with Respect to the Issue

The Strategic Water Management Group has the responsibility of overseeing implementation of the Groundwater Management Protection Act of 1989. DEQ acts as the lead agency assigned to implement the act.

The Environmental Quality Commission with the DEQ Director exercises authority as follows:

- Establish maximum measurable levels used to trigger the declaration of GWMA's.
- Allocation of DEQ resources for activities related to the 1989 Groundwater Protection Act;
- Issuing, modifying or withholding water quality and other environmental permits;
- Establishing or modifying policies for DEQ activities within specific groundwater management areas;
- Expressing opinions and providing input during Action Plan development and implementation.

Alternatives and Evaluation

The Department works with both the Northern Malheur County and Lower Umatilla Basin Groundwater Management Area Citizen Committees and several related agencies striving for ways to implement the Action Plan. Evaluation of efforts is part of the activities.

Summary of Public Input Opportunity

The public can and is encouraged to provide input in writing or verbally to the local Citizen Committees, state agency project staff and the Oregon Strategic Water Management Group.

- Public in Malheur County participated during the many opportunities to comment during the development of NMC GWMA Action Plan.

- Public opportunity to comment upon the Lower Umatilla Basin groundwater technical report and Action Plan will occur at local Citizen Committee, Technical Advisory Committee, and general presentation meetings, or in writing. Public review copies of the report will be available at local libraries, schools, city halls, and county court houses.

Conclusions

- The NMC GWMA is in the Action Plan implementation stage. Time is required to allow the best management practices to work and the groundwater quality to improve. An Action Plan review is scheduled for 1997. At that time, a data analysis will be utilized to assess the impact of the voluntary implementation of the Action Plan and to determine whether the voluntary approach is working or needs to be reevaluated. To date, groundwater quality data is inconclusive.

- The LUB GWMA has concluded the investigative phase and will be proceeding to develop an action plan.

- Area-wide groundwater quality problems exist in Oregon;

- Area-wide groundwater quality problems can be addressed by declaring GWMA's, conducting area-wide groundwater investigations to understand the problem and sources, and co-develop and implement a Groundwater Management Action Plan to correct the problems as directed by the 1989 Groundwater Protection Act.

- DEQ and EQC policies and decisions affecting environmental activity within groundwater management areas must be consistent with each Action Plan and the goal of improving and protecting the long term groundwater quality.

Intended Future Actions

NMC GWMA:

I. Action Plan Review: Implementation/Adoption of the BMP by agricultural producers, August 1997;

II. Area groundwater quality analysis, March 1997.

LUB GWMA:

I. Complete a first draft of the technical groundwater investigation report, April 1994;

II. Co-develop a groundwater management area Action Plan with the Oregon Department of Agriculture and the Citizen Committee during local meetings;

III. Conduct local presentations, interviews and meetings to explain technical findings and the Action Plan;

IV. Obtain Oregon Strategic Water Management Group approval of the Lower Umatilla Basin Groundwater Management Area Action Plan;

V. Co-implement the Action Plan with the Citizen Committee, Technical Advisory Committee, other State Agencies, and other entities according to responsibilities assigned by the Action Plan.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Attachments

APPENDIX I.	Groundwater Protection Act Implementation Task Force Recommendations to the Strategic Water Management Group.
APPENDIX II.	Ranking for reconnaissance sampling of areas of groundwater quality concern.
APPENDIX III.	Sampling locations and average nitrate concentrations (sate-wide).
APPENDIX IV.	Overview of the N. Malheur County Groundwater Quality, 1983-1997.
APPENDIX V.	Northern Malheur County Groundwater Management Area Citizen Committee Membership.
APPENDIX VI.	Northern Malheur County Groundwater Management Area Priority Areas for Implementation.
APPENDIX VII.	Groundwater flow in the NMC GWMA.
APPENDIX VIII.	Overview of projects for groundwater quality protection (Malheur Co.), 1990-1993
APPENDIX IX.	Nitrogen Management Practices for Groundwater Quality Protection in the NMC GWMA, 1990-1993.
APPENDIX X.	Lower Umatilla Basin Groundwater Management Area
APPENDIX XI.	Lower Umatilla Basin Groundwater Management Area Citizen Committee and Technical Advisory Committee Membership.
APPENDIX XII.	Lower Umatilla Basin Groundwater Technical Investigation Activities
APPENDIX XIII.	Potential Groundwater Contamination Sources in the Lower Umatilla Basin

APPENDIX XIV. Concentration Range for Selected Inorganic Constituents, All LUB Alluvial and Basalt Groundwater (7/90 to 3/93)

APPENDIX XV. Concentration Range for Detected Organic Constituents, All LUB Alluvial and Basalt Groundwater (7/90 to 3/93)

Reference Documents (available upon request)

Camacho, I., G.H. Grondin, D.O. Nelson, and K. Wozniak. 1994. Draft Report Hydrogeology, Groundwater Chemistry, and Land Uses in the Lower Umatilla Basin Groundwater Management Area, Northern Morrow and Umatilla Counties, Oregon. Oregon Water Resources Department Ground Water Report No.___.

Gannett, M. W. 1990. Hydrogeology of the Ontario Area. Malheur County, Oregon. Oregon WRD Ground Water Report No. 34.

Malheur County Groundwater Management Committee. 1991. Northern Malheur County Groundwater Management Plan.

Ontario Hydrologic Unit Area, Annual Reports, 1991-1993.

Pettit, G. 1987. Assessment of Oregon's Groundwater for Agricultural Chemicals, a groundwater quality investigation, 1987. DEQ.

Summary of Groundwater Protection Grant Projects in Oregon & Potential Funding Sources. August 1993. Department of Environmental Quality.

Approved:

Section:

Division:

Report Prepared By: Ivan Camacho

Phone: (503) 229-5088

Date Prepared: March 22, 1994

Author:ic
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April 5, 1994

APPENDIX I.

GROUNDWATER PROTECTION ACT IMPLEMENTATION TASK FORCE RECOMMENDATIONS TO THE STRATEGIC WATER MANAGEMENT GROUP February 16, 1993

BACKGROUND

The Strategic Water Management Group (SWMG), convened the Groundwater Protection Act Implementation Task Force on October 23rd, 1992. The task force was created in response to a request by the Oregon Environmental Council which was supported by state agencies. This interdisciplinary group was created to review current state activities related to implementation of the Groundwater Protection Act of 1989. The 13 member task force, chaired by Anne Squier, Senior Policy Advisor Natural Resources to the Governor, consists of representatives from state agencies, natural resource organizations, environmental groups, and the agricultural community. Table 1 is a list of the task force members and the agencies or organizations they represent.

The primary responsibility of the task force was to suggest and recommend direction for groundwater protection activities of the state. The task force reviewed groundwater protection activities of each represented group, established criteria for prioritizing activities, created and evaluated lists of groundwater projects, and evaluated current groundwater protection strategies and budgets. The task force has developed a list of priority groundwater tasks and made suggestions for budget allocations which are included in the following list of recommendations.

RECOMMENDATIONS

Priorities and Budgeting

1. The task force recommends that no additional groundwater management areas or areas of concern be delineated in the coming biennium so that funds are available to increase statewide groundwater quality monitoring, data analysis and management, and community involvement activities. Seven high priority tasks were identified for the 1993 - 95 biennium. The priority tasks are:

* Continued interagency coordination
* More aggressive and coordinated development of a database and groundwater data repository based on linking the computer databases of the various state agencies
* Statewide groundwater quality assessments through analysis of all sources of existing groundwater data and additional statewide monitoring.
* Development of a more coordinated statewide grants program for research, demonstration and education projects

* Increased development and implementation of statewide groundwater public education and community involvement efforts
* Continued Wellhead Protection program development
* Continued work in existing Groundwater Management Areas

Less immediate priority tasks were also identified. Resources to address these areas would be needed in the 1995-97 biennium. They include:

* Establishing new Groundwater Management Areas or Areas of concern.
* Beginning a statewide ambient groundwater monitoring program

TABLE 1
Members of the Groundwater Protection Act Implementation Task Force

Name	Phone	Representing
Anne Squier	378-3548	Task Force Chair; Governor's Office
Barbara Sprott	229-6766	Committee Staff, Groundwater Section, DEQ
Kit Kamo	889-2588	Malheur County Soil and Water Conservation District
Vaughn Brown	326-2754	Soil Conservation Service
Susan Aldrich-Markham	434-7517	OSU Extension Service
Van Volk	737-4251	OSU Experiment Station
Bob Willis	796-7482	Portland Water Bureau
Jean Cameron	222-1963	Oregon Environmental Council
Quincy Sugarman	231-4181	OSPIRG
Clint Reeder	276-9278	Agricultural Representative
Terry Witt	370-8092	Oregonians for Food and Shelter
Ken Lite	378-8455	Water Resources Department
Dave Priebe	378-3776	Department of Agriculture
Dave Leland	731-4317	Oregon Health Division
Amy Patton	229-5878	Department of Environmental Quality

2. The task force recommends that these priorities be communicated to state agencies and legislative budget committees as appropriate. The task force's desire that the various state agencies coordinate how the priority tasks are to be delegated and that funds are then allocated accordingly. Table 2 outlines appropriations based on the percent of total general funds allocated to groundwater protection.

TABLE 2
Recommendations for Priority Budget Allocations for Groundwater Funds

ACTIVITIES	PERCENT OF GENERAL FUND BUDGET
Interagency Coordination	No extra costs
Database Development	10%
Statewide Assessments	59%
Public Education and Community Involvement	13%
Existing Groundwater Management Areas	18%
New Groundwater Management Areas and Areas Of Concern	No effort in 1993 - 95

3ADDITIONAL FUNDS	TOTAL
Grants (state and federal monies)	$685,000 *
Wellhead Protection	$100,000 *

* Numbers are dependent on federal and other fund distribution and not included in general fund budget totals.

Groundwater Protection Task Force

3. It is recommended that the task force continue to function in an advisory capacity and meet quarterly to guide groundwater protection activities, re-evaluate priorities and progress as needed, oversee a coordinated grants program, and steer statewide community involvement and public education activities. Two specific areas for involvement are:

A. **Grants:** The Technical subcommittee of the Groundwater Protection Task Force would like the opportunity to make recommendations through the task force to SWMG on how a statewide grants program could be coordinated.

Specifically, this group would address grant requests, submittal, review, and administration of all grant funded

groundwater research, demonstration, education, and community projects in the state. The subcommittee would also explore the possibility of increasing grant support of community involvement projects.

B. **Community Involvement:** The task force would like the opportunity to help create and guide groundwater community involvement, community response, and public education efforts across the state.

APPENDIX II. Ranking for reconnaissance sampling of areas of groundwater quality concern. Areas prioritized based upon potential impact caused by NPS contamination to groundwater

RANK	AREA	COUNTY	WORK PLAN COMPLETED	SAMPLING COMPLETED	CONFIRM'D SAMPLING
1	Woodburn	Marion	Yes	Yes	Yes
2	Junction City	Lane	Yes	Yes	Yes
3	Prineville	Crook	Yes	Yes	
4	Canby	Clackamas	Yes	Yes	Yes
5	Albany-Lebanon	Linn	Yes	Yes	
6	Medford	Jackson	No	No	
7	Upper Grande Ronde Valley	Union	Yes	Yes	
8	Redmond	Deschutes	No	No	
9	Washington / Yamhill Co.	Washington/ Yamhill	In progress	No	
10	Clatsop Plains	Clatsop	In Progress	No	
11	Hood River-Parkdale	Hood River	Yes	No	
12	Burns-Hines	Harney	Yes	No	
13	Milton-Freewater	Umatilla	No	No	
14	Lake Labish-Mission Bottom	Marion	No	No	
15	Klamath Falls-Merrill	Klamath	No	No	
16	John Day-Canyon City	Grant	No	No	
17	The Dalles	Wasco	No	No	
18	Harbor Beach	Curry	No	No	
19	Sauvie Island	Multnomah/ Columbia	No	No	

RANK	AREA	COUNTY	WORK PLAN COMPLETED	SAMPLING COMPLETED	CONFIRM'D SAMPLING
20	Jefferson	Marion	No	No	
21	Tillamook	Tillamook	Yes	No	
22	La Pine	Deschutes	Yes	Yes	
23	Grants Pass	Josephine	Yes	In progress	
24	Madras	Jefferson	No	No	
25	Dever-Conner	Linn	No	No	
26	Haines	Baker	No	No	
27	Coburg	Lane	Yes	In progress	
28	Lakeview	Lake	No	No	
29	Paisley	Lake	No	No	
30	Enterprise	Wallowa	No	No	
31	Myrtle Point	Coos	No	No	
32	Coquille	Coos	No	No	

Notes:

1. **Work Plan** refer to a document prepared by DEQ Groundwater Section for each area on the priority list. The plans serve to document well locations, summarize area information/background and to outline the groundwater sampling requirements.

2. **Sampling Completed** refers to a reconnaissance sampling event completed based on a work plan for a specific priority area.

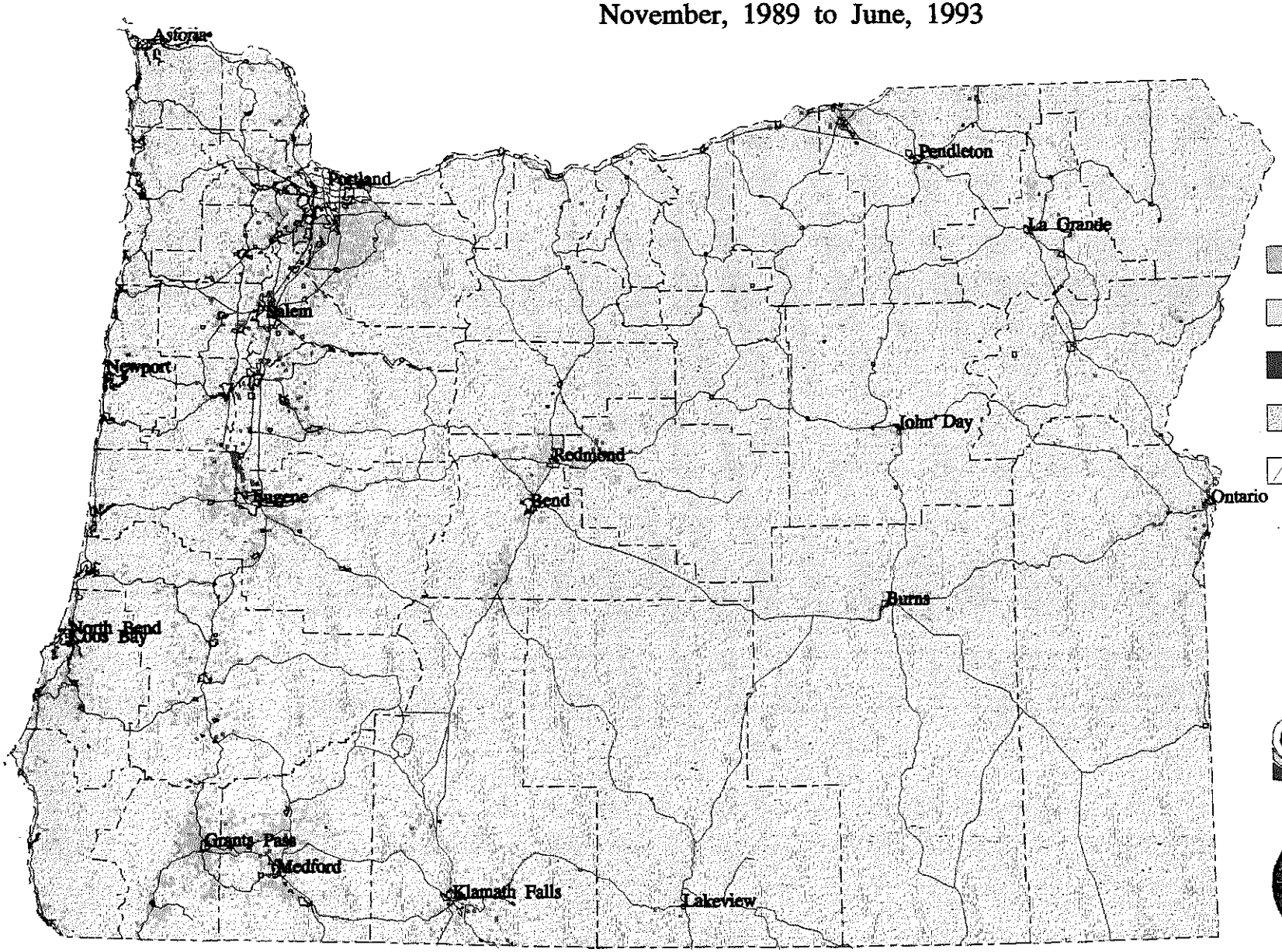
3. **Confirmed Sampling.** It refers to an additional sampling event, subsequent to the Sampling Event. This additional sampling event takes place if volatile organic compounds (VOC) and/or pesticides were detected in the reconnaissance sampling serving as a confirmation of such findings.

