

**OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION MEETING  
MATERIALS 08/26/1994**



**State of Oregon  
Department of  
Environmental  
Quality**

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## REVISED AGENDA

### ENVIRONMENTAL QUALITY COMMISSION MEETING

August 26, 1994

Harris Hall

Lane County Public Service Building

125 E. 8th Avenue (corner of 8th & Oak)

Eugene, Oregon

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**Friday, August 26, 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.*

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- A. Approval of Minutes
- B. Approval of Tax Credits
- C. Air Contaminant Discharge Permit Fee Revision and Proposed Fee Increase for Asbestos Program
- D. Proposed Adoption of Rule Amendments to Wastewater System Operator Certification Fees and Applications
- ~~E. Proposed Modifications to On-Site Sewage Disposal Technical and Procedural Rules~~
- F. Proposed Rule on Public Records Access and Reproduction

G. Request for EQC Action on Petition for Enhanced I/M Program Fee Increase

H. Commissioner Member Reports (Oral)

I. Director's Report (Oral)

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

*The Commission has set aside October 20-21, 1994, for their next meeting. This meeting is currently scheduled to be held in Newport.*

*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.*

*August 22, 1994*

Approved \_\_\_\_\_  
Approved with Corrections \_\_\_\_\_

*Minutes are not final until approved by the EQC*

## ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Thirty Seventh Meeting  
June 3, 1994

### Regular Meeting

The Environmental Quality Commission regular meeting was convened at 8:30 a.m. on Thursday, June 3, 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 April 21 work session and April 22 regular meeting minutes; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

**B. Approval of Tax Credits**

The Department recommended the Commission approve certification for the tax credit applications listed below. The Department also recommended approval of the transfer of the remaining value of 77 tax credit certificates from the original recipients to the general partnership formed by the firms, the Truax Harris Energy Company, and the transfer of TC-4208 from the Kinzua Corporation to Kinzua Resources, LLC.

Application Number	Applicant	Description
TC 4107	Vahan M. Dinihanian	A Reclaimed Plastic facility consisting of a 200 ton Nissei injection mold.
TC 4122	Oregon Metallurgical Corporation	A Water Pollution Control facility consisting of two caustic storage tanks, one neutralizing tank, a concrete foundation, instrumentation and piping.
TC 4137	Planned Marketing Solutions, Inc.	A Reclaimed Plastic products facility consisting of an aluminum injection mold.
TC 4159	William H. Burrell, Jr.	A Water Pollution Control facility consisting of a covered steam pit, including a building, a sump, an oil/water separator and plumbing for steam cleaning engines, equipment and parts.
TC 4195	Pendleton Sanitary Service, Inc.	A Solid Waste recycling facility consisting of costs to remodel a building, a conveyor and baler, drop boxes, storage containers and recycling process equipment.
TC 4224	Stanley Goffena	An Air Quality (field burning) facility consisting of a John Deere round baler for baling grass seed straw.
TC 4225	Flanagan Farms, Inc.	An Air Quality (field burning) facility consisting of a Big "G" 18' offset disk, a John Deere 2810 plow and a John Deere 8650 tractor.

Application Number	Applicant	Description
TC 4227	Hays Oil Company	A Water Pollution Control (UST) facility consisting of galvanic cathodic protection for three steel tanks, fiberglass piping, spill containment basins, a tank gauge system, an overfill alarm, line leak detectors, monitoring wells, automatic shutoff valves and Stage I and II vapor recovery piping.
TC 4228	Hays Oil Company	A Water Pollution Control (UST) facility consisting of three fiberglass coated steel doublewall tanks, flexible doublewall piping, spill containment basins, a tank gauge system with overfill alarm, line leak detectors, and Stage I and II vapor recovery piping.

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

Application Number	Applicant	Description
TC 4208	Kinzua Corporation	An Air Quality facility consisting of one PPC Industries electrostatic precipitator (ESP).

Commissioner Lorenzen moved approval of all tax credits except TC-4195; Commissioner Castle seconded the motion. The motion to approve all tax credits excluding TC-4195 was unanimously approved.

Commissioner Whipple moved approval of TC-4195; Commissioner McMahan seconded the motion. TC-4195 was unanimously approved with four yes votes and with Commissioner Lorenzen abstaining.

**Note:** Item D was considered before Item C.

**D. Proposed Amendments to the Stipulation and Final Order Addressing the City of Portland's Combined Sewer Overflows**

This proposed item amends the Stipulation and Final Order (SFO) addressing the City of Portland's combined sewer overflows (CSOs). The August 1991 SFO agreed upon by the City and Commission required the City to reduce CSO discharges to the Willamette River and Columbia Slough. The SFO specified CSO control levels to be achieved but also allowed the parties to modify the CSO control level based on information developed in the draft facilities plan.

The draft facilities plan findings were reviewed by a collaborative process. As a result, a draft amended SFO was developed for adoption by the City and Commission. The principal change in the proposed amended SFO was to make the CSO control level for discharges to the Willamette River slightly less stringent but at the most cost effective level.

The Department recommended the Commission authorize execution of the amended SFO and that the Commission direct the Department to assure that the various planning and permitting issues raised during the public notice process are satisfactorily resolved in the final facilities plan and subsequent National Pollutant Discharge Elimination System permit for the CSO control facilities.

Director Hansen introduced this item to the Commission. Richard Santner of the Department's Northwest Region Office summarized the Department's recommendation that the Commission approve the amended SFO. In response to questions from Commissioner Lorenzen, staff explained that the effluent discharged from the future wet weather treatment facilities would be required to meet water quality standards as they now exist. It was also explained that the principal constraint to providing secondary treatment to a portion of the captured combined sewage will be the treatment capacity of the Columbia Boulevard plant rather than the capacity of the storage tunnels.

Portland City Commissioner Mike Lindberg addressed the Commission. He expressed appreciation to the Commission and Department for participating in the collaborative process and stated the City's commitment to the long-term effort to improve the quality of the Willamette River and Columbia Slough.

Craig Johnston of Northwest Environmental Advocates reiterated key points made in his letter submitted during the comment period on the proposed amended SFO which focused on interim CSO control measures, proposed SFO language prohibiting untreated CSO discharges and changes to the stipulated penalties section.

Mikey Jones told the Commission his concerns of how difficult it would be for citizen legal action to secure elimination of untreated discharges if this SFO was adopted.

Further discussion occurred about the proposal to expand the SFO requirements covered by stipulated penalties. Subsequent discussion focused on the proposal to remove the phrase "that violate applicable water quality standards" from the text of paragraph 12 of the proposed amended SFO. A change in language would constitute a prohibition of all untreated CSO discharges except those resulting from the specified storm event or larger. There was general agreement that the change in language would be consistent with the overall goal of eliminating untreated CSO discharges except when the storm design is exceeded. However, because in some locations storm sewers and combined sewers share the same outfall, it would place on the City the burden of proof that a discharge is storm water only rather than the burden of proof being with the Department to show that water quality standards had been violated.

Commissioner Lorenzen moved approval of the amended SFO as recommended in the staff report, with the modification at appropriate locations in paragraph 12 the phrase "that violate applicable water quality standards" be deleted, and the words "untreated CSO" be added. Commissioner McMahan seconded the motion. The motion was approved with Commissioners Castle, Lorenzen and McMahan and Chair Wessinger voting yes; Commissioner Whipple was not in the room at the time the vote was taken.

Water Quality Administrator Mike Downs then responded to a question Commissioner Castle posed to the Department earlier in the meeting about the equity that relaxation of the CSO control requirement extended to Portland represented for other communities faced with eliminating raw sewage bypasses. Mr. Downs explained that although Department rules establish a more stringent standard for control of untreated summertime discharges than that contained in the amended SFO, the SFO does recognize as an ultimate goal a level of control higher than that specifically required at this time, and so is in principle consistent with the rule. Commissioner Castle suggested that at some future time the Commission and Department may want to commit to writing the types of circumstances under which flexibility in the application of the policy on control of untreated discharges is exercised so that it can be applied in a fair and consistent way.



Chairman Wessinger and Director Hansen expressed appreciation to Commissioner Lindberg and City staff and consultants, with special note of the City's acceptance of the change in SFO language.

**C. Rule Adoption: Vehicle Inspection/Maintenance Program State Implementation Plan (SIP) Update**

This proposed rule revises Oregon's vehicle inspection and maintenance (I/M) program and is designed to be equivalent to the U. S. Environmental Protection (EPA) requirements for basic vehicle I/M programs. The proposed rules add new procedures for vehicle testing and inspector training and use existing emissions reduction credits, which are beyond minimum EPA requirements, to offset pursuing additional enforcement and vehicle coverage.

The Department recommended the Commission adopt the rule amendments regarding vehicle I/M program SIP revisions.

Director Hansen introduced Greg Green, the new Air Quality Administrator, to the Commission. Then, Ron Householder, Air Quality Division, summarized the SIP changes, pointing out to the Commission that the main change to the I/M program is the change from manual to a computerized testing program. The Commission was informed that the SIP contained tradeoffs. The EPA had requested extended vehicle coverage and enforcement programs relating to U. S. government fleet vehicles that the Department believed were difficult to achieve and not applicable in Oregon compared to the closely clustered, densely populated states on the East Coast. As such, the DEQ opted to take a paper reduction in emissions credits and forego these complex programs.

Mr. Householder explained that because Oregon has a more effective program than the standard EPA "basic" program, the DEQ will still meet the EPA "basic" emission reduction requirements. The most effective element contained in the Oregon program but not in the EPA standard basic program is the testing of light-duty pickups.

The Commission had no comments except they thought the document was very large. Mr. Householder explained that the EPA required a detailed SIP because of the ineffectiveness of past I/M programs in some other states.

Commissioner Castle moved approval of the rule adoption of the vehicle inspection/maintenance program SIP update; Commissioner Whipple seconded the motion. The motion was unanimously approved.

**E. Information Report on Rule Adoption by the Oregon Department of Forestry for Classification and Protection of Waters of the State**

Staff from the Oregon Department of Forestry (ODOF) and DEQ presented information on the recent rule package adopted April 21, 1994, by the Board of Forestry to protect waters on state and private forest land. The rules include changes in the classification of streams, lakes and wetlands and how these waterbodies will be protected during commercial forest operations.

Although substantial improvements were made to the rules, Department staff were concerned that water quality standards may not be achieved in all waterbodies at all times. DEQ and ODOF staff are working together to address these uncertainties and evaluate the effectiveness of the new rules for protecting water quality and beneficial uses.

The Department recommended that the Commission accept this report.

Ted Lorensen, ODOF, Andy Schaedel and Dennis Ades from the Department's Water Quality Division briefed the Commission on the rule package adopted by the Board of Forestry. Mr. Schaedel introduced the topic, and Mr. Lorensen summarized the rulemaking process and principles upon which the rules were developed. Mr. Ades discussed the strengths and weaknesses of the new rule package.

Commissioner Castle asked Mr. Lorensen to explain why many small streams without fish are not protected. Mr. Lorensen said streams are given priorities based on beneficial uses. He said that stream temperatures were examined on a regional basis.

**PUBLIC FORUM**

Larry Tuttle thanked the Commission for adopting the mining liability rules and said that other states were using the rule as a model.

**F. EQC Member Reports**

There were no Commission member reports.

**G. Director's Report**

Update on UST environmental lawsuit: A temporary restraining order against Kenneth R. "Bob" Cyphers and Sharel L. Cyphers of Corvallis and four businesses owned and operated by the Cyphers has been extended until the trial. Oregon's Attorney General filed the lawsuit on behalf of the Department. The action alleges that the Cyphers fraudulently provided environmental cleanup services in Oregon involving at least 30 cleanup sites. The complaint alleges racketeering and violations of Oregon's unlawful trade practices act and environmental laws. The trial may be scheduled as early as August.

Regional Department staff are looking at the sites where Cyphers performed work as a contractor. A review of the files shows that Cyphers worked on approximately 84 sites throughout the state. Department staff will be working with the property owners to outline what additional work may need to be performed at the sites.

In addition to the civil enforcement action being pursued by the Attorney General's Office, the U.S. Attorney's Office is reviewing the documentation to determine whether criminal charges should be filed against Cyphers and his companies.

New office space: The Eugene office opened the first week in May. The office hosted an open house to make the regulated community and citizens aware of the new office.