This page is left blank on purpose. The page number corresponds to the **APPENDIX III. Sampling locations and average nitrate concentrations (statewide)**, enclosed in the following page.

SAMPLING LOCATIONS AND AVERAGE NITRATE CONCENTRATIONS

Data from Oregon DEQ Volunteer Nitrate Testing Program and Health Division's Real Estate Transaction Testing Program

November, 1989 to June, 1993



NITRATE CONCENTRATIONS AVERAGED BY SECTION

- < 3 mg/l
- 3 mg/l - 7 mg/l
- > 7 mg/l
- Not tested
- Major Highway

Scale 1:3,000,000

APPENDIX IV. Overview of the N. Malheur Groundwater Quality, 1983-1997.

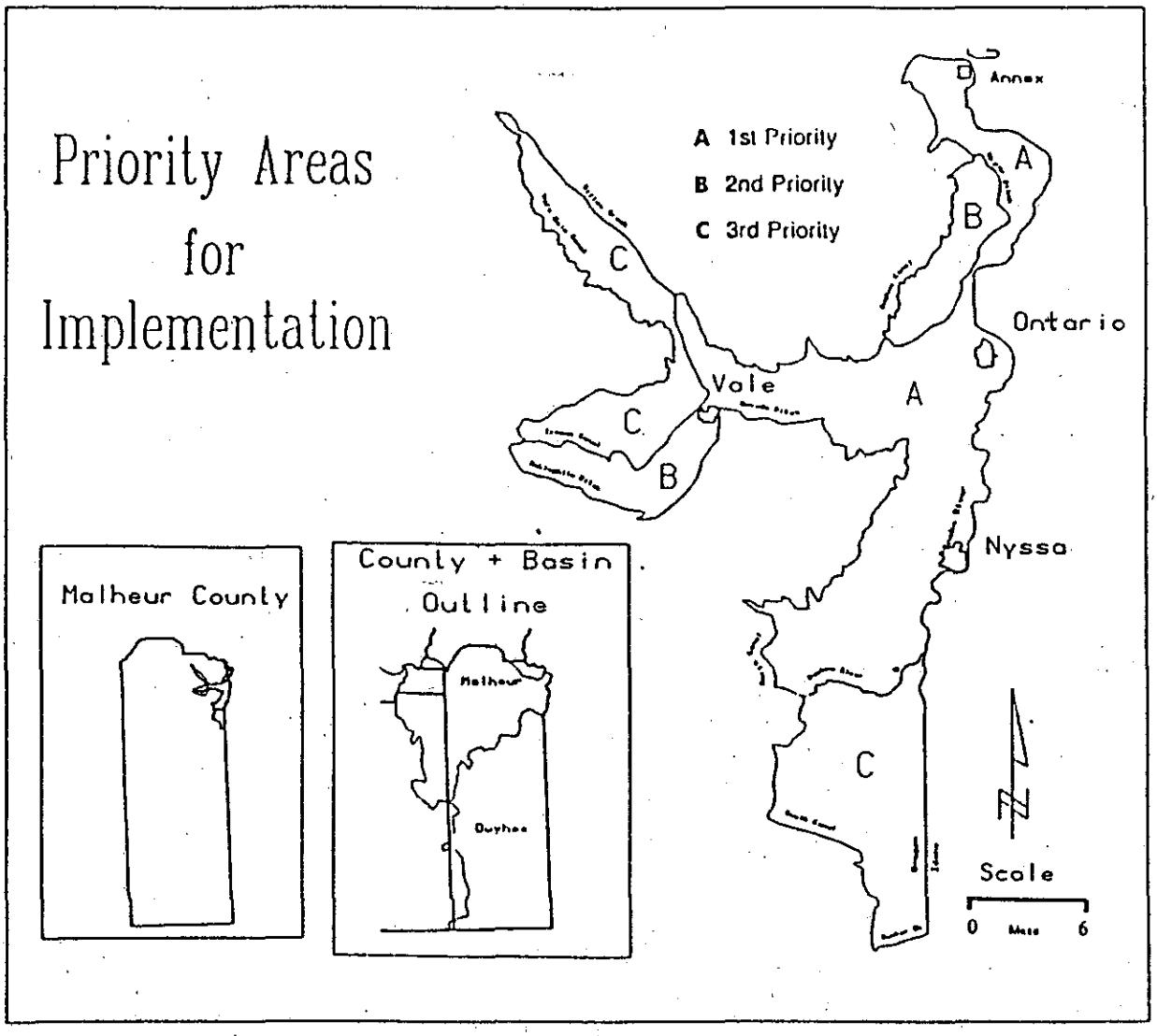
Activity Period	Reconnaissance / Sampling	Findings	Comments	Action
1983	1st Malheur Co. Groundwater investigation: EPA Survey of domestic wells (June and May, 1983)		The above 5 groundwater sampling events included 107 groundwater samples in a 180 square-mile area, (cities of Ontario, Nyssa and Vale)	
1985	Joint Effort Survey: EPA- Malheur Co - and the public. Survey for nitrates and pesticides.	Findings: Nitrate in groundwater exceeds the federal drinking water standard (in 35% of the wells. Dacthal in groundwater is first confirmed (in two-thirds of the samples, May 1985).		
1986	DEQ Survey - EPA joint effort; the investigation was part of the Statewide Assessment of Oregon's Groundwater for Agricultural Chemicals. Including in this study were 107 wells (March and September 1986).			
1987				Legislature adopted the Oregon Groundwater Protection Act (October 1989) ORS 468B.150; ORS 468B.180; ORS 468B.185; ORS 536.145 to 169.
1988	Reconnaissance sampling began. Approximately 150 Wells identified by WRD (for a Hydrogeologic Study of the Ontario area) were utilized. Groundwater sampling occurred by-monthly.			
1989				N. Malheur Co. Ground water Management Area Declared. SWMG appointed a local committee to oversee local implementation of the groundwater protection act. The area also Becomes a Hydrological Unit Area HUA - USDA.

Activity Period	Reconnaissance / Sampling	Findings	Comments	Action
1990	1. Bimonthly well network is established. 2. Vadose Zone sampling study.	Results from Vadose zone study reveal correlation between Dacthal and Nitrate in subsoil. Nitrate levels found in vadose are consistent with concen-trations in groundwater.	Funding (state and federal) of research and development projects leading to coordination of efforts and implementation of groundwater BMP begins.	1. Best Management Practices (BMP), Research and Development program for groundwater quality protection (OSU MES) began. Emphasis on identifying fertilization and irrigation practices for economic and environmental sustainability. 2. The N. Malheur Co. Groundwater Management Committee, Technical Advisory Sub-committee and DEQ, ODA, WRD, OHD and OSU representatives concluded an 18-month cooperative effort with the approval of a work plan to reduce the county's groundwater quality contamination. SWMG approved the Action Plan on August 26, 1991. Add
1991	Monitoring of groundwater quality through the well network (23 wells in primary network, 14 wells in secondary network) continues. Sampling is performed by DEQ and the Malheur County Soil Conservation Service.		The Action Plan includes detailed information on water quality, identification of contaminant sources, and recommendations for implementation of best management practices to improve groundwater quality. Funding (state and federal) of research and development projects leading to coordination of efforts and implementation of groundwater BMP continues.	
1992		Implementation and adoption of BMP's is currently under way. Changes in ground-water quality will be looked over a long-period (5 -10 year basis).		
1993				Addendum to Action Plan occurs. primary and secondary well net-works are consolidated Full screen for pesticides and VOC scheduled every two years (instead of twice a year).
1994			Water Quality plans reflect implementation of BMP.	85 Water Quality plans have been written. An estimated 35,000 acres in the Ground-water Management Area are under water quality plans.

Activity Period	Reconnaissance / Sampling	Findings	Comments	Action
1995	DEQ-SCS GROUNDWATER QUALITY MONITORING CONTINUES. 2ND STAGE OF HUA, EMPHASIZES ON MONITORING OF BMP'S AND THEIR IMPACT ON GROUNDWATER QUALITY.		200 WATER PLANS IS THE GOAL OF THE ONTARIO HUA BY THE YEAR 1995.	
1996			DEQ ASSESSMENT OF VOLUNTARY IMPLEMENTATION AND/OR ADOPTION OF GROUNDWATER QUALITY BMP AND THEIR IMPACT SCHEDULED.	
1997				

APPENDIX V. Northern Malheur County Groundwater Management Area Citizen Committee Membership

Name	Representing/Background
Barry Fujishin	Farmer
Roger Findley	Treasure Valley Comm. College
Kathy Jordan	Rancher
Bob Butler	Attorney
Don Bowers	Agronomist
Joe Hobson	Farmer, retired
Nico Hopman	Farmer
Ron Schoeneman	Simplot Soil Builders
Darrell Standage	Farmer
Dave Cloud	School Superintendent
Ray Winegar	Farmer
Cliff Bentz	Attorney
Jim Nakano	Farmer
Tom Anderson	Onion packing contractor
Caroline Nysingh	Lama rancher
Vaughn Brown	Water resource planning specialist
Gary Yeoumans	Soil conservation Service



APPENDIX VI. Northern Malheur County Groundwater Management Area. Priority areas A, B and C represent a preliminary designation of areas based on contamination concentrations of nitrate in groundwater. The priorities may be re-prioritized upon obtaining additional information on the contaminant concentrations found in the area's subsurface.

APPENDIX VII. GROUNDWATER FLOW in the NMCGWMA.

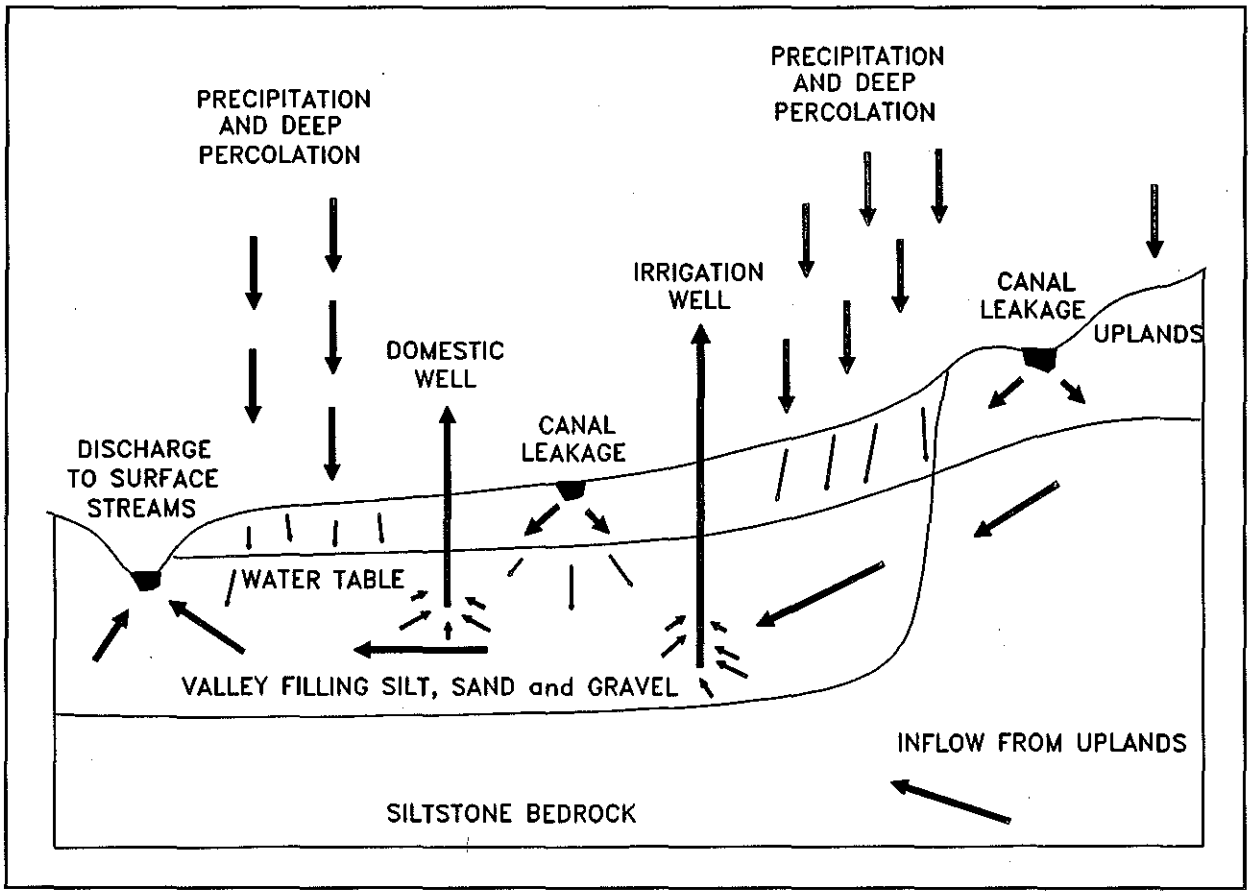


Figure 1. A DIAGRAM OF THE GROUNDWATER FLOW SYSTEM IN THE ONTARIO AREA. (ADAPTED FROM 1990 M. GANNETT, WRD GW REPORT NO. 34)

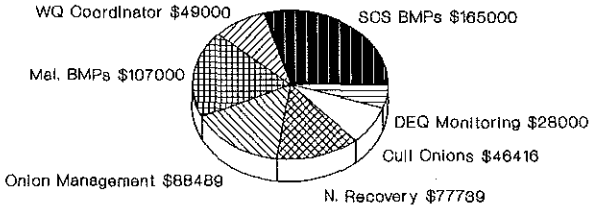
GROUNDWATER IN THE LOWLANDS OF THE ONTARIO VALLEY MOVES PRIMARILY THROUGH THE SAND AND GRAVEL. THIS WATER COMES FROM PRECIPITATION, DEEP PERCOLATION OF IRRIGATION WATER AND DITCH LEAKAGE AND INFLOW FROM THE HIGHLANDS TO THE VALLEY. GROUNDWATER GENERALLY FLOWS TO THE RIVERS, WHERE IT IS DISCHARGED FROM THE SYSTEM (BASEFLOW). IN AREAS WHERE THERE ARE NO RESERVOIRS TO PROVIDE WATER TO STREAMS DURING THE DRY TIMES OF THE YEAR, STREAM FLOW IS OFTEN ENTIRELY FROM BASEFLOW.

THERE ARE THREE MAJOR WATER BEARINGS UNITS IN THE ONTARIO AREA. THESE ARE THE UNCONSOLIDATED SANDS AND GRAVEL IN THE MAIN VALLEYS, SATURATED PARTS OF THE UPLAND GRAVELS ABOVE THE VALLEYS AND OCCASIONAL SAND AND GRAVEL LAYERS WITHIN THE GLENNS FERRY FORMATION OCCURRING LOCALLY THROUGHOUT THE AREA.

APPENDIX VIII. Overview of projects for groundwater quality protection in Malheur County, 1990-1993. YEAR 1990

Project	What did it do?	Who performed it?	Who funded it?
Cull Onion Disposal BMP's	Investigated the feasibility of: a) land application of onion culls; b) as a cattle feed; c) stockpiling for feeding of sheep.	OSU - Extension Service, Malheur County.	EPA Region X, Section 319(h) CWA, State.
Efficiency of Nitrogen Recovery for Groundwater Protection, 1990.	Reviewed current fertilizer recommendations written for deep rooted crops. Updated recommendations to optimize deep-rooted crop use of residual nitrates in the subsoil.	OSU - Malheur Experimental Station.	319(h) CWA, State (Research and Development Funds).
Improved Onion Management for Groundwater Protection, 1990.	Investigated and reviewed nitrogen requirements and losses from onions, particularly related to nitrogen fertilization, rate of application, timing and irrigation management	OSU - Malheur Experimental Station.	319(h) CWA, State (Research and Development Funds).
Malheur County Best Management Practices, 1990.	Research position to coordinate Best Management Practices, research and development projects for groundwater quality protection.	OSU - Malheur Experimental Station.	319(h) CWA, State.
Malheur County SWCD Water Quality Coordinator and Farm Planner, 1990.	Staff positions to: a) provide leadership and coordination for implementation of the NMC GWMA Action Plan; and b) technical assistance to farmers on adoption of groundwater quality BMPs.	Malheur Co. SWCD	319(h) CWA, State.
Soil Conservation Service BMP's	Initial stage of vadose zone sampling.	Malheur County SCS	319(h) CWA, State.
DEQ Groundwater Quality Monitoring	Continuous monitoring of groundwater quality. (nitrate and dacthal) other possible contaminants	ODEQ	State: General Fund

Groundwater Projects, NMCGWMA YEAR 1990
Project Costs

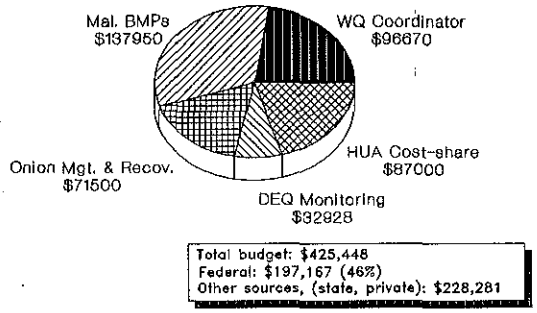


Total budget: $561,654
Federal: $221,600 (39%)
Other sources, (state, private): $340,054

APPENDIX VIII (cont): YEAR 1991

Project	What did it do?	Who performed it?	Who funded it?
Efficiency of Nitrogen Recovery for Groundwater Protection, 1991.	Reviewed current fertilizer recommendations written for deep rooted crops. Updated recommendations to optimize deep-rooted crop use of residual nitrates in the subsoil.	OSU - Malheur Experimental Station.	State (Research and Development Funds).
Improved Onion Management for Groundwater Protection, 1991.	Investigated and reviewed nitrogen requirements and losses from onions, particularly related to nitrogen fertilization, rate of application, timing and irrigation management	OSU - Malheur Experimental Station.	State (Research and Development Funds).
Malheur County Best Management Practices, 1991.	Research position to coordinate Best Management Practices, research and development projects for groundwater quality protection.	OSU - Malheur Experimental Station.	EPA Region X, Section 319(h) CWA, State.
Malheur Co. Soil and Water Conservation District, Water Quality Coordinator and Farm Planner, 1991.	Staff positions to: a) provide leadership and coordination for implementation of the N. Malheur Co. Groundwater Management Action Plan; and b) technical assistance to agricultural producers on adoption of groundwater quality BMPs.	Malheur Co. SWCD	319(h) CWA, State.
DEQ Groundwater Quality Monitoring	Continuous monitoring of groundwater quality. Sampling for nitrate and dacthal among other possible contaminants/indicators.	ODEQ	State: General Fund
HUA Ontario	Cost-share incentives for farmers adopting BMP's -	Local producers	Federal: USDA

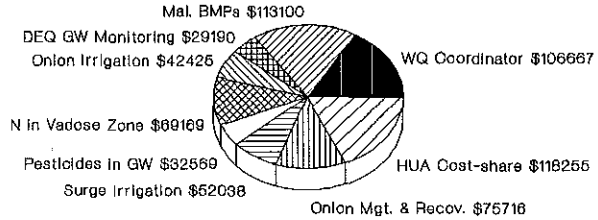
Groundwater Projects, NMC GWMA YEAR 1991
Project Costs



APPENDIX VIII (cont): YEAR 1992

Project	What did it do?	Who performed it?	Who funded it?
Efficiency of Nitrogen Recovery for Groundwater Protection, 1992	Reviewed current fertilizer recommendations written for deep rooted crops. Updated recommendations to optimize deep-rooted crop use of residual nitrates in the subsoil.	OSU - MES.	State (Research and Development Funds).
Improved Onion Management for Groundwater Protection, 1992	Investigated and reviewed nitrogen requirements and losses from onions, particularly related to nitrogen fertilization, rate of application, timing and irrigation management	OSU - MES.	State (Research and Development Funds).
Malheur Co. BMP, 1992	Research position to coordinate BMP, research and development groundwater projects.	OSU - MES.	319(h) CWA, State.
Malheur Co. SWCD, Water Quality Coordinator and Farm Planner, 1992	Staff positions to: a) provide leadership and coordination for implementation of the Action Plan; and b) technical assistance to agricultural producers on adoption of BMPs.	Malheur Co. SWCD	319(h) CWA, State.
Breakthrough Technology for Onion Irrigation	Attempted to determine the soil water potential which would result in optimum onion yield, quality and storability. It evaluated sprinkler, subsurface drip and furrow irrigation systems for onion production, water use and nitrate leaching.	OSU MES	State (SWMG)
Fate and Transformations of Nitrate in the Vadose Zone	Investigated the potential of surplus soil nitrate originating from fertilizer immobilization in the unsaturated vadose zone.	OSU	State (SWMG)
Pesticides/Groundwater Vulnerability	Assessed degradation rates and sorption potential to determine the presence of compounds classified as leachers, and to re-evaluate leaching potential of pesticides from soils.	OSU	State (SWMG)
Surge Irrigation of Onions in Malheur Co.	Investigated the impact of surge irrigation on reducing nitrate leaching for onion crops and on increased efficiency of water use.	OSU MES	State (SWMG)
DEQ Groundwater Quality Monitoring	Continuous monitoring of groundwater quality. Sampling for nitrate and dacthal among other possible contaminants/indicators.	ODEQ	State: General Fund
HUA Ontario	Cost-share incentives for farmers adopting BMP's	Local producers	Federal: USDA

Groundwater Projects, NMCGWMA YEAR 1992
Project Costs

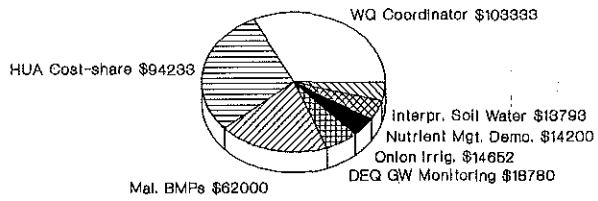


Total budget: $639,129
Fed: $248,315 (39%); SWMG: $65,640 (10%)
Other sources, (state, private): $325,174

APPENDIX VIII (cont): YEAR 1993

Project	What did it do?	Who performed it?	Who funded it?
Onion Irrigation Practices to Reduce Nitrate Leaching	Continued investigation on Nitrogen requirements and losses for onions, particularly related to nitrogen fertilization, rate of application, timing and irrigation management	OSU - Malheur Experimental Station.	State (Research and Development Funds).
BMP Research and Development Program, Part 2	Coordination of BMP, research and development projects for groundwater quality protection, emphasizing on irrigation management.	OSU - Malheur Experimental Station.	State.
Malheur Co. SWCD, Water Quality Coordinator and Farm Planner, 1992	Staff positions to: a) provide leadership and coordination for implementation of the Action Plan; and b) technical assistance to agricultural producers on adoption of BMPs.	Malheur Co. SWCD	EPA Region X, Section 319(h) CWA, State.
Demonstration of Rapid Interpretation of Soil Water Information for Irrigation Decisions	Investigated and reviewed methodologies for moisture requirements of crops. Developed a rapid method of interpretation data for irrigation.	OSU MES	State, (Research and Development Funds).
Nutrient Management Demonstration Project on Onion Fields	Demonstration project on onion production management.	Malheur County SWCD	State (Research and Development Funds)
DEQ Groundwater Quality Monitoring	Continuous monitoring of groundwater quality. Sampling for nitrate and dacthal among other possible contaminants/indicators.	ODEQ	State: General Fund
Ontario HUA	Cost-share incentives for farmers adopting BMP's	Local producers	Federal: USDA

Groundwater Projects, NMCGWMA YEAR 1993
Project Costs



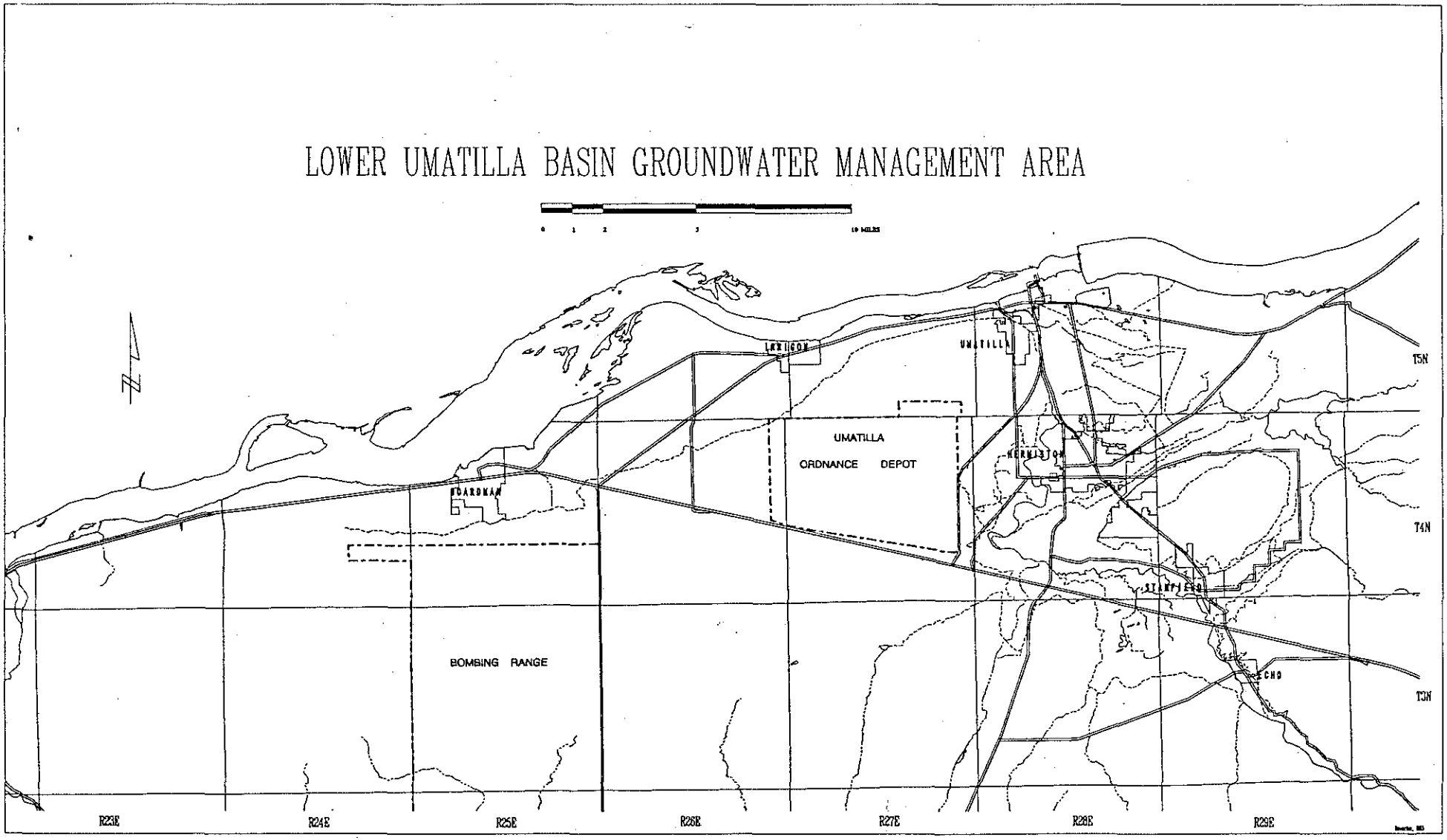
Total budget: $321,001
Federal: $156,233 (49%);
Other sources, (state): $164,768

APPENDIX IX. Nitrogen Management Practices for Groundwater Quality Protection in the Northern Malheur County Groundwater Management Area, 1990-1993.

FY	Practice (BMP)	Acres
1990 through 1993	Conservation cropping sequence	11,792
	Grasses and legumes in rotation	1,213
	Irrigation water management	10,642
	Mulching	1,300
	Pasture and hayland management	69
	Pasture and hayland planting	69
	Nutrient management	18,669
	Waste utilization	1,070
	Soil testing	10,874
	Fertilizer application timing	8,402
	Tissue analysis	7,688
	Split application of nitrogen	5,920
	Banding of nutrients	1,090
	Surge irrigation	160
	Bubbler	41
	Irrigation scheduling	4,200
	Sprinkler irrigation	4,193
	TOTAL*	87,392

* Note: The number of acres includes annual and permanent practices. The BMP's are assumed to be continued by the producer in subsequent years without assistance (cost-share incentive), on a voluntary basis. The list presents a cumulative number of acres under BMP's in a four year period, starting 1990. For a subsequent year, a particular field could have more than one BMP's but the acres of the executed practice would be counted separately. For this reason, the total number of acres listed in this list for annual and permanent practices, (1990-1993) in the NMC GWMA does not coincide with the actual number of acres under water quality plans previously reported. (35,000 acres).

APPENDIX X.Lower Umatilla Basin Groundwater Management Area.



APPENDIX XI. Lower Umatilla Basin Groundwater Management Area Membership:

CITIZEN COMMITTEE:

Name	Representing/Background
Henry Lorenzen,	Committee Chairman.
Chester Prior	Potato grower.
Stafford Hansell	Former member of Oregon Legislature, Hog Farmer, Local concerns.
Phil Walchli	Umatilla Co. SWCD Board.
Judge Louis Carlson	Morrow County Commissioner.
Sheri Wadekamper	Owner cow\calf operation, local farm.
Barry Beyeler	Public Works Director, City of Boardman.
Lynn Webb	Irrigation Manager for Pacific Northwest Farming Co.
Bob Levy	Large farm owner, innovative.
Jeff Lyon	Environmental Manager for JR Simplot land application.
Dennis Reisch	Wilber-Ellis, fertilizer/pesticide business.
Frank Mader	Morrow County & State. Conservation Farmer of 1987-88.
Tom Able, Jr.	Organic vegetable farmer utilizing drip irrigation.
Brigitta Lamb	President Eastern Oregon Regional Arts Council-Representing environmental issues.