Legislative wrap up:

- **Tax Credits:** The Department met with a work group formed out of the House Revenue Committee to discuss pollution control tax credits. Although there did seem to be consensus that the program is more economic development than pollution control oriented, the group does not seem in a hurry to make a change in the program.
- **Stringency:** A subcommittee of the House Natural Resources Committee met yesterday to discuss the pre-session filing of the stringency bill from last session. The Department recently concluded a work group to develop a set of questions that should be answered when advisory groups or the Commission are considering a rule that would be different from a federal standard. The Department will soon be bringing a report from that work group to the Commission.

Temporary Rule -Total Dissolved Gas: Director Hansen informed the Commission that the National Marine Fisheries Service (NMFS) had asked the U. S. Corps of Engineers to reduce the Columbia River spill based on the level of internal gas bubble disease (GBD) detected in fish. The NMFS biological monitoring plan had set an action level of 5 percent for internal GBD signs. This level was exceeded in the test organisms; therefore, NMFS took the action required in the plan and requested a reduction in the spill. There is some controversy over this reduction as it will reduce the number of fish passed over the dams, and the scientific community is not in agreement as to what level of internal symptoms will impact the fish.

Director Hansen told the Commission that he was, as allowed in the temporary rule adopted on May 16, setting the total dissolved gas (TDG) level at 110 percent on a 12-hour average with a 115 percent single sample maximum. This was based on the levels which were now being reported in the river as a result of the reduced spill.

The Commission heard testimony about the spill program from the following individuals:

- **Dr. Gerald Bouck:** Dr. Bouck told the Commission that he had not been contacted by the Department for any further information or consultation. He said that 120 percent spill was too high and that instantaneous readings were not being obtained.
- **Bert Bowler, Idaho Department of Fish and Wildlife:** Mr. Bowler said that the spill was needed to spread the risk. He said the spill enhanced river conditions for salmon survival and provided flow augmentation. He said monitoring is going well and that visually no impacts were apparent on returning adult salmon.
- **Bruce Lovelin, Columbia River Alliance:** Mr. Lovelin said the spill should be stopped. He said the river should be allowed to clear of TDG. He said that the scientists should determine the percentage of spill. Mr. Lovelin added that the Alliance questioned the logic of continuing a spill program which could harm the fish that we are trying to save.
- **Dr. Margaret Filardo, Fish Passage Center:** Dr. Filardo said there has been no evidence that GBD was occurring; however, she said fish counters had seen some signs. Dr. Filardo said monitoring data is updated daily and has been provided to the Department.

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- Doug DeHart, Oregon Fish and Wildlife: Mr. DeHart said that they are not finding significant incidence of GBD as they read the monitoring data. He said they were hopeful that scientific review would allow adjustments to the spill percentage.

There was no further business, and the meeting was adjourned at 1:25 p.m.

Approved _____
Approved with Corrections _____

*Minutes are not final until approved by the EQC*

**ENVIRONMENTAL QUALITY COMMISSION**

Minutes of the Two Hundred and Thirty Eighth Meeting  
July 22, 1994

**Regular Meeting**

The Environmental Quality Commission regular meeting was convened at 9 a.m. on Friday, July 22, 1994, at Pacific University, in the Multi-Purpose Room, University Center, 2043 College Way, Forest Grove, 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 Whipple moved approval of the May 9, 1994, special conference call meeting minutes; Commissioner McMahan seconded the motion. The motion was unanimously approved.

**B. Approval of Tax Credits**

The Department recommended the Commission approve certification for the tax credit applications listed below.

Application	Applicant	Description
TC 2863	Jeld-Wen, Inc.	A noise pollution facility consisting of a barrier for a fan, a silencer and enclosure for a high pressure blower and insulation for a baghouse.
TC 3957	L & L Sawyer Painting And Sandblasting	Hazardous Waste solvent recovery equipment.
TC 4167	Joseph A. Huff dba Joe's Market	A UST facility consisting of two STI-P3 tanks and doublewall fiberglass piping, spill containment basins, a tank gauge system, an overfill alarm, automatic shutoff valves and Stage II vapor recovery piping.
TC 4211	Honke Heating & Air Conditioning	A CFC Air Quality facility consisting of a machine that removes and cleans air conditioner or commercial refrigerant coolant.
TC 4212	Proudfoot Ranches, Inc.	A CFC Air Quality facility consisting of a machine that removes and cleans auto air conditioner coolant.
TC 4216	University Motors, Inc. dba University Honda	A CFC Air Quality facility consisting of a machine that removes, cleans and recharges automobile air conditioner coolant.

Application	Applicant	Description
TC 4218	Peter Kyril	A UST facility consisting of four monitoring wells and one recovery well.
TC 4222	One Cent Profit Sales	A CFC Air Quality facility consisting of a machine that removes, cleans and recharges automobile air conditioner coolant.
TC 4223	The Heating Specialist, Inc.	A CFC Air Quality facility consisting of a machine that removes and cleans air conditioner or commercial refrigerant coolant.
TC 4229	Mike Strassel Mobile Repair	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4230	Bug Works, Inc.	A CFC Air Quality facility consisting of a machine that removes and cleans automobile air conditioner coolant.
TC 4231	Russell Oil Company	A UST facility consisting of three fiberglass tanks and doublewall fiberglass piping, spill containment basins, a tank gauge system, an overfill alarm, turbine leak detectors, monitoring wells, sumps and automatic shutoff valves.
TC 4234	Neils Jensen Farms	An Air Quality Field Burning facility consisting of a model 2620 Bush Hog Mower, a Model 8850 John Deere Tractor and a 27 ft. # 225 Dow Kello-Bilt Disc.
TC 4236	James VanLeeuwen	An Air Quality field burning facility consisting of JD 4960 MFWD tractor.
TC 4237	Floyd Smith	An Air Quality Field Burning facility consisting of a G-K 3W 600 Swamp Buggie Herbicide Applicator.



Application	Applicant	Description
TC 4239	Stein Oil Company, Inc.	An Air Quality facility consisting of an above ground stage II vapor recovery system.
TC 4240	Stein Oil Company, Inc.	A UST facility consisting of the epoxy lining of three steel underground storage tanks.
TC 4241	Stein Oil Company, Inc.	An Air Quality facility consisting of an above ground stage II vapor recovery system.
TC 4247	James VanLeeuwen	An Air Quality field burning facility consisting of a Rear's straw vacuum.

The Department also recommended approval of the methodology for allocating the costs of grant assistance presented in Attachment B of the staff report. In addition, the Department recommended approval of a request to transfer Certificate No. 3312 (TC 4207) from the Eichler Hay Company to Mary and Walter Eichler, the owners of the tax credit facility.

In discussing the merits of TC-4237, Commissioner Lorenzen requested an evaluation be performed to determine whether an allocation formula similar to the methodology used for tractor claims might also be appropriate for herbicide application equipment. The Oregon Department of Agriculture in coordination with the Department will evaluate the alternatives. Also, Rich Reiter of the Department's Waste Management and Cleanup Division presented the Department's recommended methodology to allocate costs associated with essential services grants for underground storage tanks (UST). TC-4167, which used the methodology to identify the percentage of that claim that was allocable to pollution control, was approved by the Commission.

Commissioner Lorenzen moved approval of the above-listed tax credits excluding TC-4212; Commissioner McMahan seconded the motion. All tax credits with the exception of TC-4212 were unanimously approved.

Commissioner Whipple moved approval of TC-4212; Commissioner McMahan seconded the motion. TC-4212 was approved by four yes votes with Commissioner Lorenzen abstaining.

**C. Boundary Expansion for Portland Area Vehicle Inspection Program**

This proposed rule adoption was about expansion of the vehicle inspection program to include approximately 11 percent more vehicles than are currently tested. Residents owning cars who live in Aurora, Banks, Canby, Dundee, Estacada, Gaston, Hubbard, Newberg, North Plains, Sandy, Scappoose and other adjacent areas to the current Metro boundary will be required to pass an emissions compliance inspection. Farm vehicles, 1974-model year automobiles and older, special interest and collectors' item vehicles are not subject to the inspection requirement.

The Department recommended the Commission adopt the rules/rule amendments regarding expanding the control area for vehicle emission inspections in the Portland area as presented in Attachment A of the Department's staff report.

Department staff presented the case for rule adoption to the Commission. The Portland area is designated as nonattainment for carbon monoxide and ozone pollution. Although air quality is getting better, anticipated growth in population and traffic volume will jeopardize future maintenance of health standards unless steps are taken to further reduce emissions. With no additional emission reduction strategies the population is at risk of exposure to unhealthy levels of air pollution and current restrictions on economic growth and business expansion will remain in place. These current requirements are an impediment to growth and the development of new jobs in the region.

The proposal before the Commission differed from the proposal put out for public comment in that the Department was recommending that the town of Lafayette be excluded from the testing requirement. Further review of the data indicated that its trip generation to the Portland air quality maintenance area was significantly different than other areas proposed to be within the new boundary. The Department also made clear, in response to concerns expressed by public officials in Yamhill County, that as the maintenance plan is reviewed in ten years that the boundary will also be reviewed to reflect subsequent changes in trip orientation to the Portland area.

Jesse VanderZanden from the Oregon Farm Bureau testified in opposition to the proposal urging the Commission to consider an exemption for areas zoned for exclusive farm use. He suggested that the boundaries could follow major highways to population centers thus avoiding rural areas. He also suggested that the rule adoption be delayed pending further study of trip generation from rural and non-rural areas.

Discussion followed on data presented by staff that indicated that rural areas did generate a sizeable number of work related trips to the metropolitan area. It was also pointed out that although land use designations control land development these regulations do not impose any restrictions on employment off the property and that many people living on farms do have non-farm jobs.

Dr. Robert Palzer, a representative from the Sierra Club, testified in favor of the expanded boundary and also urged the Commission to require increased testing of large diesel trucks. The Department responded that testing of heavy duty diesel trucks was not feasible at this time because of the lack of emission standards for these engines but that the Department was open to the possibility and was following developments in other states along these lines.

Commissioner McMahan moved approval of the boundary expansion for the Portland area vehicle inspection program; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

**D. Proposed Adoption of Rule Amendments to On-Site Sewage Disposal Fee Rules**

This proposed adoption of rule amendments to on-site sewage disposal fees would establish a schedule of fees that will generate sufficient revenue to support the program and enhance service delivery. The field services portion would be supported by application fees while the administrative/support portion would be funded from license fees and surcharge fees collected on all program applications within the state.

The counties of Benton and Washington required one or more of the application fees they charge be increased above the schedule of fees adopted by the Commission in 1991. The new schedule of fees within Attachment A of the staff report will set a new ceiling for the county fees. The Benton County fee would be lower than that ceiling and would not need to be established by rule. Many of the Washington County fees would also be lower. However, Washington County requested approval to establish two application fees at higher levels than being

considered by the Department. The Department did not support adoption of the higher Washington County fees as contained in Attachment J of the staff report. The Department recommended the Commission adopt the rule amendments regarding the on-site sewage program fees as presented in Attachment A of the staff report.

Director Hansen briefed the Commission about this item, describing the need to provide a better level of service, the need to be more responsive to the public and that the proposed fees would provide funding needed to increase staffing so that all applications would be responded to within two weeks. Director Hansen advised that Benton and Washington counties have requested the ability to increase their fees to levels higher than the current fee schedule and that the proposed Department fee schedule establishes a new ceiling which would allow the agreement counties to adjust their fees. He also shared the suggestion from the Douglas County Board of Commissioners that the Department consider changing the way the program was conducted by implementing a pilot project they would be willing to assist in developing.

Water Quality staff presented a summary of what the on-site program fees support and why it is necessary to increase fees. Chair Wessinger inquired about the procedures followed when a site evaluation report application is submitted.

Mr. Bob Wilson, Benton County Health Department, discussed the need to increase the fees so that the counties could make adjustments to their fee schedules so as to allow a greater part of the programs they implement to be fee-supported. Mr. Wilson expressed support for the Department's proposed new fee schedule.

Staff described that even with the higher fees, Washington County had requested that two of their fees be established at a higher level. The Department did not support this request for the two higher Washington County fees because the county should be at least (if not more) efficient in the delivery of program services.

Diana Godwin, Counsel for Clearwater Ecological Systems, stated that most of the public comment was not in favor of establishing higher fees, that she believed the fee proposal should be delayed and be considered as part of a future staff report to the Commission requesting adoption of significant amendments to the program's technical rules.