CITIZEN COMMITTEE:

Name	Representing/Background
Don Eppenbach	Irrigon City Administrator Previous connections with city planning and Army Depot.
Gene Kerby	Owns and operates "small" farm near Umatilla Army Depot.
Bob Kenny	Melon Grower using controlled irrigation.
Ron Shoemaker	Plant Engineer, Hermiston Foods -- Representing food processing industry land application.
LTC. William D. McCune	Recently appointed Commanding officer, U.S. Army Depot Activity Umatilla.
Duane Neiffer	Local issues. Former high school science teacher. Director of Morrow County SWCD. PGE Chemist, farmer.

APPENDIX XI. (cont) LUB GWMA

TECHNICAL ADVISORY COMMITTEE

Name	Representing/Background
Don Wysocki,	Committee Chairman
Jerald Rea	Member, West Extension Irrigation Board, Port of Morrow, Farm and Utility Supervisor
Luther Fitch	Senior OSU Agricultural Extension Agent, (Retired)
Fred Ziari	President of IRZ Consulting, Water management
Tom Darnell	OSU Horticultural Extension Agent
Skip Mathews	ASCS Director for Morrow County
Charlie Newhouse	ASCS Director for Umatilla County
Loren Unruh	SCS Representative for Morrow County
Bob Adleman	SCS Representative for Umatilla County
Mike Henderson	Lamb-Weston, Inc.

APPENDIX XII. Lower Umatilla Basin Groundwater Technical Investigation Activities

Period	Agency or Committee	Activity
7/90	SWMG	Lower Umatilla Basin Groundwater Management Area is declared
7/90 to 10/91	DEQ, ODA, OHD	Reconnaissance groundwater sampling from nearly 200 wells
7/90 to 3/94	DEQ, OWRD, OHD	Review more than 150 area specific and other related literature
11/90	SWMG	20 member local Citizen Committee and 10 member local Technical Advisory Committee appointed
1/91 to 3/94	OWRD	Hydrogeologic activity for characterizing groundwater occurrence and flow: o reconnaissance geology o groundwater elevation measurements o hydrogeologic interpretations
2/91 to present	Citizen Com. Tech. Adv. Com., DEQ, OWRD, OHD, ODA, OSU	Citizen Committee and Technical Advisory Committee meetings o 6 joint meetings o 5 separate Tech. Adv. Com. meetings
9/91 to present	DEQ, ODA, OHD	Bi-monthly groundwater sampling from 35 to 40 wells
6 & 7/92	DEQ, OWRD, OHD, ODA, OSU, U.S. Army, local Industries	Synoptic groundwater sampling from 228 wells and 26 surface water sites
1/92 to 3/93	DEQ, OHD	Analyze groundwater chemistry and quality data from DEQ and other data sources as they relate to characterizing the groundwater quality problems and contaminant source identification o areal and temporal variations o constituent vs constituent relationships o travel time through the unsaturated zone o chemistry changes along groundwater flowpaths
1/93 to 3/94	DEQ	Identify historic and current land use activities as they relate to potential groundwater contamination
1/93 to 4/94	DEQ, OWRD, OHD	Produce, maps, tables, figures, and write draft groundwater technical investigation report
4/94 to present	DEQ, OWRD, OHD, local Committees	Present, review, and revise technical investigation findings and report

APPENDIX XIII. Potential Groundwater Contamination Sources in the Lower Umatilla Basin

Point Source Facilities in the Lower Umatilla basin			
Type of Facility	Number with Water Quality Permits	Number of Permits Pending	Others: Historic, Existing
Large On-Site Systems with Drainfields	6		yes
Municipal Sewage Treatment Systems	7		
Food Processing Industry	7		
Electricity Generating Industry	1	3	
Groundwater Recharge Projects		1	2
Confined Livestock (CAFOs)	4		24
Other	4		

Non-Point Sources in the Lower Umatilla basin	
Irrigated Crop Agriculture	Approximately 200,000 acres (312 square miles): nearly 90% of this area is irrigated by center pivot and most are fertilized via center pivot
Rural Residential Homes and Businesses	Approximately 4375 small on-site septic systems with drainfields

Environmental Clean-Up and Hazardous and Solid Waste Sites in the Lower Umatilla basin	
Activity	Number
Landfills with Operational Permits	3
Environmental Clean-Up Sites on File	11*
Underground Storage Tank Clean-Up Sites on File	20
Environmental Clean-Up Spills and Accidents Reported (2/81-12/92)	83

* Includes U.S. Army Umatilla Depot with 50 sites that received remedial investigations

APPENDIX XIV. Concentration Range for Selected Inorganic Constituents
All LUB Alluvial and Basalt Groundwater (7/90 to 3/93)

Selected Constituent	Maximum Contaminant Level (MCL) mg/L	Maximum Concentration Detected mg/L	Minimum Concentration Detected mg/L	Number of Samples with Conc. Greater Than MCL	Number of Wells with Max. Conc. Greater Than MCL	Percent of Wells with Max. Conc. Greater Than MCL
Nitrate	10	76	<0.02	246	80	31%
TDS	500	1600	77	159	63	24%
Arsenic	0.05	0.120	<0.005	5	4	2%
Chloride	250	490	1.9	1	1	<1%
Sodium	20*	300	3.4	661	219	--
Phosphate	--	50.80	<0.01	--	--	--
Vanadium	--	2.00	<0.03	--	--	--

* 20 mg/L is the recommended concentration limit for individuals on a physician prescribed sodium restricted diet. Groundwater from 85 percent of the wells sampled had maximum sodium concentrations exceeding 20 mg/L.

APPENDIX XV. Concentration Range for Detected Organic Constituents
All LUB Alluvial and Basalt Groundwater (7/90 to 3/93)

Constituent	Maximum Contaminant Level (MCL) mg/L	Maximum Concentration Detected mg/L	Minimum Concentration Detected mg/L	Number of Samples with Detections	Number of Wells with Detection Samples	Percent of Wells with Max. Conc. Greater Than MCL
Ethylene Dibromide (EDB)	0.00005	0.00260	0.00150	4	1	< 1%
Tetrachloro-ethylene (PCE)	0.00500	0.00090	0.00090	1	1	0
Chloroform	0.10000	0.00280	0.00050	4	4	0
Toluene	1.00000	0.00130	0.00100	1	1	0
Atrazine	0.00300	0.00230	0.00015	14	6	0
Dacthal	--	0.0000018	0.0000006	2	2	--

Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☑ Information Item

Agenda Item J
April 22, 1994 Meeting

Title:

Informational Report on Rule Development by the Oregon Department of Agriculture for Agricultural Water Quality Management under SB 1010

Summary:

Staff of the Oregon Department of Agriculture (ODA) and DEQ will present information on Senate Bill 1010, the Agricultural Water Quality Management Program, adopted by the 1993 Legislature. This bill gives ODA the authority to develop plans to prevent and control pollution from agricultural activity and soil erosion in certain areas, including TMDL basins, Groundwater Management Areas and any other place where an agricultural water quality management plan is required by state or federal law. SB 1010 applies, therefore, to Oregon's coastal area, which is required to have an enforceable nonpoint pollution control program, including agricultural activity, by the federal Coastal Zone Management Act of 1990. SB 1010 gives ODA the authority to require actions by landowners, to enforce the requirements and to collect fees for program funding. ODA has proposed administrative rules for the implementation of the program except for fee collection. The rules cover program definition and procedure, they do not yet include basin plan rules for a specific basin.

SB 1010 was developed because both ODA and DEQ were concerned about the lack of mechanisms to ensure that nonpoint source pollution would be controlled in TMDL basins and other areas experiencing water quality problems. In addition, there is a lack of stable funding for ODA's agricultural water quality management program. SB 1010 addresses both of these issues.

DEQ staff generally support the rules proposed by the ODA with some concerns and suggestions, which will be forwarded to the ODA. One of the concerns is that the rules do not address fee collection. Without this funding source for staff, how does the ODA proposed to implement this program? Additional concerns and suggestions are outlined in the staff report.

Department Recommendation:

This is an informational item. No action is required of the EQC. The Department recommends that we forward our comments on the proposed rules to ODA during their public review period.

Report Author	Division Administrator	Director
Debra Sturdevant	Michael Rosen	Fred Hansen

April 5, 1994

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

sate of Oregon
Department of Environmental Quality Memorandum†

Date: April 5, 1994

To: Environmental Quality Commission

From: Fred Hansen, Director

Subject: Agenda Item J, April 22, 1944, EQC Meeting

Information Report on Rule Development by the Oregon Department of Agriculture for Agricultural Water Quality Management under SB 1010

Statement of Purpose

The purpose of this report is to inform the Commission about the Oregon Department of Agriculture's (ODA) activity related to Senate Bill 1010. ODA staff will describe how their rule development is progressing and how this new tool will assist the State in addressing water quality problems from agricultural nonpoint sources. DEQ staff will also present our views on SB 1010 and its relation to basins with Total Maximum Daily Loads (TMDLs), Groundwater Management Areas and the Coastal Nonpoint Pollution Control Program under the federal Coastal Zone Management Act (CZMA)

ODA is accepting comments on the Agricultural Water Quality Management Program rules (see Attachment A), the program authorized by SB 1010 (see Attachment B), until May 13, 1994. Therefore, the EQC may comment on the rules if they choose.

Background

The Purpose and Applicability of SB 1010

Water quality problems associated with nonpoint sources of pollution are a significant concern for many Oregon river basins and groundwater resources. These sources of pollution are not new, but it is becoming more and more apparent that reducing point source discharges alone will not solve the State's water quality problems. Nor will it protect salmonid fishes, drinking water and other beneficial uses of the State's waters. Nonpoint pollution sources must also be addressed.

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

Senate Bill 1010 resulted in part from a lack of mechanisms to ensure that agricultural pollution sources would be controlled in water quality limited basins and other basins needing such controls. For example, the EQC designated the ODA as the management agency for agriculture under the Tualatin and Bear Creek TMDLs. In both of these basins, ODA has had difficulty providing assurance that the necessary steps would be taken by landowners to reduce nonpoint pollution and achieve their collective load allocations. Both DEQ and ODA were concerned about the lack of enforcement capability and the lack of stable funding for ODA's agricultural water quality management program. The EQC directed that these issues be addressed and established compliance dates for this to be accomplished. (See Attachment C for a chronology of EQC actions and concerns related to the agricultural management plan under the Tualatin basin TMDL.)

In response to these concerns, ODA worked with the agricultural industry and the legislature to improve their ability to implement an effective agricultural water quality management program by obtaining clear enforcement and fee collection authorities. Out of this effort, evolved Senate Bill 1010 which was adopted by the 1993 Legislature. SB 1010 requires ODA to "develop and carry out a plan for the prevention and control of water pollution from agricultural activities and soil erosion" [ORS 568.909(2)]. These plans will be required for TMDL basins, groundwater management areas, and any other place where an agricultural management plan is specifically required by state or federal law.

While SB 1010 applies to all TMDL basins, it is reasonable that those with agricultural load allocations be the priority for implementation. A list of TMDL basins is provided in Attachment D. The Tualatin Basin and Bear Creek are the only two TMDL basins that have received agricultural load allocations to date. TMDLs are currently being developed for the Grande Ronde basin and will most likely include an agricultural load allocation.

There are two groundwater management areas (GWMAs) in the state, the Northern Malheur County and Lower Umatilla Basin (LUB) areas. These areas were declared groundwater management areas under the state's Groundwater Protection Act based on high nitrate levels in the groundwater. In some areas pesticides were found in the groundwater as well, although the levels did not exceed the drinking water maximum contamination levels (MCLs) established by EPA. The purpose of the groundwater program is to protect the resource for drinking water and other future beneficial uses. Agricultural activities contribute to the groundwater quality problems in these areas. Therefore, the Department would like to see ODA to take the lead for the agricultural water quality management portion of the required Action plans. At a minimum, the

Department and ODA should work in conjunction so that one agricultural management plan is acceptable under both the Groundwater Protection Act and SB 1010.

SB 1010 will also apply to Oregon's coastal zone because an agricultural water quality management program is required by federal law, one of the conditions that triggers SB 1010. The federal Coastal Zone Management Act (CZMA) requires that the State develop and submit a Coastal Nonpoint Pollution Control Program to EPA and NOAA by July 1, 1995. The State must develop and implement management measures for agriculture and other nonpoint pollution sources to restore and protect coastal waters. In Oregon, the Department of Land Conservation and Development and the DEQ are the lead management agencies for developing the program. The management measures must conform with EPA guidance and they must be enforceable. SB 1010 will help the State to meet the requirements of the coastal program for agricultural activity. DLCD, DEQ and ODA have begun discussion of how the programs will be integrated to ensure that responsibilities are clear and we avoid duplicative efforts.

A Summary of the Draft Rules

Draft rules for the agricultural water quality management program (SB 1010) have been proposed by the ODA and are now undergoing public review (see Attachment A). In summary, the rules provide the following:

1. ODA will develop "programs to effectuate agricultural water quality management area plans in applicable geographic areas."

2. Agricultural water quality management area plans will "comprehensively outline measures that will be taken to prevent and control water pollution and soil erosion from activities on agricultural and rural lands..."

3. It is ODA's policy that:

   a. pollution prevention be the focus of the plans to the fullest extent possible,

   b. voluntary adoption of land management activities be encouraged through education and demonstration programs,

   c. enforceable mechanisms be available to address problems where voluntary compliance is not achieved, and

d. the plans provide as much flexibility to the operator as reasonably possible, among others.

4. A local advisory committee will be established for each management area to participate in the development of the water quality management plan and to track the progress of plan implementation.

5. Agricultural water quality management plans shall describe a program to achieve the water quality goals and standards; including the pollution prevention and control measures necessary to achieve the goal, a schedule for implementation of the measures, and a strategy for ensuring that the necessary measures are implemented.

6. Where a landowner is required to take specific actions, he/she may request an alternate measure if the alternative measure provides an equal level of water quality protection as the required action. The ODA Director determines whether to allow the alternate measure, and may consider in this decision whether the required action presents a "great practical difficulty or great economic hardship" to the landowner.

7. Enforcement procedures are outlined, including a notice of non-compliance, plan of correction, notice of civil penalty assessment, hearing procedures and penalty determination and assessment procedures.

DEQ staff have participated on an advisory committee to assist the ODA with rule development and are generally satisfied with the rules. In particular, we support the definition of agricultural water quality management area plans as "plans that comprehensively outline measures that will be taken to prevent and control water pollution and soil erosion from activities on agricultural and rural lands..." We also support ODA's policy that voluntary adoption of land management practices be encouraged through education and demonstration projects prior to enforcement. The rules do not specify how long an educational approach will be pursued prior to taking enforcement action other than to say that enforcement should be pursued only when "reasonable attempts at voluntary solutions have failed." This is, of course, a subjective determination and possibly a potential point of conflict in the future.

DEQ also supports the use of local advisory committees and alternative measures, as long as these provisions help to further progress toward attaining the water quality goals. Achieving the water quality objectives is DEQ's concern and our goal. In some cases local advisory committees for nonpoint sources already exist. We encourage ODA to use

the existing local committees where it is appropriate, but particularly for groundwater management areas. The GWMA committees were formed to address water quality concerns and include agricultural representation.