Commissioner Lorenzen moved adoption of the rule amendments to the on-site sewage disposal fee rules; Commissioner Castle seconded the motion. In discussion, Commissioner Whipple expressed a concern that the fee proposal should be consistent with the future technical amendments and stated her preference that this request be made a part of the future staff report on this issue. After further discussion, the motion was approved by four yes votes with Commissioner Whipple voting no.

**Note:** Agenda Item E was considered at 1:00 p.m. before Agenda Item G, the last item discussed.

**F. Proposed Policy on Calculation of UST Tax Credit when Applicant Previously Received UST Financial Assistance Grant**

This proposed policy was about calculation of underground storage tank (UST) tax credit when an applicant had previously received an UST financial assistance grant. Certain UST owners are eligible to receive state financial assistance benefits under two programs, the Pollution Control Facility Tax Credit Program and the UST Financial Assistance Grant Program.

The tax credit program covers only the cost of installing pollution control equipment to prevent or reduce environmental contamination. The grant program covers the cost of upgrading or removing underground storage tanks, installing new tanks and pollution control equipment and cleaning up soil and ground water contamination. The tax credit program requires the applicant to certify "actual costs" that the applicant incurred which becomes the basis for calculating the tax credit. If approved, tax credits are claimed against taxes otherwise owed Oregon and are received after a project is complete. The UST financial assistance grant, on the other hand, is paid to the applicant as the project is constructed.

While both programs cover pollution control equipment costs, only the financial assistance grant program covers the cost of cleanup of petroleum contaminated soils and groundwater. Cleanup costs are specifically excluded from the tax credit program since they are not considered pollution control equipment. Since neither law speaks directly to the relationship between the two programs, a policy is necessary to determine the appropriate financial benefit that an applicant can derive under each program.

The most significant issue is to determine the actual cost that can be claimed on the tax credit application. Since the state is contributing up to 75 percent, not to exceed \$75,000 of equipment and cleanup costs, a determination needs to be made as to whether the grant is first applied against equipment costs, first applied against cleanup costs or prorated between equipment and cleanup in proportion to their share of the total project costs.

The Department recommended that tax credit applicants who have also received an UST financial assistance grant be advised that their actual costs must be adjusted to reflect the grant contribution to their project. It was further recommended that the appropriate adjustment be made by apportioning the UST financial assistance grant to equipment and cleanup costs on a pro rata basis in proportion to their share of the overall project costs.

Since the two programs cover different costs, it is necessary to define how the grant will be allocated between equipment and cleanup costs. If the grant is first applied to equipment costs, many UST tax credit applicants would not have any actual costs to claim under the tax credit program. This happens because cleanup costs often exceed pollution control equipment costs by a significant amount. If the grant is first applied to cleanup costs, most if not all equipment costs could still be claimed under the tax credit program. A third approach is to apportion the grant between equipment and cleanup costs in accordance with their pro rata share of total project cost.

The Department recommended the third approach as a reasonable way to allow all applicants to benefit under both programs in an equitable way and yet protect the public interest in conserving its scarce monetary resources.

Commissioner Castle moved approval of the Department's recommendation to pro rate the grant to equipment and cleanup costs in proportion to their share of total project cost before calculating the actual cost of equipment for the tax credit program; Commissioner Whipple seconded the motion. The motion was unanimously approved.

## **PUBLIC FORUM**

There was no public testimony.

**Note:** Agenda Item G was the last item of the meeting.

## H. EQC Member Reports

- Commissioner McMahan reported on the Oregon Community Foundation's Tualatin Valley Advisory Council on which she serves. The Foundation dispenses funds from the Unified Sewerage Agency, the Department and environmental groups. She said the Foundation had approved a \$125 million grant for expanding teacher training in rural and developed areas of Washington County.
- Commissioner Whipple reported on the Governor's Watershed Enhancement Board (GWEB). She said the program had been operating since the late 1980's and that it had a history of being successful and well received. However, the staff person for the board was retiring and that discussion would be occurring about the future of GWEB as well as watershed health and the State Watershed Management Group (SWMG).

## I. Director's Report

Clean Air Weather Watch in Portland: The Department issued a "Clean Air Weather Watch" for Portland all week. The Weather Watch is a voluntary program asking people to use alternative transportation, to reduce driving or to put off mowing the lawn with gas lawn mowers until the temperature drops. The program has received considerable cooperation from the news media in getting the word out about air pollution.

Salt Caves: The Department received a new Salt Caves hydroelectric project application. The staff review to determine whether the application is complete will be ready by the end of next week. The new application proposes some operational changes intended to meet the Commission's temperature standard.

### Hearing Authorizations:

- **Industrial Wastewater Permit Fees:** The proposed rule would revise and increase the permit fees for industrial wastewater disposal, including National Pollutant Discharge Elimination System (NPDES), Water Pollution Control Facility (WPCF) and general permits. The fee increase would help support the water quality industrial permit program by replacing General Fund monies lost as a result of Ballot Measure 5.

- **Wastewater System Operator Certification Fees and Applications:** The proposed changes would increase fees to cover costs of implementing the existing wastewater system operator certification program and make housekeeping amendments relating to various certificate applications including filing deadlines for applications.
- **Air Quality Federal Operating Permit Program:** The proposed rules that are required by the U. S. Environmental Protection Agency to obtain approval for the Department's industrial permit program in the Air Quality Division. The proposal also contains rules that would exempt smaller air pollution sources such as gas stations and auto-body shops from some of the program requirements.
- **Air Contaminant Discharge Permit Fee and Asbestos Abatement Fee Rules:** The proposal would increase Air Contaminant Discharge Permit (ACDP) fees by 54 percent and increase fees in the asbestos program for project notification, worker certification and contractor licensing.
- **Rigid Plastic Container Law:** These rules stem from a bill passed by the 1993 Legislature. The law requires that any rigid plastic container sold or offered for sale in Oregon must comply with one of the recycling, recycled content or reuse options outlined in the bill. Some containers would be exempt. These rules would clarify the statute and provide guidance to the regulated community for compliance. The proposed rules include compliance and exemption standards, methodologies for calculating rigid plastic container recycling rates, record keeping requirements, reporting responsibilities and enforcement provisions.

**E. DEQ v. Garcia: Appeal of Hearings Officer's Decision**

Geoff Garcia filed a timely appeal of the hearings officer's January 21, 1994, decision finding him liable for a civil penalty of \$4,800 for violating Oregon law by discharging wastes into state waters without a permit, increasing turbidity by more than 10 percent.

Mr. Garcia did not challenge the hearings officer's factual findings and did not require transcription of the hearing record. In his appeal, Mr. Garcia raised three issues.

1. Whether the DEQ must prove harm to the environment in order to establish a violation of Oregon Revised Statutes (ORS) 468B.050(1);



2. Whether the turbidity standard contained in Oregon Administrative Rules (OAR) 340-41-365(2)(c) is enforceable as a reasonable exercise of agency rulemaking authority; and
3. Whether the prohibition against double jeopardy prohibits pursuit of a civil penalty in this case.

The Department did not file a Notice of Cross Appeal; the Department did file a response to Mr. Garcia's appeal, asking the Commission to find that Mr. Garcia is estopped from defending the penalty for the discharge of waste without a permit. On July 1, 1994, the Department filed a Motion to Present Additional Evidence. The Department prepared and submitted a proposed order. Mr. Garcia also asked to present additional evidence. The Commission was asked to decide the July 1, 1994, motion and then to address the appeal.

The matter was scheduled for Commission review. Shelley McIntyre, Assistant Attorney General, represented the Department; Mr. Garcia represented himself. Both provided oral argument to the Commission.

Commissioner Lorenzen moved to admit all evidence; Commissioner McMahan seconded the motion. The Commission unanimously agreed to admit all the evidence submitted pursuant to the motions.

After consideration of the arguments presented, discussion among themselves and with Ms. McIntyre, Mr. Garcia and Mr. Huston, the Commission unanimously decided to grant the Department's motion, finding that Mr. Garcia was precluded from relitigating the violation of ORS 468B.050.

Then the Commission unanimously agreed to adopt the Department's proposed order, as corrected below:

**Page 4, line 19**

~~{We wish to bring to the Commission's attention that,}~~ As a legal matter, respondent is precluded from relitigating this issue because the Josephine County court found him guilty of the same violation....

The order found that the DEQ was not required to prove actual harm to the environment in order to establish a violation of ORS 468B.050(1), that the cited turbidity standard was enforceable, and that the prohibition against double jeopardy did not apply in the circumstances of the case. The result of the

Commission action was to find that Mr. Garcia violated ORS 468B.025(1)(b) by discharging waste from his mining operation into waters of the state without a permit and for violating OAR 340-41-365(2)(c) because the discharge occurring from his mining activity reduced the water quality of Rocky Gulch Creek below the state's standards for waters of the Rogue basin, and that Mr. Garcia was liable for the \$4,800 penalty.

**G. Information Item: Report on the Role of the Building Orientation in Affecting Travel Behavior**


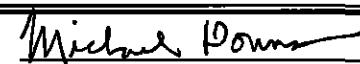

Keith Bartholomew, Project Director, 1000 Friends of Oregon, spoke to the Commission about land use development patterns that reduce travel demand and increase the use of alternative travel modes. Mr. Bartholomew illustrated his discussion with a slide presentation. He talked about the research methods and data used in creating the reports, *The Pedestrian Environment* and *Building Orientation, a Supplement to The Pedestrian Environment*. Additionally, he said that the research demonstrates that building orientation has a significant impact on household vehicle miles traveled. Employment, size of households and building orientation were all reflected in this report. Commissioner Whipple asked about environmental equity. Mr. Bartholomew indicated that a correlation existed between income and car ownership.

There was no further business, and the meeting was adjourned at 2:35 p.m.

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

**Agenda Item B**  
**August 26, 1994 Meeting**

<b>Title:</b> Approval of Tax Credit Applications		
<b>Summary:</b> New Applications - 6 tax credit applications with a total facility cost of \$ 2,651,155.00 are recommended for approval as follows:		
- 1 Air Quality facility with a total facility cost of:		\$ 92,619
- 4 Field Burning related facilities recommended by the Department of Agriculture with a total facility cost of:		\$ 216,025
- 1 Water Quality facility costing:		\$2,342,511
<p>One application with claimed facility cost exceeding \$250,000 was reviewed by an independent accounting firm contractor and the review statement is attached to the application review report.</p>		
<b>Department Recommendation:</b> 1) Approve issuance of tax credit certificates for 6 applications as presented in Attachment A of the staff report.		
 Report Author	 Division Administrator	 Director


August 26, 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: August 26, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item B, August 26, 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 4242	Lumber Tech, Inc.	An Air Pollution Control facility consisting of a Western Pneumatics Model No. 542 filter erected on a concrete slab; and, three sawdust cyclones.
TC 4249	Merton Gordon Ellis	A Field Burning Air Pollution Control facility consisting of a Loftness 1806S straw flail chopper.
TC 4251	Polschneider Farms, Inc.	A Field Burning Air Pollution Control facility consisting of a John Deere 4760 tractor for use in powering straw vacuuming equipment.
TC 4253	Mullen Farms	A Field Burning Air Pollution Control facility consisting of a John Deere 7400 series tractor to be used with a variety of straw removal equipment.

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

Application Number	Applicant	Description
TC 4254	Franklin Hoekstre	A Field Burning Air Pollution Control facility consisting of excavation and concrete work for a grass seed straw unloading and handling area and for nine container landing pads.

**Tax Credit Application Review Reports With Facility Costs Over \$250,000 (Accountant Review Reports Attached): There are none in this report.**

Application Number	Applicant	Description
TC 4168	J.R. Simplot Company	A Water Pollution Control facility consisting of a 170 million gallon lagoon lined with 60 ml high density polyethylene, an effluent pump station and related piping.

**Background**

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

**Authority to Address the Issue**

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

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

**Alternatives and Evaluation**

None.

**Summary of Any Prior Public Input Opportunity**

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

**Conclusions**

- o The recommendations for action on the attached applications are consistent with statutory provisions and administrative rules related to the pollution control facilities and reclaimed plastic product tax credit programs.
- o Proposed August 26, 1994 Pollution Control Tax Credit Totals:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>Certified Allocable Costs**</u>	<u>No.</u>
Air Quality	\$ 92,619	\$ 92,619	1
CFC	0	0	0
Field Burning	216,025	162,478	4
Hazardous Waste	0	0	0
Noise	0	0	0
Plastics	0	0	0
SW - Recycling	0	0	0
SW - Landfill	0	0	0
Water Quality	2,342,511	2,342,511	1
UST	<u>0</u>	<u>0</u>	<u>0</u>
<b>TOTALS</b>	<b>\$2,651,155</b>	<b>2,597,608</b>	<b>6</b>

Memo To: Environmental Quality Commission  
 Agenda Item B  
 August 26, 1994 Meeting  
 Page 4

o Calendar Year Totals Through July 22, 1994:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>Certified Allocable Costs**</u>	<u>No.</u>
Air Quality	\$ 2,633,532	\$ 2,633,532	8
CFC	\$ 36,318	\$ 32,793	14
Field Burning	\$ 1,567,475	\$ 731,913	10
Hazardous Waste	4,158	4,158	1
Noise	43,024	43,024	1
Plastics	\$ 362,777	\$ 362,777	10
SW - Recycling	\$ 436,972	\$ 436,972	3
SW - Landfill	\$ 0	0	0
Water Quality	\$ 364,576	\$ 364,576	4
UST	<u>\$ 1,333,732</u>	<u>\$1,184,436</u>	<u>18</u>
<b>TOTALS</b>	<b>\$ 6,782,564</b>	<b>\$ 5,794,181</b>	<b>69</b>

\*These amounts represent the total facility costs. The actual dollars that can be applied as credit is calculated by multiplying the total facility cost by the determined percent allocable and dividing by 2.

\*\*These amounts represent the total eligible facility costs that are allocable to pollution control. To calculate the actual dollars that can be applied as credit, the certifiable allocable cost is multiplied by 50 percent.

**Recommendation for Commission Action**

It is recommended that the Commission approve certification for the tax credit applications as presented in Attachment A of the Department Staff Report.

**Intended Followup Actions**

Notify applicants of Environmental Quality Commission actions.

Memo To: Environmental Quality Commission  
Agenda Item B  
August 26, 1994 Meeting  
Page 5

**Attachments**

- A. Pollution Control Tax Credit Application Review Reports.

**Reference Documents (available upon request)**

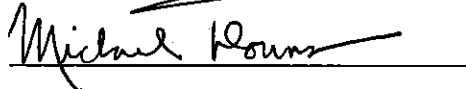
1. ORS 468.150 through 468.190.
2. OAR 340-16-005 through 340-16-050.
3. ORS 468.925 through 468.965.
4. OAR 340-17-010 through 340-17-055.

Approved:

Section:



Division:



Report Prepared By: Charles Bianchi

Phone: 229-6149

Date Prepared: August 9, 1994

Charles Bianchi  
AUGEQC  
August 9, 1994



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Lumber Tech, Inc.  
P.O. Box 624  
Lebanon, OR 97355

The applicant owns and operates a secondary wood products manufacturing facility in Lebanon, 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 process of removing knots, finger jointing, molding, ripping, and patching wood. The facility consists of a baghouse, fire suppression equipment, a concrete slab foundation, and support equipment.

Claimed Facility Cost: \$92,619.00

Accountant's certification was provided.

The applicant indicated that the useful life of the facility is 10 years.

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Erection of the facility was substantially completed on February 5, 1994 and the facility was placed into operation on February 6, 1994. The application for final certification was received by the Department on May 24, 1994. The application was considered to be complete on June 9, 1994, within 2 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, Rule 060. The Air Contaminant Discharge Permit for this source, 22-6037, 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.

The claimed facility reduces particulate emissions from the three cyclones and one wood chip bin of the applicant's wood molding operation. Prior to installation of the new facilities, sawdust from the production lines was pneumatically conveyed to one of two cyclone systems. The cyclone systems were of a standard cyclone type which relied on centrifugal force to collect the dust prior to exhausting to the atmosphere. The applicant stated in their application that there was visual evidence of particulate emissions prior to installation of the baghouse. A Department inspection on March 11, 1993, stated that the cyclone systems were "marginally in compliance".

The claimed facility consists of a Western Pneumatics Model No. 542 filter baghouse, with 7095 square feet of cloth area, handling a total of 57,000 cubic feet per minute of air. The baghouse was erected on a concrete slab for support. The baghouse is connected to three sawdust cyclones, one of which was recently installed with a second cutting line. Particulate laden exhaust air from the cyclones is blown into ducting and is routed through the bag filters. Particulate is collected on the surface of the bagfilters. The dust collected by the bag is then removed and disposed of.

An unannounced inspection by the DEQ on February 18, 1994, verified that the equipment had been installed in accordance with the plans submitted. No visible emissions were observed from the baghouse, and its efficiency was estimated to be 99.9 percent or greater.

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 waste material retrieved by the baghouse is a usable commodity consisting of 2.5 bone dry tons wood dust recovered annually. The average annual value of this material is estimated to be \$63.00.

- 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.

Baghouse control systems are technically recognized as an acceptable method for controlling the emissions of particulate from secondary wood products manufacturing facilities.

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

The annual operating cost of the facility is approximately \$3,800 from the increased electricity use, maintenance labor, insurance, property taxes, electricity, and bag replacement.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to control air pollution.
- c. The facility complies with DEQ statutes, rules, and permit conditions.
- d. The portion of the facility cost that is 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 \$92,619 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4242.

Tonia C. Garbowsky : PRC Environmental Management, Inc. / June  
21, 1994

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Merton Gordon Ellis  
11105 S. Mt. Hope Road  
Molalla OR 97038

The applicant owns and operates a grass seed farm operation in Clackamas 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 Loftness 1806S, 15' wide, straw flail chopper, located at 11105 S. Mt. Hope Road, Molalla, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$9,990  
(The applicant provided copies of the purchase invoice.)

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

The applicant has 540 acres of perennial grass seed under cultivation. Several years ago the applicant open field burned all of his grass seed producing acres. Recently the applicant reduced open field burning by approximately 80% by relying on custom straw balers to remove the bulk straw from the fields. The applicant has found the weather and custom straw balers reliability to vary from year to year.

To compensate for this unreliability the applicant experimented with a small 9' flail mower and found flail chopping to work well in fields to be replanted and promising for some established stands. To be viable economically a larger flail chopper was required. The applicant purchased the 15' flail as another part of the solution for straw disposal without field burning.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on May 2, 1994. The application was submitted on June 21, 1994 and the application for final certification was found to be complete on June 27, 1994.

The application was filed within two years of substantial purchase of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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 \$3,199 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 \$9,990, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4249.

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

jb:bm4249  
June 27, 1994

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Polschneider Farms, Inc.  
17904 French Prairie Road NE  
St. Paul, Oregon 97137

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

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

2. Description of Claimed Facility

The equipment described in this application is a John Deere 4760 tractor, located at 17904 French Prairie Road NE, St. Paul, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$83,800  
(Accountant's Certification was provided.)

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

The applicant has 575 acres of perennial grass seed under cultivation. Prior to incorporating alternatives to thermal sanitization, the applicant open field burned as many of his acres as the weather and smoke management program permitted.

To replace open field burning and propane flaming the applicant purchased a 12' Grassvac. The machine chops long straw, sweeps the fields, and blows the residue into a container box leaving the fields virtually free of straw residue. The applicant vacuums his own acreage and additional acreage of his neighbors. The JD 4760 tractor will be used solely to power the Grassvac while another tractor is leased for all other farm work.

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 October 27, 1993. The application was submitted on June 23, 1994 and the application for final certification was found to be complete on June 28, 1994. The application was filed within two years of substantial purchase of the equipment.



5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

There is no annual percent return on the investment as applicant claims a negative annual cash flow.

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 \$6,860 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.

The established average annual operating hours for tractors is set at 450 hours. To obtain a total percent allocable,

the annual operating hours per implement used in reducing acreage open field burned is as follows:

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/Hour</u>	<u>Annual Operating Hours</u>
Grassvac	2000	5	400

The total amount operating hours of 400 divided by the average annual operating hours of 450 produces a percent allocable of 89%.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 89%.

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 89%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$83,800, with 89% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4251.

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

jb:bm4251  
June 28, 1994

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Mullen Farms  
17792 River Road NE  
St. Paul OR 97137

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

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

2. Description of Claimed Facility

The equipment described in this application is a 100 hp John Deere 7400 series tractor with loader, located at 17792 River Road NE, St. Paul, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: \$59,800  
(Accountant's Certification was provided.)

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

The applicant has 440 acres of perennial grass seed under cultivation. Prior to incorporating alternatives the applicant open field burned as many acres as the weather and smoke management program permitted.

The applicant's alternatives include baling, stacking and giving the straw away; flail chopping and vacuuming the remaining stubble; and mulching the vacuum loaves. Some of the alternatives were accomplished by using equipment borrowed from a neighboring operation. As both the applicant's and neighbor's alternative practices expand, the applicant states that for "the continued, timely removal of straw it is now necessary to provide this tractor to be used in combination with the above mentioned practices, thus maintaining our ability to avoid burning as a method of straw removal".

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 December 18, 1993. The application was submitted on June 30, 1994 and the application for final certification was found to be complete on

July 7, 1994. The application was filed within two years of substantial purchase of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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 \$2,722 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.

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

<u>Implement</u>	Home <u>Acres</u>	Neighbor <u>Acres</u>	Total <u>Acres</u> <u>Worked</u>	<u>Acres</u> <u>Hour</u>	Annual <u>Operating</u> <u>Hours</u>
Baler	250	250	500	4	125
Flail Chopper	250 x 2	200 x 2	900	6	150
Harrow	400 x 2	213 x 2	1226	7	175
Fluff & Rake	175		175	7	25
Mulching bucket	120		120	3	<u>40</u>

Total annual operating hours 515

The total annual operating hours of 515 exceeds the established average annual operating hours of 450 producing a percent allocable of 100%.

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 \$59,800, with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4253.

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

jb:bm4253  
July 8, 1994

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Franklin Hoekstre  
4190 Van Well Road  
Dallas OR 97338

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

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

2. Description of Claimed Facility

The facility described in this application is an expansion and improvement to the storage and compressing facilities, located at 11325 Ehlen Road, Aurora, Oregon. The land and buildings are owned by the applicant.

Excavation and concrete work for unloading  
and handling area (23,028 sq. ft.): \$56,397

Excavation and concrete work for  
nine container landing pads: \$ 6,038

Claimed facility cost: \$62,435  
(Accountant's Certification was provided.)

3. Description of custom baling and compressing operation plan to reduce open field burning.

The applicant's operation consists of baling grass straw, storing it, transporting it to the compressing facility, possible additional storage, compressing the bales and loading them into containers for transport to the Port of Portland.

The applicant has recently expanded the storage and compressing facilities to handle the increased grower demand for removal of grass straw from their fields. Total acreage processed through the facilities has increased from 7,984 acres in 1992 to 11,569 acres projected for 1994.

4. Procedural Requirements

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

Construction of the facility was substantially completed on October 8, 1992. The application for final certification was found to be complete on July 12, 1994. The application was filed 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 grass seed growers with straw removal and Japanese consumers with supplemental feed and fiber for livestock.

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 5621. The industry median profit before taxes as a percent of total assets (ROA) 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, 5.0, and 3.3. Therefore, the industry average profit before taxes as a percent of total assets (IROI) is 4.84 (ROA/5). Selecting the reference annual percent return (RROI) of 6.8 from Table 2 that corresponds with the year construction or purchase was completed the percentage of actual costs allocable to pollution control  $(\text{RROI}-\text{IROI}/\text{RROI} \times 100)$  is 29%.

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 29%.

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 29%.



7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$62,435, with 29% allocated to pollution control, be issued for the facility claimed in Tax Credit Application Number TC-4254.

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

jb:bm4254  
July 12, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

J. R. Simplot Company  
Potato Division  
P.O. Box 27  
Boise, Idaho 83707

The applicant owns and operates a potato processing facility near Hermiston, Oregon.

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

2. Description of Facility

The facility consists of a 170 million gallon lagoon lined with high density polyethylene (60 mils thickness), an effluent pump station and related piping on site and to connect the lagoon to the existing irrigation system. The lagoon's main function is to store excess process wastewater when the flow exceeds irrigation demands or there are frozen soil conditions on the land application site.

A secondary function of the lagoon is to provide treatment for nitrogen removal. The removal of nitrogen is accomplished by ammonia volatilization and reactive nitrification/denitrification to nitrogen gas. The removal is estimated to be 15-20 percent of the overall annual nitrogen loading.

Claimed Facility Cost: \$ 2,386,464  
(Accountant's Certification was provided)

Eligible Facility Cost: \$ 2,342,511

The eligible costs are:

All costs submitted by the applicant were deemed to be eligible except for the permit fees for temporary fresh water rights and fencing costs.