Concerns with SB 1010 Activity

DEQ staff have two outstanding concerns with the progress of activity under SB 1010. First, the proposed rules do not address fee assessment, which is authorized by SB 1010. The fees are needed to provide ODA stable funding to implement the agricultural water quality management program. ODA and the legislature agreed that fee assessment would not begin this biennium. If, however, ODA is to be ready to collect fees beginning in July of 1995, the rule-making process for this purpose must begin soon.

The second concern is that time is short for developing an agricultural water quality management area plan and adopting basin rules for the Tualatin basin. The Commission's Implementation/Compliance Schedule and Order of July, 1993 for the Tualatin basin states that by December 31, 1994, the ODA will "coordinate with local agencies and DEQ to develop mechanisms to insure that necessary practices are applied," and to "implement the program through enabling legislation or other state or local authorities." The proposed rules cover program administration and procedures, but not specific basin rules. It may be difficult for ODA to develop and adopt basin rules by the end of this year. If this happens, the compliance dates may pass without being achieved, and water quality improvements will not occur at the pace envisioned by the EQC.

Staff would like to point out to the Commission that much has been accomplished in the Tualatin basin related to agricultural activity and this should also be recognized. Attachment E is a list of ODA accomplishments in the basin since 1990.

Authority of the Commission with Respect to the Issue

The EQC and the DEQ retain the authority and responsibility to protect water quality and the beneficial uses of the states' waters under the federal Clean Water Act and state law. The EQC or the Department establish state water quality standards, action levels and TMDLs under the authorities and mandates of the Clean Water Act. The Department designates groundwater management areas which are then approved by the Strategic Water Management Group (SWMG). DEQ and the Department of Land Conservation and Development (DLCD) have joint responsibility for the development of the Coastal Nonpoint Pollution Control Program required by the Coastal Zone Management Act (CZMA).

The Tualatin Basin TMDLs were adopted in 1988 and are found in OAR 340-41-470(3). The Bear Creek TMDLs were adopted in 1989 and revised in 1990 and are found in OAR 340-41-385.

Alternatives and Evaluation

The Commission can direct staff to provide comment to the ODA on the proposed draft rules as you see fit.

Summary of Public Input Opportunity

The ODA held 4 public hearings around the state in late March and early April. Public comment on the draft rules will be accepted until May 13, 1994. In addition, the ODA developed the draft rules with the assistance of an advisory committee. The committee had more than 20 members, including a DEQ staff person.

Conclusions

The DEQ staff are pleased to see this progress made in the ability of the state via the ODA to effectively implement an agricultural water quality management program. SB 1010 is a very important step toward providing "reasonable assurance" that agricultural nonpoint sources of pollution can be controlled and TMDLs can be achieved.

Despite the difficulties, progress has been made toward improving water quality management in the Tualatin basin. Attachment D lists some of the accomplishments of the ODA in the basin since 1990.

The Department has the following outstanding concerns:

1. No provision for fee collection is included in the draft rules. Although ODA and the 1993 Legislature agreed that fees would not be collected this biennium, rules should be adopted to allow fee collection to begin in July of 1995.

2. The proposed draft rules are administrative procedural rules. The agricultural water quality management plan for the Tualatin basin has yet to be adopted by rule. DEQ staff are concerned about whether this will be accomplished by December 31, 1994. We view this as a necessary step to meet the requirement

for ODA to provide "assurance of implementation" in the Commission's Implementation/Compliance Schedule and Order of July, 1993.

3. The Department encourages ODA to be actively involved in Groundwater Management Areas from their inception. We would like to see ODA take the lead in developing the agricultural portion of the Action plans required under the state Groundwater Protection Act, even when these plans are in a voluntary phase. We also encourage ODA to utilize the existing GWMA local advisory committees for their program.

4. The Department would like to hear from ODA on how they intend to prioritize their SB 1010 work. We suggest that while SB 1010 may apply to all TMDL basins, those basins with agricultural load allocations should take priority over other TMDL basins. This suggestion is made with the recognition that the CAFO and container nursery programs can proceed in all TMDL basins and other basins where they apply.

Intended Future Actions

1. DEQ staff will comment on the ODA's proposed rules.

2. DEQ staff will continue to track progress under SB 1010 and to participate as appropriate.

2. ODA is required by the Implementation and Compliance Order for the Tualatin basin to develop mechanisms by December 31, 1994 to "assure that necessary practices are applied." If this deadline will not be met, staff will return to the Commission for consideration of how to proceed at that time.

Department Recommendation

It is recommended that the Commission accept this report, discuss the matter, and provide advice and guidance to the Department as appropriate.

Attachments

Attachment A.	Proposed administrative rules for the Oregon Department of Agriculture, "Agricultural Water Quality Management Program."
Attachment B.	Oregon Revised Statutes 568.900 to 568.933, "Agricultural Water Quality Management," (SB 1010)
Attachment C.	A Chronology of EQC Action on the Agricultural Management Plan for the Tualatin Basin
Attachment D.	List of TMDL basins in Oregon.
Attachment E.	Tualatin River Nonpoint Source Management Plan Implementation Program Accomplishments Since 1990, ODA

Reference Documents (available upon request)

1. Agenda Item F and the Addendum to Agenda Item F, July 23, 1993, EQC Meeting, containing the "Tualatin River Watershed Nonpoint Source Management Implementation and Compliance Schedule and Order."

2. Agenda Item E, April 23, 1993, EQC Meeting, "Review of Bear Creek Nonpoint Source Control Plans and Implementation and Compliance Schedule."

Approved:

Section: _____

Division: _____

Report Prepared By: Debra Sturdevant

Phone: 229-6691

Date Prepared: April 5, 1994

(DJS:djs)
(WQ51\SB1010\EQCDRAFT)
(April 5, 1994)

OREGON ADMINISTRATIVE RULES

OREGON DEPARTMENT OF AGRICULTURE

CHAPTER 603

DIVISION 90

AGRICULTURAL WATER QUALITY MANAGEMENT PROGRAM

Preamble

603-90-000 (1) ORS 568.900 to 568.933 authorizes the Oregon Department of Agriculture to develop and carry out an agricultural water quality management area plan for any agricultural and rural lands where a water quality management plan is required by state or federal law. In executing this responsibility, the department develops, adopts, and periodically modifies programs to effectuate agricultural water quality management area plans in the applicable geographic areas.

(2) These administrative rules establish policies, guidelines, and specific requirements for the development and content of agricultural water quality management area plans, requirements of agricultural water quality management area plans for applicable geographic areas, the process of landowner appeal of specific required actions, and enforcement procedures to be followed by the department.

(3) Agricultural water quality management area plans are plans that comprehensively outline measures that will be taken to prevent and control water pollution and soil erosion from

activities on agricultural and rural lands located in a management area which requires such a plan and for which boundaries have been established by the department.

(4) It is the policy of the department that:

(a) Cooperation between private and public entities be encouraged during the development and implementation of water quality management area plans;

(b) To the full extent possible, pollution prevention activities be the focus of water quality management area plans;

(c) Voluntary adoption of land management activities be encouraged through education and demonstration programs to achieve the goals and objectives of water quality management area plans;

(d) Enforceable mechanisms be available to address water pollution problems where voluntary compliance is not achieved;

(e) Enforcement action be pursued only when reasonable attempts at voluntary solutions have failed; and

(f) Measures required of individual farm operators under agricultural water quality management area plans provide as much flexibility to the operator as reasonably possible.

Definitions

603-90-010 Unless otherwise required by the context, as used in this Division:

(1) "Agency of this state" has the meaning given in ORS 568.210(1)

(2) "Board" means the state Board of Agriculture.

(3) "Department" means the state Department of Agriculture.

(4) "Director" means the director of the state Department of Agriculture.

(5) "Government or governmental" has the meaning given in ORS 568.210(7).

(6) "Landowner" includes any landowner, land occupier or operator as defined in ORS Chapter 568.

(7) "Local Management Agency" means any agency of this state, including but not limited to a soil and water conservation district, which has been designated by the department to undertake activities within a management area whose boundaries have been designated under ORS 568.909.

(8) "Local Management Area Advisory Committee" means a committee established by the department under OAR 603-90-020.

(9) "Operator" has the meaning given in ORS 568.900(2).

(10) "Plan" or "Agricultural Water Quality Management Area Plan" means a plan for the prevention and control of water pollution in a management area whose boundaries have been designated under ORS 568.909.

(11) "Pollution" or "water pollution" has the meaning given in ORS 468B.005(3).

(12) "Water" or "the waters of the state" has the meaning given in ORS 468B.005(8).

Local Water Quality Management Area Advisory Committee

603-90-020 (1) The department shall establish a local water quality management area advisory committee for each water quality management area established under these rules. The local water quality management area advisory committee shall represent a balance of

affected persons. The local water quality management area advisory committee must provide an opportunity for a high level of citizen involvement in the development and implementation of the agricultural water quality management area plan. The members of each local water quality management area advisory committee shall be appointed by the director in consultation with the board. The director and board shall consider the recommendations, if any, of the designated local management agency when making advisory committee appointments.

(2) A local water quality management area advisory committee shall be composed primarily of landowners in the affected local agricultural water quality management area. Membership may include, but is not limited to:

(a) State Board of Agriculture representatives;

(b) Persons serving on the local soil and water conservation district;

(c) Private landowners;

(d) Representatives of local, state and federal boards, commissions and agencies;

(e) Members of Indian tribes;

(f) Members of the public;

(g) Persons associated with industry;

(h) Members of academic, scientific and professional communities.

(3) The local water quality management area advisory committee's responsibilities shall include but are not limited to:

(a) Participation in the development and ongoing modifications of the agricultural water quality management area plan;

(b) Recommendation of strategies necessary to achieve water quality goals and objectives outlined in the agricultural water quality management area plan;

(c) Biannual review of the progress of implementation of the management area's water quality management plan, including enforcement actions taken, and requests for alternate measures that have been granted and/or denied;

(d) Submittal of annual, written reports to the board and the director, summarizing meetings held, advisory committee members present, and actions taken;

(e) Recommendations to the board and the director regarding modifications to the plan that may be necessary to achieve water quality goals and objectives.

Requirements of an Agricultural Water Quality Management Area Plan

603-90-030 (1) Agricultural water quality management area plans shall describe a program to achieve the water quality goals and standards necessary to protect designated beneficial uses related to water quality, as required by state and federal law. A plan shall include but not be limited to a description of the geographical area and physical setting to which the plan applies, a listing of water quality issues of concern, a listing of current designated beneficial uses that are being adversely affected, a statement that the goal of the plan is to achieve applicable water quality standards, a description of the pollution prevention and control measures deemed necessary by the department to achieve the goal, a schedule for implementation of the necessary measures that is adequate to meet applicable dates established by law, guidelines for public participation, and a strategy for ensuring that the necessary measures are implemented.

Specific Action Requirements - Appeals

603-90-040 (1) Pursuant to ORS 568.912, a landowner subject to an agricultural water quality management area plan may be required to undertake certain specific actions. A landowner may appeal a specific action requirement by filing a formal request for alternate measures as provided in OAR 603-90-050.

(2) Prior to filing a formal request for alternate measures, a landowner may informally consult with the department regarding the specific actions required under the plan. Such consultation, however, shall not extend the time periods required for filing a formal request.

Request for Alternate Measures - Filing, Content, and Approval

603-90-050 (1) A request for alternate measures shall be made in writing and filed with the director. The request may be filed at anytime, but it must be received by the department prior to the initiation of any enforcement actions described in OAR 603-90-080 to be effective.

(2) A request shall include a detailed description of proposed alternative measures and all information needed to determine whether the request satisfies the requirements of subsection (3) below.

(3) A request for alternate measures may be approved only if the director finds that the alternate measures will providea an equivalent level of water quality protection that is provided by the specific actions required under the plan.

(4) When determining whether proposed alternate measures will be allowed, the director also may consider:

(a) Whether the landowner's land is conducive to the use of the specific actions required under the plan;

(b) Whether the specific actions required under the plan present a great practical difficulty or great economic hardship; and

(c) Any other information that the director finds relevant.

(5) The director shall determine whether to allow a request for alternate measures within 60 days after the request is received unless the landowner agrees to extend the period or the director makes a determination that a longer period of time is required to obtain sufficient information to evaluate the request.

(6) The director's decision to approve or deny a request for alternate measures shall be made in writing and shall be an order in other than a contested case for purposes of judicial review.

Enforcement Procedures

Definitions

603-90-060 Unless otherwise required by the context, as used in this Division:

(1) "Compliance" means meeting the requirements of ORS 568.900 to 568.933 or any of the department's rules or orders pursuant thereto.

(2) "Documented Violation" means any violation which the department or other appropriate government agency records after observation, investigation or data collection.

(3) "Flagrant Violation" means any violation where the department has documented evidence that the respondent had actual knowledge of the law and knowingly committed the violation.

(4) "Formal Enforcement Action" means an action signed by the director or the director's designee which is issued to a respondent in connection with a documented violation. Formal enforcement actions may require the respondent to take action within a specified time frame, or may state the consequences of the violation or continued noncompliance, or both.

(5) "Individual Water Quality Management Plan" means a plan for the prevention or control of water pollution for an individual landowner.

(6) "Intentional" means conduct by a person with a conscious objective to cause the result of the conduct.

(7) "Negligence" or "Negligent" means failure to take reasonable care to avoid a foreseeable risk of committing an act or omission constituting a violation.

(8) "Order" has the meaning given in ORS 183.310(5).

(9) "Person" includes individuals, corporations, associations, firms, joint stock companies, public and municipal corporations, political subdivisions of the state and any agencies thereof, and the federal government and any agency thereof.

(1 0) "Reckless" 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.

(11) "Repeat Violation" means the recurrence of the same violation or the occurrence of a similar violation for which a person has been previously notified.

(12) "Respondent" means the person to whom a formal enforcement action is directed.

(13) "Rule" has the meaning given in ORS 183.310(8).

(14) "Violation" means transgression of any rule or order made by the department pursuant to ORS 568.900 to 568.933 and includes both acts and omissions.

(15) "Wastes" has the meaning given in ORS 468B.005(7).

Consolidation of Enforcement Proceedings

603-90-070 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 unless otherwise determined by the department, proceedings for the assessment of multiple civil penalties for multiple violations against a landowner may be consolidated into a single proceeding.

Enforcement Actions

603-90-080 (1) A Notice of Noncompliance:

(a) shall inform the landowner of the violation, including a reference to the particular statute, administrative rules or order involved, the location of the violation when appropriate, and the consequences of the violation or future violations;

(b) shall direct the subject landowner to perform those actions necessary to comply with the water quality management plan;

(c) shall specify a reasonable period of time by which compliance is to be achieved not to exceed 30 days after the date of the notice, or if the violation requires more than 30 days to correct, a period of time contained in a plan of correction acceptable to the department;

(d) shall be issued by the director or the director's designee;

(e) shall be in writing and shall be served by registered or certified mail or delivered personally;

(f) shall in all cases also be mailed or delivered to the legal owner of the property;

(g) shall be an order other than a contested case for purposes of judicial review.

(2) A Plan of Correction:

(a) shall include a statement of the actions that must be taken by the landowner to eliminate the violation and shall include a schedule stating the time by which each of the actions is required to be accomplished to achieve compliance;

(b) may include requirements for the landowner to report the completion of specific actions;

(c) shall be in writing and shall be sent to the landowner by registered or certified mail or delivered personally;

(d) shall be an order other than a contested case for the purposes of judicial review.

(3) The department shall make a reasonable attempt to consult with the subject landowner in the development of a plan of correction.