Claimed Facility Cost:	\$2,386,464
Temporary fresh water rights	(621)
Fencing costs	<u>(43,332)</u>
Eligible Facility Cost:	\$2,342,511

3. Procedural Requirements

The facility is governed by ORS 468.150 through 468.190 and by OAR Chapter 340, Division 16. The facility met statutory deadlines in that construction and installation of the facility was substantially completed on January 17, 1992, and the application for certification was found to be complete on December 15, 1993, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent groundwater pollution. The requirement is to comply with OAR 340-40 and Schedule C, Condition 2, of the Water Pollution Control Facilities (WPCF) Permit No. 100518. To accomplish this goal, the applicant installed a holding pond, effluent pump station and related piping on site and piping to connect the facility to the existing irrigation system

Prior to construction and installation of the holding pond, the applicant was not able to meet the requirement that wastewater shall receive necessary nitrogen treatment and control for prevention of groundwater contamination. The construction and installation of the holding pond enables the applicant to irrigate wastewater at agronomic rates to prevent groundwater contamination.

b. Eligible Cost Findings

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

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

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

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

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

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

Several alternative methods were considered for control of nitrogen. These alternatives included secondary treatment, breakpoint chlorination, air stripping, AARP, and development of additional land. These alternatives and the holding pond were compared against capital cost, operating cost and risk involved in meeting compliance with the WPCF permit. The holding pond had the best overall combination of capital costs, operating costs and risk factor.

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

There are no savings from the facility. The cost of maintaining and operating the facility is \$ 32,000 annually.

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

The Department determined that a permit fee for temporary fresh water rights was not an eligible cost. In addition, costs for fencing surrounding the facility were determined to make an insignificant contribution to pollution control and were therefore disallowed.

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to prevent groundwater pollution. The applicant accomplished this purpose by providing storage to allow irrigation at agronomic rates.
- c. The holding pond complies with DEQ statutes and rules, and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is \$2,342,511.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$ 2,342,511 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4168.

John Straughan:jrs  
MW\WC12\WC12362.5  
(503) 276-4063  
December 22, 1993

**SYMONDS, EVANS & LARSON**  
CERTIFIED PUBLIC ACCOUNTANTS

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

At your request, we have performed certain agreed-upon procedures with respect to J.R. Simplot Company's (the Company's) Pollution Control Tax Credit Application No. 4168 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the Water Pollution Control Facility in Hermiston, Oregon (the Facility). The Application has a claimed Facility cost of \$2,386,464. 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, John Straughan and Joni Hammond.
3. We discussed certain components of the Application with Company personnel, including Joan Cloonan, Jeff Lyon, Henry Hamanishi, Thomas Ryder and Cynthia Eyolfson.
4. We reviewed certain documents supporting the cost of the Facility.
5. We requested and analyzed information from the Company supporting "gross annual income" and "annual operating expenses" to determine the appropriate portion of actual costs properly allocable to pollution control.
6. 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) There were no internal costs of the Company that were included in the Application.
  - c) The capacity of the Facility is adequate for the Company's present operations and does not include significant capacity for potential future operations.
  - d) The costs incurred to operate the Facility in accordance with regulatory requirements exceed any economic benefits derived from the Facility.

**SYMONDS, EVANS & LARSON**  
CERTIFIED PUBLIC ACCOUNTANTS

- e) 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 Company's existing property and equipment in the normal course of business.
- f) All costs included in the Application related directly to the construction of the Facility and were not related to maintenance and repairs.
- g) In accordance with ORS 468.155(2)(e), the Facility 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..."
- h) There were no transactions with related parties included in the Company's analysis of annual expenses and revenues associated with the land application system, other than those related to leased property and the purchase of supplies and materials. All such transactions were recorded on an arms-length basis at fair market value.
- i) The operation of the Facility has no positive economic effect on the operation of the Company's processing plant in Hermiston, Oregon.
- j) To the best of their knowledge and belief, the expected useful life of the Facility is 20 years.
- k) Future operating expenses (net of depreciation, interest, income taxes and crop sales) of the Facility through 1997 are not anticipated to be less than pre-existing operating expenses of the Facility, in amounts which would result in only a portion of actual Facility costs being properly allocable to pollution control.

**Findings:**

1. through 4.

No matters came to our attention that caused us to believe that the Application should be adjusted, except for \$43,332 in fencing costs that are considered non-allowable and \$621 in permit fees identified by the DEQ as non-allowable. As a result, the allowable costs for the Application should be reduced to \$2,342,511.

- 5. Although we received and analyzed "gross annual income" and "annual operating expense" schedules with amounts which differed from those included in the Application, such amounts still resulted in 100% of the Facility costs being properly allocable to pollution control.
- 6. Company personnel confirmed in writing that such assertions were true and correct.

**SYMONDS, EVANS & LARSON**  
CERTIFIED PUBLIC ACCOUNTANTS

Conclusion:

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the specified items should be adjusted, except as noted 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 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. 4168 with respect to its Water Pollution Control Facility in Hermiston, Oregon and should not be used for any other purpose.

*Symonds, Evans & Larson*

August 4, 1994



## Environmental Quality Commission

- Rule Adoption Item  
 Action Item  
 Information Item

Agenda Item C  
August 26, 1994 Meeting

**Title:**

Air Contaminant Discharge Permit Fee and Asbestos Abatement Fee Rules Revisions

**Summary:**

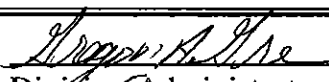
This rulemaking proposes to increase Air Contaminant Discharge Permit (ACDP) fees for minor industrial sources and to increase Asbestos program fees. The increase in the Air discharge permit fees will increase the portion of that program's funding paid by the regulated community (approximately 1100 sources) from 66% to 84%. In its mid-biennial evaluation of ACDP program funding the Air Quality Division projected that \$650,000 in additional funding would be needed in the next budget cycle to maintain the current level of effort. This is due to lower than expected permit revenues, General Fund cuts, and increased costs during 1995-97. If this revenue is lost and not replaced by a fee increase the Department will be required to reduce resources dedicated to the program. This would inevitably increase permitting times and reduce both technical assistance and compliance efforts required to protect air quality. The recommended fee increase will not be funding new positions or activities.

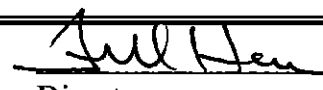
Fees in the Asbestos program have not been revised since their inception in 1988. Although program resources have been reduced the Asbestos program is projected to have a \$190,000 deficit in the 1995-1997 biennium. This rulemaking will revise asbestos fees to recover this deficit and adjust fee revenue according to comments received from the industry.

**Department Recommendation:**

It is recommended that the Commission adopt the rules and rule amendments regarding the ACDP fee increases, the asbestos fee revisions and new asbestos fees as presented in Attachment A of the Department Staff Report.

  
Report Author

  
Division Administrator

  
Director

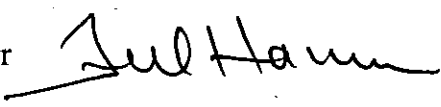
August 3, 1994

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: August 9, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item C, EQC Meeting August 26, 1994

Air Contaminant Discharge Permit Fee and Asbestos Abatement Fee Rules Revisions

**Background**

The Air Contaminant Discharge Permit (ACDP) program regulates industrial point source air pollutant emissions. This program currently permits 1100 facilities in Oregon as part of the Department's State Implementation Plan (SIP) to improve air quality in areas that do not meet the National Ambient Air Quality Standard (NAAQS) and maintain air quality in areas that meet these standards. The Asbestos program regulates certification, accreditation, and removal for the asbestos services industry to protect public health. Authority to implement the Asbestos program is delegated to the Department through procedures established by the National Emissions Standard for Hazardous Air Pollutants (NESHAP).

On June 23, 1994, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would increase Air Contaminant Discharge Permit fees by 54 percent. In its mid-biennial evaluation of ACDP program funding the Air Quality Division projected that \$650,000 in additional funding would be needed in the next budget cycle to maintain the current level of effort. This is due to lower than expected permit revenues, General Fund cuts, and increased costs during 1995-97. If this revenue is lost and not replaced by a fee increase the Department will be required to reduce resources dedicated to the program. This would inevitably increase permitting times and reduce both technical assistance and compliance efforts required to protect air quality.

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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).

Memo To: Environmental Quality Commission  
Agenda Item C  
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increases in notification, worker, and contractor fees and a reduction in the training provider fees. The revised rules also require notification for residential and non-friable asbestos projects. These rules are proposed to adjust the original asbestos fee structure developed in 1988 to reflect the current asbestos industry/market based upon input from advisory groups. These fees support certification of asbestos worker/contractors, inspection of asbestos abatement projects, program development, and accreditation of training providers.

A Hearing Notice was published in the Secretary of State's Bulletin on July 1, 1994. The Notice and informational materials were mailed on June 13, 1994, to those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by, or interested in, the proposed rulemaking action.

A Public Hearing was held on July 18, 1994 at the DEQ Offices, 811 S.W. Sixth Ave. in Portland, at 1:00 p.m. in Conference Room 3A with David Berg, Program Operations Section Manager serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through July 25, 1994, 5:00 p.m.. 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 (Attachment F).

The following sections summarize the issues that this proposed rulemaking action is intended to address; the authority to address the issues; the process for development of the rulemaking proposal including alternatives considered; a summary of the rulemaking proposal presented for public hearing; and a summary of how the rules will work and how they are proposed to be implemented.

#### **Issue this Proposed Rulemaking Action is Intended to Address**

This rulemaking will allow the Department to maintain inspection, permitting, emissions inventory, source testing, rulemaking and laboratory resources required to implement the industrial source control program. These resources serve electronics, minerals, technology, petroleum, steel, coating, printing and other industries within Oregon as

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well as the general public. The fee increases will be used to eliminate a projected deficit of \$650,000 in the Air Contaminant Discharge Permit program and a projected \$190,000 deficit in the Asbestos program. This will maintain current service levels; the fee increase will not be funding new positions or activities.

If the Department does not maintain sufficient resources to adequately implement these programs it is subject to sanctions against federal grant funds and eventually the withdrawal of delegation to run the federal programs in lieu of EPA. The Department may also be subject to third party lawsuits for not implementing these programs according to Department rules.

Historically, air permit fees have not recovered program costs. Instead it has been funded by a combination of state general funds, federal funds, and fees assessed on the regulated community. In recent years, fees on the regulated community have increased as General Fund revenue has been lost and federal funds remain constant. Projected reductions in the 1995-97 biennium are \$400,000. Start-up of the federal operating permit program will remove many of the larger sources from ACDP permits and result in an additional projected loss in revenue of \$250,000. Fee revenues currently recover approximately 66% of the projected program operating costs. This rulemaking proposes to increase air permit fees by 54% resulting in the program being funded by 8% federal funds, 8% general funds, and 84% fees.

Fees in the Asbestos program have not been revised since their inception in 1988. The Asbestos program is projected to have a \$190,000 deficit in the 1995-1997 biennium due to costs increasing over time. This rulemaking will revise asbestos fees to recover this deficit and adjust fee revenue according to comments received from the industry.

There will be no direct financial impact to the general public as a result of the proposed rules; however, asbestos fee increases and ACDP increases may be passed through to customers of the affected facilities. The 1100 facilities with Air Contaminant Discharge Permits (ACDP) and various service providers in the asbestos service industry will be impacted by increased fees.

### **Relationship to Federal and Adjacent State Rules**

The proposed rules are consistent with Federal requirements, as implementation of the Industrial Source Control program is required by the existing State Implementation Plan

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(SIP) which is a Federal requirement, and the Asbestos program is a delegated National Emissions Standard for Hazardous Air Pollutants (NESHAP) program.

### **Authority to Address the Issue**

ORS 469.020 provides the Department of Environmental quality with general rulemaking authority. Further, ORS 468.065 addresses the Commission's authority on the issuance of permits, their content, fees, and use. Specifically, ORS 468.065(2) provides the Commission with the authority to establish a schedule of fees for permits by rule after holding a public hearing.

The second part of this rulemaking proposal is to adopt changes in OAR 340-32-5620, 340-32-5630, 340-33-010 and 340-33-100 to provide for revisions in Asbestos Abatement fees to adjust the fee funding level of the program back to 85%. These rule amendments are proposed under the authority of ORS 468A.745 and 468A.750.

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

The Industrial Source Advisory Committee reviewed and approved the proposed ACDP fee increases at its regularly scheduled meeting on June 2, 1994. See Attachment C which lists the committee members. This committee represents a broad variety of interests from the industrial community, environmental groups, and the public at large. The committee was concerned that the Department maintain sufficient regulatory presence to ensure that an effective industrial program was implemented.

In addition to the Industrial Source Advisory Committee meeting, the Division held two ad-hoc advisory group meetings on May 20 and May 27, 1994 to review proposed asbestos fee revision alternatives. The proposed rules are the consensus of these two advisory groups which represented various interests within the asbestos service industry.

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

The primary issue addressed by this rulemaking is whether the Department should maintain adequate resources to implement the industrial segment of the air quality program through the Air Contaminant Discharge Permit (ACDP) process. This program

currently regulates 1100 industrial facilities in an effort to improve air quality throughout Oregon. As funding levels decrease from other sources more of the burden of the program has been transferred to fees on the users. This follows a general trend of market-based mechanisms inherent within the Clean Air Act Amendments of 1990.

The proposed changes in the ACDP fees will result in a 54% increase in the Application Processing and Compliance Determination fees for all source categories in Part II of Table 4 (OAR 340-28-1750). No fees in Part I of Table 4 will be increased. The Temporary Closure Fee (OAR 340-28-1750) is proposed to be increased by the same percentage. In addition, the Department is proposing some general housekeeping corrections in Parts I and II of Table 4 to make it more understandable.

The proposed changes in the asbestos fees comprise a range of increases from 40% for small projects to 167% for the largest projects. This is designed to balance the burden of fee increases according to potential revenue obtained by asbestos service providers. Contractor licensing and worker certification fees have been increased proportionately while training provider fees have been reduced. In addition to fee increases, the range of project sizes from which notification fees are derived has been expanded to reflect the diversity of projects in the marketplace.

#### **Summary of Significant Public Comment and Changes Proposed in Response**

Most of the comments received opposed the fee increase based upon the magnitude of the increase. Commenters indicated that businesses can not increase their prices by this magnitude and any increase should be commensurate with the consumer price index. On the other hand, the Associated Oregon Industries provided comment in support of the rule change. They felt this course was preferable to reducing Department resources which would inevitably increase permitting time and reduce technical assistance to both the public and the regulated community. While the Department would prefer not to raise fees, no changes in the proposed increase are being recommended.

Oral testimony from the Humane Societies raised the issue of exemptions for no-profit organizations. The Department believes that the Commission has given clear direction on this issue previously and does not propose to add such exemptions.

Comments on the asbestos rule amendments proposed changes in the language of the rules to provide clarification. The Department agrees with the majority of these comments and has revised the rules accordingly.

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

The following two categories of fee rules changes are proposed:

**Air Contaminant Discharge Permit Fees**

The existing ACDP fees will be increased effective upon adoption for all new permits and permit modifications. Because of the complexities of the ACDP invoicing system, the increase will be effective with invoices due as of January 1, 1995 for all renewal permits and annual compliance determination fees.

**Asbestos Fees**

The existing Asbestos fees will be revised effective upon adoption.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rules and rule amendments regarding the ACDP fee increases, the asbestos fee revisions and new asbestos fees as presented in Attachment A of the Department Staff Report.

**Attachments**

- A. Rules (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
  - 6. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
- C. Presiding Officer's Report on Public Hearing
- D. List of Written Comments Received
- E. Department's Evaluation of Public Comment

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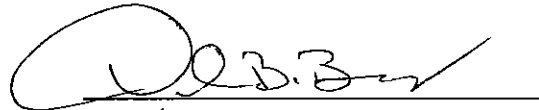
- F. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- G. Advisory Committee Membership and Report
- H. Rule Implementation Plan

**Reference Documents (available upon request)**

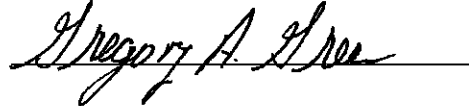
- OAR Chapter 340, Division 28
- OAR Chapter 340, Division 32
- OAR Chapter 340, Division 33
- ORS Chapter 468
- ORS Chapter 468A

Approved:

Section:



Division:



Report Prepared By: D.Berg/T.Sylvester/G.Lande

Phone: 229-6856/5181/6411

Date Prepared: August 9, 1994

DBB/TS/AD/GL  
FEERULE/STAFRPT  
8-9-94



**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 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 refileing 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~~385.
- (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. 5-31-85; 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; DEQ 13, f. & ef. 5-19-94

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-~~G~~~~H~~ are in addition to any other applicable fees

<p>A. Late Payment a) 8-30 days \$200 b) &gt; 30 days \$400</p> <p>B. Ambient Monitoring Network Review - \$900</p> <p>C. Modeling Review - \$2000</p> <p>D. Alternative Emission Control Review - \$1500</p> <p>E. Non-technical permit modification (name change, ownership transfer, and similar) - \$50</p>	<p>F. Initial Permitting <del>and</del>for Construction a) Complex \$22,000 b) Moderately Complex \$10,000 c) Simple \$2,000</p> <p>G. Elective Permits - Synthetic Minor Sources a) Permit application or modification \$1,900 b) Annual compliance assurance \$1,000</p> <p><u>H. Filing \$ 75</u></p>
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NOTE: Persons who operate boilers shall include fees as indicated in Items 58, 59, or 60 in addition to fees for other applicable categories.

PART II.

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
1. <u>Seed cleaning and associated grain elevators</u> located in special control areas, commercial operations only <del>{(not elsewhere included)}</del>	0723	<del>{75}</del>	<del>{400}</del> <u>616</u>	<del>{610}</del> <u>939</u>
2. Reserved				
3. <u>Flour and other grain mill products and associated grain elevators</u> in special control areas	2041			
a) 10,000 or more tons/yr		<del>{75}</del>	<del>{1300}</del> <u>2002</u>	<del>{1200}</del> <u>1848</u>
b) Less than 10,000 tons/yr		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{515}</del> <u>793</u>
4. <u>Cereal preparations and associated grain elevators</u> in special control areas	2043	<del>{75}</del>	<del>{1300}</del> <u>2002</u>	<del>{865}</del> <u>1332</u>

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
5. Blended and prepared flour <u>and associated grain elevators</u> in special control areas	2045			
a) 10,000 or more tons/yr		<del>{75}</del>	<del>{1300}</del> <u>2002</u>	<del>{865}</del> <u>1332</u>
b) Less than 10,000 tons/yr		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{500}</del> <u>770</u>
6. Prepared feeds for animals and fowl <u>and associated grain elevators</u> in special control areas	2048			
a) 10,000 or more tons/yr		<del>{75}</del>	<del>{1300}</del> <u>2002</u>	<del>{1200}</del> <u>1848</u>
b) Less than 10,000 tons/yr		<del>{75}</del>	<del>{800}</del> <u>1232</u>	<del>{945}</del> <u>1455</u>
7. Beet sugar manufacturing	2063	<del>{75}</del>	<del>{1700}</del> <u>2618</u>	<del>{5955}</del> <u>9171</u>
8. Animal reduction facilities	2077			
a) 10,000 or more tons/yr input		<del>{75}</del>	<del>{1600}</del> <u>2464</u>	<del>{1920}</del> <u>2957</u>
b) Less than 10,000 tons/yr input		<del>{75}</del>	<del>{1200}</del> <u>1848</u>	<del>{1040}</del> <u>1602</u>
9. Coffee roasting, 30 tons/yr or more roasted product	2095	<del>{75}</del>	<del>{800}</del> <u>1232</u>	<del>{785}</del> <u>1209</u>
10. Sawmills and/or planing mills	2421, 2426			
a) 25,000 or more bd.ft./shift finished product <u>or 10 or more employees per shift</u>		<del>{75}</del>	<del>{800}</del> <u>1232</u>	<del>{1200}</del> <u>1848</u>
b) Reserved				
11. Reserved				
12. Reserved				
13. Millwork (including kitchen cabinets and structural wood members), 25,000 or more bd.ft./shift input <u>or 10 or more employees per shift</u>	2431, 2434, 2439	<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{945}</del> <u>1455</u>
14. Plywood manufacturing and/or veneer drying	2435, 2436			
a) 25,000 or more sq.ft./hr, 3/8" basis finished product		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{2420}</del> <u>3727</u>
b) 10,000 or more but less than 25,000 sq.ft./hr, 3/8" basis finished product		<del>{75}</del>	<del>{1800}</del> <u>2772</u>	<del>{1635}</del> <u>2518</u>
c) Less than 10,000 sq.ft./hr, 3/8" basis finished product		<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{865}</del> <u>1332</u>
15. Reserved				
16. Wood preserving (excluding waterborne)	2491	<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{960}</del> <u>1478</u>

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
17. Particleboard manufacturing (including strandboard, flakeboard and waferboard)	2493			
a) 10,000 or more sq.ft./hr, 3/4" basis finished product		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{2850}</del> <u>4389</u>
b) Less than 10,000 sq.ft./hr, 3/4" basis finished product		<del>{75}</del>	<del>{1200}</del> <u>1848</u>	<del>{1360}</del> <u>2094</u>
18. Hardboard manufacturing (including fiberboard)	2493			
a) 10,000 or more sq.ft./hr, 1/8" basis finished product		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{2340}</del> <u>3604</u>
b) Less than 10,000 sq.ft./hr, 1/8" basis finished product		<del>{75}</del>	<del>{1200}</del> <u>1848</u>	<del>{1200}</del> <u>1848</u>
19. Battery separator mfg.	2499	<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{2080}</del> <u>3203</u>
20. Furniture and fixtures	2511			
a) 25,000 or more bd.ft./ shift input <u>or 10 or more employees per shift</u>		<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{945}</del> <u>1455</u>
b) Reserved				
21. Pulp mills, paper mills, and paperboard mills	2611, 2621, 2631			
a) Kraft, sulfite, & neutral sulfite only		<del>{75}</del>	<del>{5000}</del> <u>7700</u>	<del>{10355}</del> <u>15947</u>
b) Other - 100 tons or more of emissions		<del>{75}</del>	<del>{5000}</del> <u>7700</u>	<del>{10355}</del> <u>15947</u>
22. Building paper and building-board mills	2621, 2493	<del>{75}</del>	<del>{800}</del> <u>1232</u>	<del>{785}</del> <u>1209</u>
23. Alkalies and chlorine mfg.	2812			
a. High cost		<del>{75}</del>	<del>{2450}</del> <u>3773</u>	<del>{2750}</del> <u>4235</u>
b. Low cost		<del>{75}</del>	<del>{1400}</del> <u>2156</u>	<del>{2065}</del> <u>3180</u>
24. Calcium carbide manufacturing	2819			
a. High cost		<del>{75}</del>	<del>{2625}</del> <u>4043</u>	<del>{2750}</del> <u>4235</u>
b. Low cost		<del>{75}</del>	<del>{1500}</del> <u>2310</u>	<del>{2065}</del> <u>3180</u>
25. Nitric acid manufacturing	2819			
a. High cost		<del>{75}</del>	<del>{1750}</del> <u>2695</u>	<del>{1385}</del> <u>2133</u>
b. Low cost		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{1040}</del> <u>1602</u>
26. Ammonia manufacturing	2819			
a. High cost		<del>{75}</del>	<del>{1750}</del> <u>2695</u>	<del>{1600}</del> <u>2464</u>
b. Low cost		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{1200}</del> <u>1848</u>
27. Industrial inorganic and organic chemicals manufacturing (not elsewhere included)	2819, <u>2851</u> , 2869			
a. High cost		<del>{75}</del>	<del>{2275}</del> <u>3504</u>	<del>{1960}</del> <u>3018</u>
b. Low cost		<del>{75}</del>	<del>{1300}</del> <u>2002</u>	<del>{1475}</del> <u>2272</u>