(4) Failure to perform any of the requirements of a plan of correction may be considered by the department to be a failure to correct the violation within the period of time set for correction by the department.

(5) A Notice of Civil Penalty Assessment:

(a) shall be issued by the director or the director's designee;

(b) shall be issued in a manner consistent with the provisions of ORS 183.415, ORS 568.900 to 568.933, and OAR Chapter 137.

(c) shall be in writing and shall be served personally or by registered or certified mail;

(d) shall include but not be limited to:

(A) a reference to the particular statute, administrative rules or order involved;

(B) a short or plain statement of the matters asserted or charged including a reference to the location of the violation when appropriate;

(C) a statement of the amount of the penalty and how it was calculated;

(D) a statement of the person's right to request a hearing within ten business days from the date of mailing of the notice and an explanation of how a hearing may be requested;

(E) a statement that the notice becomes a final order unless the person on whom the civil penalty is assessed makes a written request for a hearing within ten business days from the date of mailing of the notice.

Hearing Procedures

603-90-090 All formal hearings requested by the respondent concerning a civil penalty assessment shall be conducted in accordance with applicable contested case procedures as outlined in ORS 183.310 to 183.550, and OAR Chapter 137.

Entry of Order and Appeal Rights

603-90-100 (1) If a person having received a notice of civil penalty assessment fails to request a hearing as specified in OAR 603-90-090, or if after the hearing the person is found to be in violation of the provisions of these rules, an order may be entered by the department assessing a civil penalty.

(2) The order shall be signed by the director or the director's designee.

(3) If the order is not appealed, any penalty is due and payable ten business days after the entry of the order.

(4) When an order assessing civil penalty becomes final by operation of law or on appeal and the amount of the penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state as provided by ORS 183.090(6) and proceedings to enforce the order may be initiated in accordance with ORS 183.090(12).

Civil Penalty Assessment

603-90-110 (1) In addition to any other penalty provided by law, the department may assess a civil penalty against a landowner for failing to comply with the requirements of a water quality management plan adopted under ORS 568.900 to 568.933 including rules and orders to implement the plan. The amount of civil penalty shall be determined using the two matrices contained in OAR 603-90-120 in conjunction with the formula contained in OAR 603-90-120(4). The amount of the initial civil penalty may not exceed $2,500 and any subsequent civil penalties for a repeat occurrence may not exceed $10,000 per violation.

(2) Prior to assessment of a civil penalty for a violation, the department shall provide a notice of noncompliance to the landowner. No advance notice or period to achieve compliance 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 documented as intentional; or

(b) The landowner has received a previous notice of the same or similar violation.

(3) The amount of any civil penalty imposed shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality if the latter penalties are imposed on the same person and are based on the same violation.

(4) Magnitude of Violation: The magnitude of a violation shall be categorized as follows:

(a) Category I (Major):

(A) Violation of a department order issued as a part of or in connection with a formal enforcement action;

(B) Failure to provide access to premises or records when required by law, rule or order;

(C) Any direct discharge of wastes that enters the waters of the state, either without a waste discharge permit, or from a point not authorized by a waste discharge permit;

(D) Submitting records, reports or application forms which are false, misleading, or fraudulent;

(F) Failure to provide notification of a spill or upset condition that results in a nonpermitted discharge to public waters.

(b) Category II (Moderate):

(A) Failure to submit a plan or report as required by rule;

(B) Placing wastes such that the wastes are likely to enter the waters of the state by any means;

(C) Any violation of a department rule or order which is not classified elsewhere in these rules as major or minor.

(c) Category III (Minor):

(A) Failure to operate in accordance with an approved individual water quality management plan.

(5) The gravity of effect of the violation shall be determined by consideration of the individual or cumulative possibility of harm to public health or the environment caused by a violation or violations. Gravity of effect shall be classified as high, medium or low. The existence of one or more factors determined to be high level shall result in the gravity of effect considered to be of high level. Lacking any factor determined to be of high level, the existence of one or more factors of medium level shall result in the gravity of effect to be considered to be of medium level. Lacking any factor of high or medium level shall result in the gravity being of low level:

(a) Gravity of Effect - High Level:

(A) Evidence of significant injury to crops, wildlife or livestock documented by the department or other appropriate state or federal agency;

(B) Surface or groundwater contamination of a level that poses a significant risk of harm to public health or the environment documented by the department or other appropriate state or federal agency.

(b) Gravity of Effect - Medium Level:

(A) Surface or groundwater contamination that causes a loss of beneficial uses or a violation of applicable water quality standards documented by the department or other appropriate state or federal agency, but does not pose a significant threat to human health or the environment.

(b) Gravity of Effect - Minor Level:

(A) Water contamination not documented or not of a level in excess of applicable water quality standards.

Civil Penalty Determination Procedure

603-90-120 In determining the amount of a civil penalty to be assessed for any violation of the requirements of a water quality management plan adopted under ORS 568.900 to 568.933, the department shall apply the following procedure:

(1) Determine the magnitude of the violation as specified in OAR 603-90-110(4).

(2) Determine the gravity of effect pertinent to the violation as specified in OAR-603-90-110(5).

(3) Using the magnitude of the violation and the gravity of effect identified, and depending on whether it is the first or a repeat violation, determine the base penalty (B) by reference to the appropriate matrix contained in OAR 603-90-120.

Civil Penalty Matrix for First Violation

	Gravity of Effect		
Magnitude of Violation	High	Medium	Low
Category I (major)	$1,500	$1,000	$500
Category II (moderate)	$750	$500	$250
Category III (minor)	$300	$150	$50

Civil Penalty Matrix for Repeat Violations

	Gravity of Effect		
Magnitude of Violation	High	Medium	Low
Category I (major)	$6,000	$3,000	$1,000
Category II (moderate)	$2,000	$1,000	$500
Category III (minor)	$500	$250	$100

(4) Calculate the amount of the civil penalty to be assessed utilizing the formula:

$$NB + [(.1 \times NB) (P + H + R + C)] = \text{Penalty Amount}$$

where:

(a) N = equals the number of times, within a period of three years prior to and including the date of the current violation that the person has been determined by the

department to have committed the violation, but not including any previously adjudicated violation;

(b) B = Base penalty is the primary penalty for a given violation derived from the appropriate matrix contained in OAR 603-90-120;

(c) P = Past occurrence of violations of the requirements of a water quality management plan adopted under ORS 568.900 to 568.933. P will be weighted from 0 to 6 in the following manner:

(A) 0 = no prior violation or insufficient evidence on which to base a finding;

(B) 1 = past occurrence of a Category III violation;

(C) 2 = past occurrence of a Category II violation or two Category III violations;

(D) 3 = past occurrence of a Category I violation, two unrelated Category II violations, or three Category III violations;

(E) 4 = past occurrence of two Category I violations, three unrelated Category II violations or four Category III violations;

(F) 5 = past occurrence of three Category I violations, four Category II violations, or five or more unrelated Category III violations;

(G) 6 = past occurrence of more than three Category I violations or five or more Category II violations.

(d) H = History of the person in taking all feasible steps or procedures necessary and appropriate to prevent or correct a violation. H will be weighted from -2 to 2 in the following way:

(A) -2 = the person took all feasible steps to correct any prior violations;

(B) 0 = there is no prior history or insufficient information on which to base a finding;

(C) 1 = the person took some, but not all feasible steps to correct prior violations;

(D) 2 = the person took no action to correct prior violations.

(e) R = Preventability of the violation and whether negligence or misconduct was involved. R will be weighted from -2 to 7 in the following way:

(A) -2 = the person's actions determined to be violative were unavoidable;

(B) 0 = information is insufficient to make any finding;

(C) 3 = the person's actions determined to be violative were reasonably avoidable;

(D) 7 = the person's actions were flagrant or constituted a case of reckless disregard.

(f) C = Cooperativeness on the part of the person to assist the department in its investigation and to the extent possible rectify the violation. C shall be weighted from -2 to 0 in the following way:

(A) -2 = the person is cooperative;

(B) -1 = the person provides limited cooperation;

(C) 0 = the person is uncooperative or there is insufficient information to determine that the person was cooperative.

(g) In determining the degree of cooperativeness, the department shall consider the following factors:

(A) Whether or not the person allowed an authorized officer, agent or employee of the department to enter upon the property of the person or to inspect lands, facilities, equipment, records, or other things or to take samples necessary to determine the existence of a violation;

(B) Whether or not the person willingly provided such other relevant information as may have been requested by the department to determine the existence of a violation;

(C) Whether or not the person attempted to interfere with or impede the lawful conduct of an investigation by an authorized officer, agent, or employee of the department;

(D) Whether or not the person took timely corrective steps if a violation was found;

(E) Whether or not the person reported on progress to correct the violation on a schedule as agreed or directed.

(5) A civil penalty imposed under the applicable statutes and these rules may be remitted or reduced at the director's discretion upon such terms and conditions that are proper and consistent with public health and safety.

(6) At the discretion of the director, a respondent who is unable to pay the full amount of a civil penalty may be allowed to pay the civil penalty by means of a schedule of payments which may include payment of interest on the unpaid balance for any delayed payments.

AGRICULTURAL WATER QUALITY MANAGEMENT

568.900 Definitions for ORS 568.900 to 568.933. As used in ORS 568.900 to 568.933:

(1) "Board" means the State Board of Agriculture.

(2) "Operator" means any person, including a landowner or land occupier engaged in any commercial activity relating to the growing or harvesting of agricultural crops or the production of agricultural commodities.

(3) "Water" or "the waters of the state" has the meaning given in ORS 468B.005.

(4) "Water pollution" has the meaning given in ORS 468B.005.

(5) "Plan" or "water quality management plan" means a plan developed under ORS 568.909. The plan shall be based upon scientific information. [1993 c.263 §2]

568.903 "Landowner" defined. Notwithstanding the definition given in ORS 568.210, as used in ORS 568.909 to 568.933 "landowner" includes any landowner, land occupier or operator. [1993 c.263 §4]

568.906 Plan implementation to involve local agencies. It is the intention of the Legislative Assembly that plans developed under ORS 568.900 to 568.933 involve soil and water conservation districts as local management agencies to the fullest extent practical, consistent with the timely and effective implementation of these plans. [1993 c.263 §10]

568.909 Boundaries for land subject to water quality plans; implementation of plan. (1) The State Department of Agriculture may describe the boundaries of agricultural and rural lands that are subject to a water quality management plan:

(a) Due to a determination by the Environmental Quality Commission to establish a Total Maximum Daily Load for a body of water under the federal Water Pollution Control Act (33 U.S.C. §1313);

(b) Due to a declaration of a ground water management area under ORS 468B.180; or

(c) When an agricultural water quality management plan is otherwise specifically required by state or federal law.

(2) For an area whose boundaries have been designated under this section, the department shall develop and carry out a plan for the prevention and control of water pollution from agricultural activities and soil erosion. The plan shall be based upon scientific information. [1993 c.263 §3]

568.912 Rules; required actions under plan; prohibiting specific practices; landowner appeals. (1) The State Department of Agriculture in consultation with the State Board of Agriculture may adopt rules necessary to effectuate a water quality management plan initiated under ORS 568.909.

(2) The department may require any landowner whose land is located within an area subject to a water quality management plan to perform those actions on the landowner's land necessary to carry out a water quality management plan. Such actions may include:

(a) Routine construction, maintenance and clearance of any works and facility;

(b) Agricultural and cropping practices; or

(c) Any other measure or avoidance necessary for the prevention or control of water pollution of the waters of the state.

(3) No specific practice may be prohibited under this section unless the department has a scientific basis for concluding that the practice is a factor in causing water quality standards to be exceeded.

(4) A landowner subject to the requirements of a plan may appeal specific actions required of that landowner by the department to carry out a plan. The department shall establish by rule a procedure and criteria for the appeal process. [1993 c.263 §5]

568.915 Entry upon land; purpose. After making a reasonable attempt to notify the landowner, the State Department of Agriculture or a designee of the department

may go upon any lands within the area subject to a water quality management plan for the purpose of determining:

(1) Those actions that may be required of landowners under ORS 568.900 to 568.933; and

(2) Whether the landowner is carrying out the required actions. [1993 c.263 §6]

568.918 Notice to landowner of failure to perform requirements. Upon finding that a landowner in an area subject to a water quality management plan has failed to perform actions required by the plan, the State Department of Agriculture shall notify the landowner and direct the landowner to perform the work or take any other actions necessary to bring the condition of the subject lands into compliance with the plan within a reasonable period of time. In all cases, the legal owner of the property shall also be notified, prior to the assessment of any civil penalty. [1993 c.263 §7]

568.921 Fees from landowners. The State Department of Agriculture, in consultation with the State Board of Agriculture, may establish and collect fees from landowners subject to the requirements of a water quality management plan adopted under ORS 568.909. The fees shall not exceed the total cost of developing and carrying out the plan and shall not exceed $200 annually per landowner. Any fees received by the department pursuant to this section shall be deposited in the State Treasury to the credit of the Department of Agriculture Service Fund. Such moneys are continuously appropriated to the department for the purpose of implementing ORS 568.900 to 568.933. [1993 c.263 §9]

568.924 Interagency agreements. The State Department of Agriculture may enter into agreements with any agency of this state, including but not limited to a soil and water conservation district, or with any agency of the Federal Government, for the purposes of carrying out the provisions of ORS 568.900 to 568.933 including the development of a plan. [1993 c.263 §11]

568.927 Law inapplicable to certain forest practices. The provisions of ORS 568.900 to 568.933 shall not apply to any forest practice conducted on forestland as defined in ORS 527.620. [1993 c.263 §12]

568.930 Agricultural activities subject to plan requirements; reduction of civil penalties; consultation with Environmental Quality Commission; review and revision of plans. (1) All agricultural activities conducted on agricultural lands within the boundaries of an area subject to a water quality management plan shall be conducted in full compliance with the plan and rules implementing the plan and with all the rules and standards of the Environmental Quality Commission relating to water pollution control. In addition to any other remedy provided by law, any violation of those rules or standards shall be subject to all remedies and sanctions available to the Department of Environmental Quality or the Environmental Quality Commission.

(2) Any civil penalty imposed under ORS 568.933 shall be reduced by the amount of any civil penalty imposed by the Environmental Quality Commission or the Department of Environmental Quality for violations of water quality rules or standards, if the latter penalties are imposed on the same person and are based on the same violation.

(3) The State Department of Agriculture and the State Board of Agriculture shall consult with the Department of Environmental Quality or the Environmental Quality Commission in the adoption and review of water quality management plans.

(4)(a) The Environmental Quality Commission may petition the department for a review of part or all of any water quality management plan and rules implementing the plan. The petition must allege with reasonable specificity that the plan or its content is not adequate to achieve compliance with applicable state and federal water quality standards.

(b) The department, in consultation with the board, shall complete its review of a petition submitted under paragraph (a) of this subsection within 90 days of the date of the filing of the petition for review. The department shall not terminate the review without the concurrence of the Environmental Quality Commission unless the department initiates revisions to the water quality management plan that address the issues raised by the Environmental Quality Commission. Any revisions adopted in response to a petition by the Environmental Quality Commission shall be adopted not later than two years from the date the Environmental Quality Commission submits the petition, unless the department, with the concurrence of the Environmental Quality Commission, finds special circumstances require additional time.

(5) A water quality management plan and rules implementing the plan that pertain to a ground water management area shall be subject to the coordination requirements of ORS 536.108. [1993 c.263 §13]

568.933 Civil penalty. (1) In addition to any other liability or penalty provided by law, the State Department of Agriculture may impose a civil penalty on a landowner in an agricultural or rural area subject to a

water quality management plan for failure to comply with the requirements of the plan including rules to implement the plan.