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
28. Synthetic resin manufacturing	2821			
a. High cost		<del>{75}</del>	<del>{1750}</del> <u>2695</u>	<del>{1600}</del> <u>2464</u>
b. Low cost		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{1200}</del> <u>1848</u>
29. Charcoal manufacturing	2861	<del>{75}</del>	<del>{1400}</del> <u>2156</u>	<del>{2500}</del> <u>3850</u>
30. Pesticide manufacturing	2879	<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{10355}</del> <u>15947</u>
31. Petroleum refining	2911			
a) Refining, general		<del>{75}</del>	<del>{5000}</del> <u>7700</u>	<del>{10355}</del> <u>15947</u>
b) Asphalt production by distillation		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{1200}</del> <u>1848</u>
32. Reserved				
33. Asphalt blowing plants	2952	<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{1555}</del> <u>2395</u>
34. Asphaltic concrete paving plants	2951			
a) Stationary		<del>{75}</del>	<del>{500}</del> <u>770</u>	<del>{590}</del> <u>909</u>
b) Portable		<del>{75}</del>	<del>{500}</del> <u>770</u>	<del>{750}</del> <u>1155</u>
35. Asphalt felts or coating	2952	<del>{75}</del>	<del>{500}</del> <u>770</u>	<del>{900}</del> <u>1386</u>
36. Rerefining of lubricating oils and greases, and reprocessing of oils and solvents for fuel	2992	<del>{75}</del>	<del>{900}</del> <u>1386</u>	<del>{1120}</del> <u>1725</u>
37. Glass container manufacturing	3221	<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{1475}</del> <u>2272</u>
38. Cement manufacturing	3241	<del>{75}</del>	<del>{3200}</del> <u>4928</u>	<del>{7585}</del> <u>11681</u>
39. Concrete manufacturing, including redimix and CTB	3271, 3272, 3273	<del>{75}</del>	<del>{200}</del> <u>308</u>	<del>{320}</del> <u>493</u>
40. Lime manufacturing	3274	<del>{75}</del>	<del>{1500}</del> <u>2310</u>	<del>{785}</del> <u>1209</u>
41. Gypsum products	3275	<del>{75}</del>	<del>{800}</del> <u>1232</u>	<del>{865}</del> <u>1332</u>
42. Rock crusher	1442, 1446, 3295			
a) Stationary		<del>{75}</del>	<del>{450}</del> <u>693</u>	<del>{590}</del> <u>909</u>
b) Portable		<del>{75}</del>	<del>{450}</del> <u>693</u>	<del>{750}</del> <u>1155</u>
43. Steel works, rolling and finishing mills, electro-metallurgical products	3312, 3313	<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{2065}</del> <u>3180</u>

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
44. Incinerators	4953			
a) 250 or more tons/day capacity or any off-site infectious waste incinerator		<del>{75}</del>	<del>{12000}</del> <u>18480</u>	<del>{5170}</del> <u>7962</u>
b) 50 or more but less than 250 tons/day capacity		<del>{75}</del>	<del>{3000}</del> <u>4620</u>	<del>{1570}</del> <u>2418</u>
c) 2 or more but less than 50 tons/day capacity		<del>{75}</del>	<del>{500}</del> <u>770</u>	<del>{610}</del> <u>939</u>
d) Crematoriums and pathological waste incinerators, less than 2 tons/day capacity		<del>{75}</del>	<del>{500}</del> <u>770</u>	<del>{610}</del> <u>939</u>
e) PCB and/or hazardous waste incinerator		<del>{75}</del>	<del>{12000}</del> <u>18480</u>	<del>{5170}</del> <u>7962</u>
45. Gray iron and steel foundries, malleable iron foundries, steel investment foundries, steel foundries (not elsewhere classified)	3321, 3322, 3324, 3325			
a) 3,500 or more tons/yr production		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{1810}</del> <u>2787</u>
b) Less than 3,500 tons/yr production		<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{945}</del> <u>1455</u>
46. Primary aluminum production	3334	<del>{75}</del>	<del>{5000}</del> <u>7700</u>	<del>{10355}</del> <u>15947</u>
47. Primary smelting of zirconium or hafnium	3339	<del>{75}</del>	<del>{5000}</del> <u>7700</u>	<del>{10355}</del> <u>15947</u>
48. Primary smelting and refining of ferrous and nonferrous metals (not elsewhere classified)	3331, 3339			
a) 2,000 or more tons/yr production		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{4480}</del> <u>6899</u>
b) Less than 2,000 tons/yr production		<del>{75}</del>	<del>{500}</del> <u>770</u>	<del>{1730}</del> <u>2664</u>
49. Secondary smelting and refining of nonferrous metals, 100 or more tons/yr metal charged	3341	<del>{75}</del>	<del>{1200}</del> <u>1848</u>	<del>{1200}</del> <u>1848</u>
50. Nonferrous metals foundries, 100 or more tons/yr metal charged	3363, 3364, 3365, 3366, 3369	<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{1040}</del> <u>1602</u>
51. Reserved				
52. Galvanizing and pipe coating (excluding all other activities)	3479	<del>{75}</del>	<del>{500}</del> <u>770</u>	<del>{785}</del> <u>1209</u>
53. Battery manufacturing	3691	<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{1040}</del> <u>1602</u>



Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
54. Grain elevators, intermediate storage only, located in special control areas (not elsewhere classified)	4221			
a) 20,000 or more tons/yr grain processed		<del>{75}</del>	<del>{900}</del> <u>1386</u>	<del>{1635}</del> <u>2518</u>
b) Less than 20,000 tons/yr grain processed		<del>{75}</del>	<del>{500}</del> <u>1770</u>	<del>{785}</del> <u>1209</u>
55. Electric power generation-	4911 <del>{}</del>			
a) Wood or coal fired, 25 MW or more		<del>{75}</del>	<del>{20000}</del> <u>30800</u>	<del>{10355}</del> <u>15947</u>
b) Reserved				
c) Oil or natural gas fired, 25 MW or more		<del>{75}</del>	<del>{1800}</del> <u>2772</u>	<del>{2500}</del> <u>3850</u>
56. Fuel burning equipment for Gas production and/or distribution, 10 million or more Btu/hr heat input	4922, 4925			
a) Natural gas transmission		<del>{75}</del>	<del>{1900}</del> <u>2926</u>	<del>{1200}</del> <u>1848</u>
b) Natural gas production and/or mfg.		<del>{75}</del>	<del>{1900}</del> <u>2926</u>	<del>{1200}</del> <u>1848</u>
57. <del>{Grain elevators, }</del> Terminal elevators primarily engaged in buying and/or marketing grain, in special control areas	5153			
a) 20,000 or more tons/yr grain processed		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{2065}</del> <u>3180</u>
b) Less than 20,000 tons/yr grain processed		<del>{75}</del>	<del>{700}</del> <u>1078</u>	<del>{785}</del> <u>1209</u>
58. Fuel burning equipment within the boundaries of the Portland and Medford-Ashland Air Quality Maintenance Areas, Salem Area Transportation Study Boundary, and Grants Pass, Klamath Falls, and LaGrande Urban Growth Areas**, ***	4961		(Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)	
a) Residual or distillate oil fired, 250 million or more Btu/hr heat input		<del>{75}</del>	<del>{1600}</del> <u>2464</u>	<del>{1570}</del> <u>2418</u>
b) Residual or distillate oil fired, 10 or more but less than 250 million Btu/hr heat input		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{865}</del> <u>1332</u>
c) Reserved				

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
59. Fuel burning equipment within the boundaries of the Portland and Medford-Ashland Air Quality Maintenance Areas, Salem Area Transportation Study Boundary, and Grants Pass, Klamath Falls, and LaGrande Urban Growth Areas**, ***	4961			
			(Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)	
a) Wood or coal fired, 35 million or more Btu/hr heat input		<del>{75}</del>	<del>{1600}</del> <u>2464</u>	<del>{1570}</del> <u>2418</u>
b) Wood or coal fired, less than 35 million Btu/hr heat input		<del>{75}</del>	<del>{400}</del> <u>616</u>	<del>{865}</del> <u>1332</u>
60. Fuel burning equipment outside the boundaries of the Portland and Medford-Ashland Air Quality Maintenance Areas, Salem Area Transportation Study Boundary, and Grants Pass, Klamath Falls, and LaGrande Urban Growth Areas**, ***	4961			
			(Fees will be based on the total aggregate heat input of all fuel burning equipment at the site)	
All oil fired 30 million or more Btu/hr heat input, and all wood and coal fired 10 million or more Btu/hr heat input		<del>{75}</del>	<del>{1000}</del> <u>1540</u>	<del>{865}</del> <u>1332</u>
61. Sources installed in or after 1971 not listed herein which would emit 5 or more tons PM <sub>10</sub> in a PM <sub>10</sub> nonattainment area, or 10 or more tons/yr of any air contaminants in <del>{other}</del> <u>any part</u> of the state. This includes but is not limited to particulates, SO <sub>x</sub> , or Volatile Organic Compounds (VOC). if the source were to operate uncontrolled	any			
a) High cost		<del>{75}</del>	<del>{9000}</del> <u>13860</u>	<del>{6400}</del> <u>9856</u>
b) Medium cost		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{1120}</del> <u>1725</u>
c) Low cost		<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{480}</del> <u>739</u>
62. Sources installed in or after 1971 not listed herein which would emit significant malodorous emissions, as determined by Departmental review of sources which are known to have similar air contaminant emissions.	any			
a) High cost		<del>{75}</del>	<del>{9000}</del> <u>13860</u>	<del>{6400}</del> <u>9856</u>
b) Medium cost		<del>{75}</del>	<del>{2500}</del> <u>3850</u>	<del>{1120}</del> <u>1725</u>
c) Low cost		<del>{75}</del>	<del>{600}</del> <u>924</u>	<del>{480}</del> <u>739</u>

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	<del>{Filing Fee}</del>	Application Processing Fee	Annual Compliance Determination Fee
63. Sources not listed herein for which an air quality problem is identified by the Department or which are otherwise required to obtain a permit	any			
a) High cost		<del>{75}</del>	<del>{9000}{13860}</del>	<del>{6400}{9856}</del>
b) Medium cost		<del>{75}</del>	<del>{2500}{3850}</del>	<del>{1120}{1725}</del>
c) Low cost		<del>{75}</del>	<del>{600}{924}</del>	<del>{480}{739}</del>
64. Bulk gasoline plants regulated by OAR 340-22-120****	5171	<del>{75}</del>	<del>{400}{616}</del>	<del>{515}{793}</del>
65. Bulk gasoline terminals****	5171	<del>{75}</del>	<del>{4000}{6160}</del>	<del>{1730}{2664}</del>
66. Liquid storage tanks, 39,000 gallons or more capacity, regulated by OAR 340-22-160 (not elsewhere included)****	5169, 5171	<del>{75}</del>	<del>{200}{308}/tank</del>	<del>{355}{547}/tank</del>
67. Can or drum coating****	3411, 3412			
a) 50,000 or more units/mo.		<del>{75}</del>	<del>{6000}{9240}</del>	<del>{3105}{4782}</del>
b) Less than 50,000 units/mo.		<del>{75}</del>	<del>{400}{616}</del>	<del>{690}{1063}</del>
68. Paper or other substrate coating****	2672, 3861	<del>{75}</del>	<del>{6000}{9240}</del>	<del>{3105}{4782}</del>
69. Coating flat wood regulated by OAR 340-22-200****	2435	<del>{75}</del>	<del>{2000}{3080}</del>	<del>{1040}{1602}</del>
70. Surface coating, manufacturing****	any			
a) 100 or more tons VOC/yr		<del>{75}</del>	<del>{2000}{3080}</del>	<del>{1380}{2125}</del>
b) 10 or more but less than 100 tons VOC/yr		<del>{75}</del>	<del>{600}{924}</del>	<del>{690}{1063}</del>
c) less than 10 tons VOC/yr (at sources' request)		<del>{75}</del>	<del>{200}{308}</del>	<del>{290}{447}</del>
71. Flexographic or rotogravure printing, 60 or more tons VOC/yr per plant****	2754, 2759	<del>{75}</del>	<del>{2250}{3465}</del>	<del>{2000}{3080}</del>
72. Reserved				
73. Sources subject to NESHAPS rules (except demolition and renovation)	any	<del>{75}</del>	<del>{400}{616}</del>	<del>{500}{770}</del>
74. Sources requiring toxic air pollutant review, including Maximum Available Control Technology (MACT), (not elsewhere classified)	any	<del>{75}</del>	<del>{1000}{1540}</del>	<del>{960}{1478}</del>
75. Soil remediation plants	1799			
a) Stationary		<del>{75}</del>	<del>{1000}{1540}</del>	<del>{945}{1455}</del>
b) Portable		<del>{75}</del>	<del>{1000}{1540}</del>	<del>{1200}{1848}</del>

Air Contaminant Source	Standard Industrial Classification Number (Reference Only)	[Filing Fee]	Application Processing Fee	Annual Compliance Determination Fee
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- \* Excluding hydro-electric and nuclear generating projects.
- \*\* Including co-generation facilities of less than 25 megawatts.
- \*\*\* Legal descriptions and maps of these areas are on file in the Department.
- \*\*\*\* Permit for sources in categories 64 through 71 are required only if the source is located in the Portland AQMA, Medford-Ashland AQMA or Salem SATS.