(a) The civil penalty for the first violation shall not exceed $2,500. Upon a second violation, the department may impose a civil penalty of not more than $10,000.

(b) For the purposes of this section, each day of violation continuing after the period of time for correction set by the department shall be considered a separate violation unless the department finds that a different period of time is more appropriate to describe a specific violation event.

(2) A civil penalty may not be imposed for the first violation under this section unless the department has notified the person of the violation and prescribed a reasonable time for the elimination of the violation:

(a) Not to exceed 30 days after the first notice of a violation; or

(b) If the violation requires more than 30 days to correct, the period of time specified in a plan of correction found acceptable to the department.

(3) The person to whom the notice is addressed shall have 10 days from the date of receipt of the notice in which to make written application for a hearing before the department.

(4) In imposing a penalty under this section, the department shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct a violation.

(b) Any prior violations of rules, regulations or statutes pertaining to a water quality management plan.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was repeated or continuous.

(e) Whether the cause of the violation was an unavoidable accident, negligence or an intentional act.

(f) The violator's efforts to correct the violation.

(g) The immediacy and extent to which the violation threatens the public health or safety.

(5) No notice of violation or period to comply shall be required under subsection (2) of this section if:

(a) The violation is intentional; or

(b) The landowner has received a previous notice of the same or similar violation.

(6) Any civil penalty recovered under this section shall be deposited into a special subaccount in the Department of Agriculture Service Fund. Moneys in the subaccount are continuously appropriated to the department to be used for educational programs on water quality management and to provide funding for water quality management demonstration projects. [1993 c.263 §8]

Attachment C

A CHRONOLOGY OF EQC ACTION ON THE AGRICULTURAL WATER QUALITY MANAGEMENT PLAN FOR THE TUALATIN BASIN

1988 — The EQC adopted Total Maximum Daily Loads for total phosphorus and ammonia nitrogen and assigned load allocations to nonpoint sources, including agriculture, in order to meet the dissolved oxygen standard and the chlorophyll-a action level.

The rule required that the Oregon Department of Agriculture (ODA), as the designated management agency, develop a plan to control nonpoint source pollution from agricultural lands. The rule established a compliance deadline of June 30, 1993. After this date no activities would be allowed that cause the compliance concentrations to be exceeded without the authorization of the Commission.

Aug 1990 — The EQC deferred action on the agricultural water quality management plan.

June 1991 — The agriculture plan was re-submitted. The Commission approved the plan conditionally (for one year), with a compliance schedule, and directed the ODA to address two concerns: 1) the lack of mechanisms to provide reasonable assurance that pollution reduction will occur, and 2) the lack stable program funding.

July 1992 — The Commission considered the agriculture management plan again. The two concerns raised in 1991 remained. The Commission again approved the plan for approximately one year and asked that these concerns be addressed.

July 1993 — The compliance deadline (June 30, 1993) for the phosphorus TMDL was not met. The EQC adopted a new Implementation and Compliance Schedule and Order. The order states that by December 31, 1994, the ODA will coordinate with local agencies to develop mechanisms to ensure necessary practices are applied, and to implement the program through enabling legislation or other state or local authorities.

ATTACHMENT D

WATER QUALITY LIMITED RECEIVING STREAMS

- Tualatin River/Oswego Lake
- Yamhill River
- Bear Creek
- Columbia Slough
- Pudding River
- Coquille River
- Klamath River
- Grande Ronde River
- South Umpqua River
- Columbia/Willamette Rivers
- Coast Fork Willamette River
- Clear Lake
- Garrison Lake
- Rickreall Creek
- Umatilla River

Tualatin River NonPoint Source Management Plan Implementation Program Accomplishments Since 1990

Oregon Department of Agriculture

Planning and Special Studies

- Special tributary monitoring on reaches of Burris and Christiansen Creeks to identify pollution sources.
- OSU/SCS special study on tributaries, winter 1992, to characterize pollutants in runoff.
- Agricultural BMP effectiveness monitoring in a sub-area of the Dairy-McKay Hydrologic Unit Area is being conducted by Oregon Graduate Institute and expected to continue for several years.
- A literature review of land use and phosphorus sources completed by OSU. Management implications for agriculture were to "keep soil and water on the site."

Demonstrations and Pilot Projects

- ODA has conducted cover crop and mulching demonstrations that have documented substantial reductions in phosphorus and sediment in runoff.
- Animal waste handling and stream corridor management on small farms demonstration underway coordinated by OSU and ODA, funding from EPA/DEQ.
- SCS and DEQ are cooperating to demonstrate streambank stabilization using bioengineering techniques.
- Currently attempting to site a leaf compost facility for rural stormwater runoff treatment demonstration.

Public Involvement/Education

- Rural landowner survey conducted by OSU extension to assess awarness of agricultural NPS pollution, and of technical and financial assistance available.
- A multi-agency agricultural water quality newspaper insert was produced and distributed to over 36,000 rural Washington County residents in October 1992. OSU coordination, DEQ/ODA funding.
- OSU coordinated a phosphorus workshop in December 1992. Numerous other workshops, seminars, meetings held.
- Numerous farm tours and presentations to 4-H groups, horse clubs, etc., have been conducted.
- Water quality displays have been placed at the Washington County Fair.
- A flyer "Water Quality Ideas for Small Farms with Livestock" has been published and distributed.

Department of Agriculture (continued)

Ambient Monitoring

No routine monitoring program has been established in the agricultural areas, however, a number of short term studies and synoptic surveys have been done.

Inventories of Potential Sources

- Aerial survey of all 52 permitted Confined Animal Feeding Operations (CAFOs) in the watershed. Follow-up inspections of operations judged to have high probability of non-compliance. Where non-compliance is documented schedules to achieve compliance are being developed.
- An inventory of sites needing nutrient and/or erosion control in the Burris, Christensen and McFee Creek drainages has be conducted. Sites in each drainage have been listed in priority order.
- Aerial inventory of container nurseries is being conducted.

Program Financing

To date, the program has been funded through grants, ODA staff, and USDA-SCS staff. Bills currently before the Legislature may provide a mechanism for stable program staffing and funding.

Financial Assistance Programs

- Dairy-McKay Hydrologic Unit Area (HUA) - a federal program (USDA) that provides technical assistance and cost sharing to agricultural producers for structural BMPs in the Dairy-McKay subbasin. This area covers approximately half of the agricultural land and most of the forested land in the Tualatin watershed. $4.2 million over 5 years; currently in 3rd year.
- Water Quality Incentive Program (WQIP) - a federal program (USDA) that provides incentive payments for agricultural producers to implement management systems in the Dairy-McKay HUA. Funded at $100,000 in 1992 and $180,000 in 1993.
- Federal cost share rates have been increased for some practices and the list of eligible practices has been broadened in the Dairy-McKay HUA.

Farm operations throughout the watershed continue to be eligible for federal cost share through the Agricultural Conservation Program (ACP) and Food Security Act (FSA).

Department of Agriculture (continued)

Regulation/Enforcement Provisions

No new requirements have been placed on agriculture to date. Existing DEQ permitting authorities for CAFO and container nurseries have received increased attention. Bills currently before the Legislature may provide additional authorities.

BMPs Required or Implemented on a Widespread Basis.

- Waste management systems, required by CAFO permit program, have been planned and are being constructed on permitted CAFOs throughout the watershed.
- Irrigation tailwater recycling and water management strategies have been implemented on container nurseries.
- Wetland conservation and erosion control plans are in place on highly erodible lands (HEL) that participate in FSA cost share programs.

Capital Improvement Projects

Not Applicable

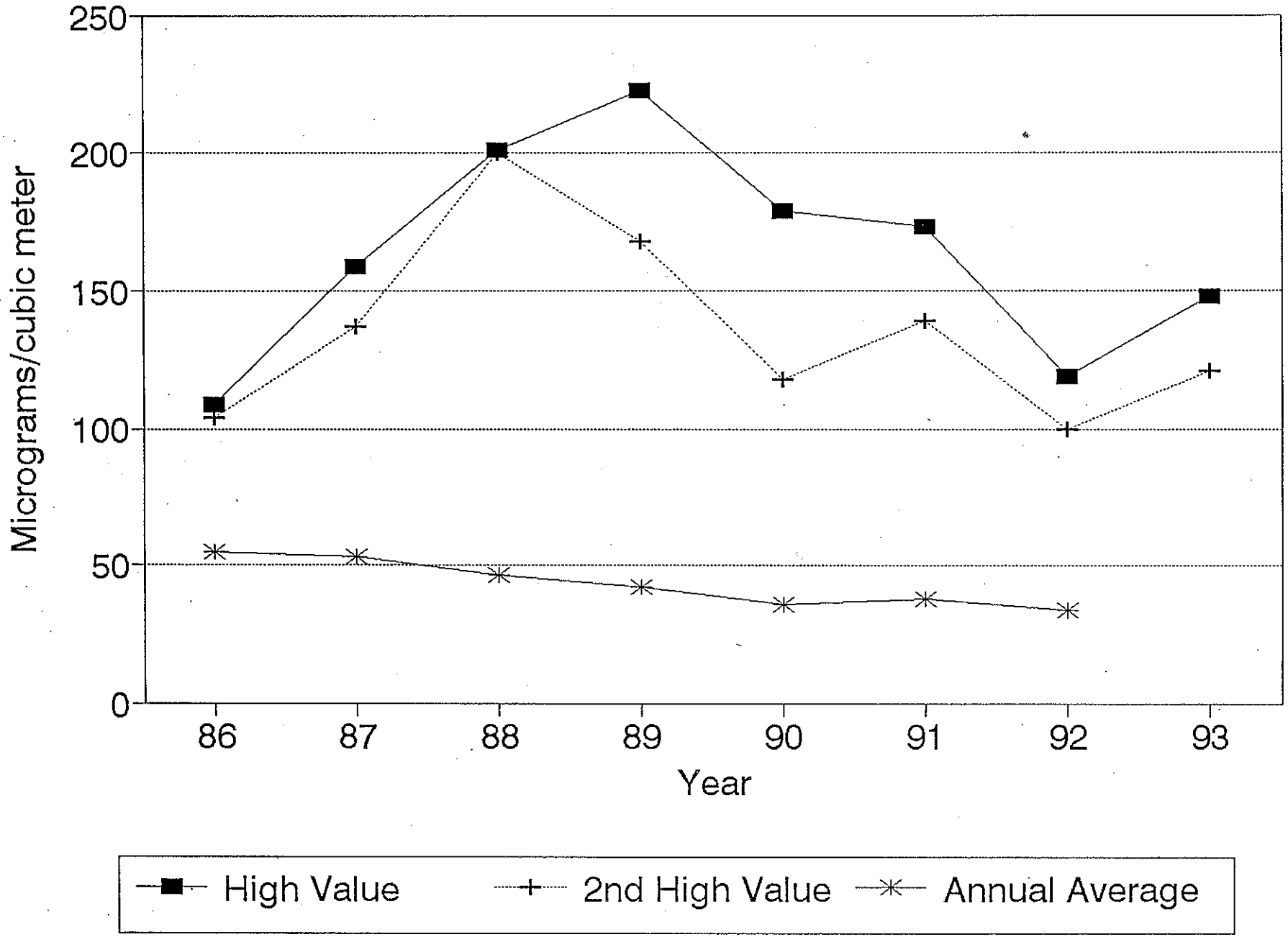
Maintenance and Operation

- SCS monitors implementation of erosion control plans and wetland conservation plans on HEL lands that participate in FSA cost share.
- ODA performs follow-up inspections of CAFOs to verify compliance with permit conditions and enforcement orders.
- ODA inspects container nurseries to verify compliance with irrigation water management plans.

Municipal NPDES Storm Water Permit Activities.

Not Applicable

La Grande PM10



PROJECT FOR IMPROVING EFFECTIVENESS
IN TECHNICAL ASSISTANCE AND POLLUTION PREVENTION

Presentation to the Oregon Environmental Quality Commission
April 22, 1994

I. Background & Definitions

II. Project Approach = broad definition of pollution prevention, viewed in terms of how individuals make decisions regarding the adoption of preferred practices.

Signals = four factors that influence individual choices:
- cost of input materials
- cost of being a regulated entity
- cost of public concern
- cost of adopting practices that prevent pollution

Effective pollution prevention signals have certain characteristics:
- imposed before the fact
- imposed directly on the individual responsible for pollution
- linked to the polluting behavior
- avoidable

III. Pollution Prevention Results and Recommendations
- structure signals (fees, regulatory thresholds, enforcement)
- leverage power of public understanding (use of data to track progress)
- help evaluate full range of environmental impacts and options
- provide incentives at appropriate times (windows of opportunity)
- provide tools to help evaluate signals (cost accounting, process flow diagrams)
- centralize functions (facilitate, advocate, resource)

IV. Technical Assistance Results and Recommendations:
- need better coordination to make more efficient use of resources

V. Next Steps = Implementation Strategy, Pilot Projects

SUMMARY
- Took a broad look at pollution prevention & technical assistance at DEQ
- Provided lots of opportunities for staff input
- Built upon existing programs and functions, common definition
- Success depends on improved coordination agencywide & upper management support
- Success of this approach will be measured in terms of structuring incentives so that they leverage decisions in favor of pollution prevention options.

The Pollution Prevention Equation

The public sector needs to understand how the private sector views costs: it weighs its total costs of current behavior against the total costs of pollution prevention practices. Thus, a change in the compliance costs for any one program may be the impetus for pollution prevention that affects other media programs.

Increasing Costs of Product/Process Inputs	+	Increasing Costs of Current Practices	+	Increasing Public Pressure Regarding Polluting Processes	vs.	Cost of Adopting Practices that Prevent Pollution
This cost impact results from policies which, for example:		*This cost impact results from policies which, for example:*		*This cost impact results from policies which, for example:*		*This cost savings may result from activities such as:*
Tax use of toxic raw materials		Regulate handling and disposal of toxic materials into any media		Provide general education on pollution		Provide technical assistance on non-polluting behaviors
Tax use of non-renewable raw materials		Regulate disposal of other materials		Mandate disclosure of toxic use and pollution generation amounts		Support publicly-funded research on pollution prevention techniques
Restrict access to raw materials		Directly tax end-of-pipe pollutants or wastes		Mandate public review processes of major enviromental decisions		Provide tax credits, etc. to reduce cost of adopting better practices
Eliminate subsidies for certain raw materials		Impose environmental liability for inadequate practices		Provide for citizen suits		Remove regulatory or administrative barriers to innovative solutions
Etc.		Etc.		Etc.		Etc.

LIZ VanLEEUWEN
State Representative
DISTRICT 37
LINN COUNTY

REPLY TO ADDRESS INDICATED:
☐ House of Representatives
Salem, OR 97310-1347
☑ 27070 Irish Bend Loop
Halsey, Oregon 97348

Home Phone:
(503) 369-2544
Capitol Message:
(503) 986-1200
Session Phone:
(503) 986-1437

2/25/94

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310-1347

Mr. Steve Crane, DEQ FAX 503/373-7944

Steve, attached is a one page-hand written response to the proposed Div. 26 Field Burning Rules.

Basically they look good with these two clarifications.

Please let me know what happens. Sincerely, Liz VanL.

Phone 503/369-2374

on 340-26-005 - (6)

"average of the totals of cumulative hours of smoke..." Okay, I think. If you are not adding Springfield & Eugene together to get a double figure. i.e. please don't count the same smoke twice.

~~OR~~ OR

340-26-012 (2) (F)

Wait — the fee paid for stack & pile burning is to be prorated by amount of straw to be burned. (Maybe that's what your language says, but not clearly) Also how that straw was removed should not be limited to "usual or standard baling methods."

attached is chapt 414 of OR laws 1993 sect 3 (1) (E)

From Liz VanLeeuwen
Geo./Liz VanLeeuwen
27070 Irish Bend Loop
Halsey, OR 97348

(v) $10 per acre in 2001 and thereafter; and [.]

(E) For acreage from which less than 100 percent of the straw is removed and burned in stacks or piles, the same per acre as the fee imposed under subparagraph (D) of this paragraph, but with a reduction in the amount of acreage for which the fee is charged by the same percentage as the reduction in the amount of straw to be burned.

RONALD M. SOMERS
ATTORNEY AT LAW
106 EAST FOURTH STREET
THE DALLES, OREGON 97058-0618

POST OFFICE BOX 618
TELEPHONE: 296-2181
FAX: 503-296-9382

AQ

January 31, 1994

Fred Hansen, Director
Environmental Quality Commission
811 SW 6th Avenue
Portland, OR 97204

William Weffinger, Member
Environmental Quality Comm.
121 SW Salmon, Suite 1100
Portland, OR 97204

Henry Lorenzen, Member
Environmental Quality Comm.
PO Box 218
Pendleton, OR 97801

Linda R. McMahan, Member
Environmental Quality Comm.
Berry Botanic Garden
11505 SW Summerville Ave.
Portland, OR 97219

Emery Castle, Member
Environmental Quality Comm.
Oregon State University
307 Ballard Hall
Corvallis, OR 97331

Carol Whipple, Member
Environmental Quality Comm.
21755 Highway 138 West
Elkton, OR 97436

Dear Ladies and Gentlemen:

I have read with great interest today copies of the new Rulemaking Hearing authorizing amendments of the field burning rules of the Willamette Valley.

To introduce myself, I was a member of the Commission from 1974 to 1982, approximately 8-1/2 years. During that time we saw the legislature phase out field burning and bring it back. I have the highest respect for Dave Nelson of the Seed Council and would rate him among the top three lobbyists I have seen perform in my lifetime in the State of Oregon.

The bottom line that all of you are going to have to look at some day is the federal rules which do not allow you to authorize, directly or indirectly, intrusions into Category I airsheds. Perhaps sometime it would be helpful to have staff identify the Category I airsheds which are mostly wilderness areas adjacent to the Willamette Valley.

It is a well recognized principle that there is no license to pollute since it causes a trespass and one day there may be a semi-smart law student who will join the commission members in a

proceeding in federal court to eliminate the trespass into the Category I airsheds. The grass seed industry is a vital industry in the state. They advised us in 1975 and the legislature that within ten years they would have a procedure for sanitizing their fields without the need of burning them and when the deadlines roll around they always get extended. In the meantime the state spends ten to fifteen million dollars a year to attract tourists to the State of Oregon to observe our occluded skyline and for the approximately half million residents of the state with compromised respiratory systems produces an enormous burden.

I see the wisdom of enacting the legislation but I don't understand how cereal grains got included back into the picture since there is no need to sanitize fields for seed grains as there is with the grass seed industry that could not stand foreign organisms. Cereal grains are routinely grown east of the mountains with no field burning and it should not be allowed.

One day a law suit will be commenced and it will be interesting. I am not unmindful of the fact that one of the Ninth Circuit Court of Appeals Judges does have an interest in a grass seed farm.

This is just a note to let you know I am disappointed that we have evolved back to allowing cereal grains to be burned when they were banned. It seems the problem is getting worse instead of better.

Very truly yours,

Ronald M. Somers

RMS:sr

OR/PAC FEED & FORAGE, LTD.
P. O. BOX 352
JUNCTION CITY, OR 97448
(503) 689-2680
(503) 689-3175 FAX

DATE: ***February 14, 1994***

TO: ***STEPHEN CRANE***

FROM: ***SHARON A SCHRENK***

SUBJECT: ***DEQ PROPOSAL***

NUMBER OF PAGES TO FOLLOW: -2-

IF YOU DO NOT RECEIVE ALL PAGES, OR THE COPY IS NOT CLEAR, PLEASE CONTACT SENDER

MR. CRANE:

ENCLOSED ARE MY THOUGHTS AND CONCERNS AS WE BRIEFLY DISCUSSED THIS MORNING. SHOULD YOU HAVE QUESTIONS, OR SHOULD YOU NOT FULLY UNDERSTAND MY THOUGHT PROCESS, PLEASE DO NOT HESITATE TO CALL.

THANK-YOU FOR THE OPPORTUNITY TO SHARE THIS WITH YOU.

SHARON A SCHRENK

February 11, 1994

Department of Environmental Quality
Western Region
Air Quality Division
750 Front Street N.E., Suite 120
Salem, OR 97310

After reviewing your proposed rule changes for OAR, chapter 340, Division 26, I have the following comments and questions:

First, your memorandum dated January 18, 1994 to Interested and Affected Public: defines the problem, as" *growers are currently responsible for the disposal of baled grass seed residue even though a custom baler, straw broker, or other party has control or custody of the material.*"

Also in your memorandum, you refer to the residue as straw: . . ."*and places the burden of straw disposal upon the person removing or baling the field.*" " *The new rules also place the burden of disposal and payment of burn fees on the custom baler, straw broker, or other parties in custody or control of the straw residue.*".

One page 2 of the Division 26, FIELD BURNING RULES, 340-26-003, you mention the residue as a crop . . . "and alternative methods of utilizing and marketing ***CROP*** residues . . . "

You refer to the subject of disposal four different ways:

residue
straw
straw residue
crop

Since you are referencing the residue as ***STRAW and*** a ***CROP***, we feel straw farmers should be named first..."even though a **STRAW FARMER**, *custom baler, or straw broker, has control or custody of the material.* Striking the "other parties" designation. The straw farmer is the most important person because he harvests a **straw *crop*** from a **straw** residue. The custom baler and straw broker come after the straw farmer who harvests the **straw crop.**

CROP: the total quantity cut or harvested.
RESIDUE: something that remains after a part is taken, separated, or designated.
CUSTOM : "regular trade or business" **BALER:** "one who bundles or packages goods, to make into bales"
CONCLUSION: Custom Baler gets paid for his service of baling straw or grass seed residue.

STRAW: "the stalk from which grain grows, and from which it is thrashed."
BROKER: "one who is employed to buy and sell for others"

It is obvious to me through your chosen terminology that the residue is a STRAW CROP. Since this residue is now determined to be a straw crop and straw is a crop that is harvested, we are straw farmers.

Bruce Andrews Director of the Oregon Department of Agriculture testified during the 1993 Legislative session that straw is definitely an agricultural commodity and "balers" are definitely farmers.

The *baled grass seed residue* is a **crop** according to your rule 340-26-003. Now that straw has been determined to be a crop, we ask you to be specific and identify us as straw farmers harvesting a straw crop. The "other parties" you name, must be the straw farmers performing the balance of the accepted non-thermal farming practice determined by studies through OSU to be the most efficient practice to remove the residue (crop).

HB 2211 has tied us tightly to the grass seed industry by, stating " *after the straw is removed from the fields of the grower, the responsibility for the further disposition of the straw, including burning or disposal, shall be upon the person who bales or removes the straw.*" The STRAW FARMER.

Your proposal will allow us to better manage our operations, both as growers and straw farmers. With the reduction of paperwork, and requirements, we are able to concentrate on our farming practices. Since some of the straw is not marketable either as feed or mulch, but must be removed according to our rental agreements, we need an alternative for disposal by burning the stacks, your proposal has made this route more assessable and for that we are grateful.

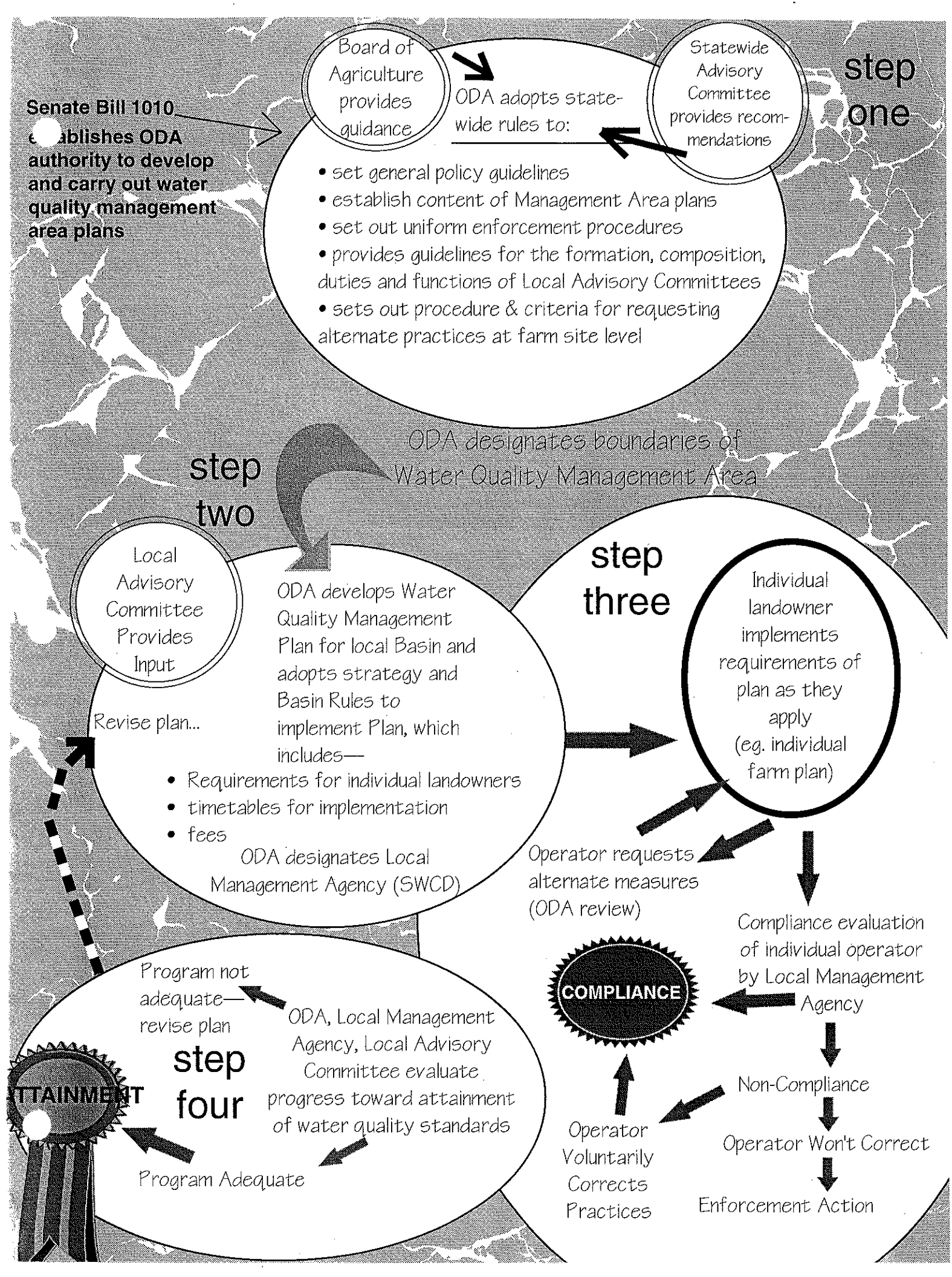
All we ask, is that you change the verbiage and name us as straw farmers, not "other parties" since you recognize the residue as a crop. In order for us to develop and market the straw crop, to reduce and prevent air pollution from open field burning, we need to be recognized for what we are. **STRAW FARMERS!!**

Please consider my request to define "residue" as a STRAW CROP, and define "other parties" as STRAW FARMERS. The harvesting of the material is an accepted farming practice with machines of animal husbandry. It only makes sense to say is like it is: "straw farmers harvesting a straw crop." I thank-you for your consideration.

Sincerely,

Sharon A. Schrenk

Sharon A. Schrenk
P. O. Box 352
Junction City, OR 97448
503 689-2680
503 689-3175 FAX


Senate Bill 1010
establishes ODA authority to develop and carry out water quality management area plans
Board of Agriculture provides guidance
Statewide Advisory Committee provides recommendations
step one
ODA adopts statewide rules to:
• set general policy guidelines
• establish content of Management Area plans
• set out uniform enforcement procedures
• provides guidelines for the formation, composition, duties and functions of Local Advisory Committees
• sets out procedure & criteria for requesting alternate practices at farm site level
ODA designates boundaries of Water Quality Management Area
step two
Local Advisory Committee Provides Input
ODA develops Water Quality Management Plan for local Basin and adopts strategy and Basin Rules to implement Plan, which includes—
• Requirements for individual landowners
• timetables for implementation
• fees
ODA designates Local Management Agency (SWCD)
Revise plan...
step three
Individual landowner implements requirements of plan as they apply (eg. individual farm plan)
Operator requests alternate measures (ODA review)
Compliance evaluation of individual operator by Local Management Agency
COMPLIANCE
Non-Compliance
Operator Won't Correct
Enforcement Action
Operator Voluntarily Corrects Practices
Program not adequate—revise plan
step four
ODA, Local Management Agency, Local Advisory Committee evaluate progress toward attainment of water quality standards
Program Adequate
TTAINMENT

Oregon Department of Agriculture

Senate Bill 1010

ADMINISTRATIVE RULES DEVELOPMENT AND IMPLEMENTATION TIMETABLE

Begin review of SB 1010 basic implications & get input from State Board of Agriculture and agricultural community	October 1993
Appoint Statewide Rules Development Advisory Committee	November 1993
Draft proposed rules	Nov. & Dec. 1993
State Board of Agriculture review of draft rules	January 1994
Publish Notice of Proposed Rulemaking in Secretary of State's Bulletin	March 1994
Hold public hearings and receive written comments	March & April 1994
Review testimony and incorporate into revised rules	March & April 1994
Consult with the Department of Environmental Quality and the Environmental Quality Commission	April 1994
Review of revised rules by State Board of Agriculture & adoption of final rules	May 1994
Implement adopted rules	June 1994

Oregon Department of Agriculture

Senate Bill 1010

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MALHEUR COUNTY SOIL AND WATER CONSERVATION DISTRICT

2925 S.W. 6TH AVENUE, SUITE 2 ONTARIO, OREGON 97914 (503) 889-2588
FAX (503) 889-4304

April 22, 1994

To the Honorable Oregon State
Environmental Quality Commissioners

Dear Commissioners:

On behalf of the Malheur County Water Quality Interagency Technical (WQIT) Committee, I would like to thank you for taking the extra time to meet in Eastern Oregon and the opportunity for us to be here today. We would like to extend to each of you an invitation to visit the Malheur County Groundwater Management Area.

We have given many water quality tours over the past 4 years to both state and federal dignitaries and we would be honored to share our accomplishments with you on a first hand basis, either as a group or as individuals.

As we are in the implementation stage or "the adoption of best management practices" stage, there are many exciting and innovative techniques to see. A visit will also provide for you a chance to meet with local landowners and receive feedback on the progress of the project.

The optimum time to view the various activities that are being implemented is in July and August. However, we realize that this may not be convenient for you and we are willing to work around your schedules.

Again, it is a pleasure to be here today, and if you have any questions, please feel free to ask or call us. Thank you.

Sincerely,

Kit

Kit Kamo, Chair
Malheur County Water Quality Interagency Technical Committee

MALHEUR COUNTY
SOIL AND WATER CONSERVATION DISTRICT

Kit Kamo
District Manager

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