## Asbestos Abatement Projects

340-32-5620

- (1) Any person who conducts an asbestos abatement project shall comply with OAR 340-32-5630 and 340-32-5640(1) through (11). The following asbestos abatement projects are exempt from OAR 340-32-5630 and 340-32-5640(1) through (11):
  - (a) Asbestos abatement conducted in a private residence which is occupied by the owner and the owner-occupant performs the asbestos abatement.
  - (b) ~~Removal of nonfriable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until disposed of in an authorized disposal site. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.~~ Mastics and roofing products that are fully encapsulated with a petroleum-based binder that are not hard, dry, and brittle. This exemption shall end whenever these materials are burned, shattered, crumbled, pulverized, or reduced to dust.
  - (c) Removal of less than three square feet or three linear feet of asbestos-containing material provided that the removal of asbestos is not the primary objective and methods of removal are in compliance with OAR 437 Division 3 "Construction" (29 CFR 1926.58 Appendix G). An asbestos abatement project shall not be subdivided into smaller sized units in order to qualify for this exemption.
  - (d) Removal of asbestos-containing materials which are sealed from the atmosphere by a rigid casing, provided that the casing is not broken or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.
- (2) Open storage of friable asbestos-containing material or asbestos-containing waste material is prohibited.
- (3) Open accumulation of friable asbestos-containing material or asbestos-containing waste material is prohibited.
- (4) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-32-5620(1) shall comply with the following:
  - (a) Submit notification and fee to the Department Business Office on a Department form in accordance with OAR 340-32-5630.
  - (b) Removal of nonfriable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until delivered to an authorized disposal site is exempt from OAR 340-32-5640(10) and OAR 340-33-030. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.

NOTE: The requirements and jurisdiction of the Department of Insurance and Finance, Oregon Occupational Safety and Health Division and any other state agency are not affected by OAR 340-32-5500 through 340-32-5650.

[Publications: The publication(s) referred to or incorporated by reference

in this rule are available from the office of the Department of Environmental Quality.]

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93;

Renumbered from OAR 340-25-466, DEQ 18-1993, f. & ef. 11-4-93

## Asbestos Abatement Notifications Requirements

340-32-5630 Written notification of any asbestos abatement project shall be provided to the Department on a Department form. The notification must be submitted by the facility owner or operator or by the contractor in accordance with one of the procedures specified in section (1) or (2) of this rule except as provided in sections (4), (5) and (6).

(1) Submit the notifications as specified in subsection (c) of this section and the project notification fee to the Department at least ten days before beginning any asbestos abatement project.

(a) The project notification fee shall be:

- (A) ~~[\$25]~~\$35 for each small-scale, residential, or non-friable asbestos abatement project ~~[except for small scale projects in residential buildings described in section (4) of this rule].~~
- (B) ~~[\$50]~~70 for each project greater than a small-scale asbestos abatement project ~~[and]~~but less than 260 linear feet or 160 square feet of asbestos-containing material.
- (C) ~~[\$200]~~275 for each project greater than or equal to 260 linear feet or 160 square feet, and less than ~~[2,600]~~1300 linear feet or ~~[1,600]~~800 square feet of asbestos-containing material.
- (D) ~~[\$500]~~375 for each project greater than or equal to ~~[2,600]~~1300 linear feet or ~~[1,600]~~800 square feet, and less than ~~[26,000]~~2600 linear feet or ~~[16,000]~~1600 square feet of asbestos-containing material.
- (E) ~~[\$750]~~650 for each project greater than or equal to ~~[26,000]~~2600 linear feet or ~~[16,000]~~1600 square feet, and less than ~~[260,000]~~5000 linear feet or ~~[160,000]~~3500 square feet of asbestos-containing material.
- (F) ~~[\$1,000]~~750 for each project greater than or equal to ~~[260,000]~~5000 linear feet or ~~[160,000]~~3500 square feet, and less than 10,000 linear feet or 6000 square feet of asbestos-containing material.
- (G) \$1,200 for each project greater than or equal to 10,000 linear feet or 6000 square feet, and less than 26,000 linear feet or 16,000 square feet of asbestos-containing material.
- (H) \$2,000 for each project greater than or equal to 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet of asbestos-containing material.
- (I) \$2,500 for each project greater than 260,000 linear feet or 160,000 square feet of asbestos-containing material.

(b) Project notification fees shall be payable with the completed project notification form. No notification will be considered to have occurred until the notification fee is submitted.

(c) The ten day notification requirement in section (1) of

this rule may be temporarily waived in emergencies which directly affect human life, health, and property. This includes:

- (A) Emergencies where there is an imminent threat of loss of life or severe injury; or
  - (B) Emergencies where the public is exposed to airborne asbestos fibers; or
  - (C) Emergencies where significant property damage will occur if repairs are not made.
- (d) The ten day notification requirement in section (1) of this rule may be temporarily waived for asbestos abatement projects which were not planned, resulted from unexpected events, and which if not immediately performed will cause damage to equipment or impose unreasonable financial burden. This includes the non-routine failure of equipment.
  - (e) In either subsection (c) or (d) of this section persons responsible for such asbestos abatement projects shall notify the Department by telephone prior to commencing work, or by 9 am of the next working day if the work was performed on a weekend or holiday. In any case notification as specified in section (3) of this rule and the appropriate fee shall be submitted to the Department within three days of commencing emergency or unexpected event asbestos abatement projects.
  - (f) The Department shall be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification will be void.
  - (g) If an asbestos project, equal to or greater than 2,600 linear feet or 1,600 square feet continues for more than one year, a new notification and fee shall be submitted annually thereafter until the project is complete.
- (2) For small-scale asbestos abatement projects conducted at one or more facilities by a single contractor or a single facility owner with centrally controlled asbestos operations and maintenance the notification may be submitted as follows:
- (a) Establish eligibility for use of this notification procedure with the Department prior to use;
  - (b) Maintain on file with the Department a general asbestos abatement plan. The plan shall contain the information specified in subsections (3)(a) through (3)(i) of this rule to the extent possible;
  - (c) Provide to the Department a summary report of all small-scale asbestos abatement projects conducted in the previous three months by the 15th day of the month following the end of the calendar quarter. The summary report shall include the information specified in subsections (3)(i) through (3)(m) of this rule for each project, a description of any significant variations from the general asbestos abatement plan; and a description of asbestos abatement projects anticipated for the next quarter;
  - (d) Provide to the Department, upon request, a list of asbestos abatement projects which are scheduled or are



- being conducted at the time of the request;
- (e) Submit a project notification fee of \$300 per year prior to use of this notification procedure and annually thereafter while this procedure is in use;
  - (f) Failure to provide payment for use of this notification procedure shall void the general asbestos abatement plan and each subsequent abatement project shall be individually assessed a project notification fee.
- (3) The following information shall be provided for each notification:
- (a) Name and address of person conducting asbestos abatement.
  - (b) Contractor's Oregon asbestos abatement license number, if applicable, and certification number of the supervisor for full-scale asbestos abatement or certification number of the trained worker for a project which does not have a certified supervisor.
  - (c) Method of asbestos abatement to be employed.
  - (d) Procedures to be employed to insure compliance with OAR 340-32-5640 and 340-32-5650.
  - (e) Names, addresses, and phone numbers of waste transporters.
  - (f) Name and address or location of the waste disposal site where the asbestos-containing waste material will be deposited.
  - (g) Description of asbestos disposal procedure.
  - (h) Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated, including:
    - (A) The age, present and prior use of the facility;
    - (B) Address or location where the asbestos abatement project is to be accomplished.
  - (i) Facility owner's or operator's name, address and phone number.
  - (j) Scheduled starting and completion dates of asbestos abatement work.
  - (k) Description of the asbestos type, approximate asbestos content (percent), and location of the asbestos-containing material.
  - (l) Amount of asbestos to be abated: linear feet, square feet, thickness.
  - (m) For facilities described in OAR 340-32-5640(5) provide the name, title and authority of the State or local government official who ordered the demolition, date the order was issued, and the date demolition is to begin.
  - (n) Any other information requested on the Department form.

~~[(4) No project notification fee shall be assessed for asbestos abatement projects conducted in the following residential buildings: site built homes, modular homes constructed off site, condominium units, mobile homes, and duplexes or other multi unit residential buildings consisting of four units or less. Project notification for a full scale asbestos abatement project in any of these residential buildings shall otherwise be in accordance with section (1) of this rule. Project notification for a small scale asbestos abatement~~

~~project in any of these residential buildings is not required.~~

- ~~(5)~~ (4) The project notification fees specified in this section shall be increased by 50% when an asbestos abatement project is commenced without filing of a project notification and/or submittal of a notification fee or when notification of less than ten days is provided under subsection (1)(c) of this rule.
- ~~(6)~~ (5) The Director may waive part or all of a project notification fee. Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship.
- ~~(7)~~ (6) Pursuant to ORS 468A.135, a regional authority may adopt project notification fees for asbestos abatement projects in different amounts than are set forth in this rule. The fees shall be based upon the costs of the regional authority in carrying out the delegated asbestos program. The regional authority may collect, retain, and expend such project notification fees for asbestos abatement projects within its jurisdiction.

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93;  
Renumbered from OAR 340-25-467, DEQ 18-1993, f. & ef. 11-4-93

## Authority, Purpose, and Scope

### 340-33-010

- (1) Authority. This Division is promulgated in accordance with and under the authority of ORS 468A.745.
- (2) Purpose. The purpose of this Division is to provide reasonable standards for:
  - (a) Training and licensing of asbestos abatement project contractors;
  - (b) Training and certification of asbestos abatement project supervisors and workers;
  - (c) Accreditation of providers of training of asbestos contractors, supervisors, and workers;
  - (d) Administration and enforcement of this Division by the Department.
- (3) Scope:
  - (a) This Division is applicable to all work, including demolition, renovation, repair, construction, or maintenance activity of any public or private facility that involves the repair, enclosure, encapsulation, removal, salvage, handling, or disposal of any material which could potentially release asbestos fibers into the air; except as provided in subsections (b) and (c) of this section;
  - (b) This Division does not apply to an asbestos abatement project which is exempt ~~from~~under OAR 340-32-5620(1) or (4);
  - (c) This Division does not apply to persons performing vehicle brake and clutch maintenance or repair;
  - (d) Full-scale asbestos abatement projects are differentiated from smaller projects. Small-scale asbestos abatement projects as defined by OAR 340-33-020(17) are limited by job size and include projects:
    - (A) Where the primary intent is to disturb the asbestos-containing material and prescribed work practices are used; and
    - (B) Where the primary intent is not to disturb the asbestos-containing material.
  - (e) This Division provides training, licensing, and certification standards for implementation of OAR 340-32-5590 through 340-32-5650, Emission Standards and Procedural Requirements for Asbestos.

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 10-1988, f. 5-19-88, cert. ef. 5-19-88 (and corrected 6-3-88); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; AQ 11-1993, f. & ef. 11-4-93

## Fees

### 340-33-100

- (1) Fees shall be assessed to provide revenues to operate the asbestos control program. Fees are assessed for the

following:

- (a) Contractor Licenses;
  - (b) Worker Certifications;
  - (c) Training Provider Accreditation;
  - (d) Asbestos Abatement Project Notifications.
- (2) Contractors shall pay a non-refundable license application fee of:
- (a) ~~\$1300~~1000 for a one year Full-Scale Asbestos Abatement Contractor license;
  - (b) \$200 for a one year Small-Scale Asbestos Abatement Contractor license.
- (3) Workers shall pay a non-refundable certification fee of:
- (a) ~~\$1100~~130 for a two year certification as a certified Supervisor for Full-Scale Asbestos Abatement;
  - (b) ~~\$180~~90 for a two year certification as a Certified Worker for Full-Scale Asbestos Abatement;
  - (c) ~~\$150~~80 for a two year certification as a Certified Worker for Small-Scale Asbestos Abatement.
- (4) Training Providers shall pay a non-refundable accreditation application fee of:
- (a) ~~\$11000~~320 for a one year accreditation to provide a course for training supervisors on Full-Scale projects;
  - (b) ~~\$1800~~320 for a one year accreditation to provide a course for training workers on Full-Scale projects;
  - (c) ~~\$1500~~320 for a one year accreditation to provide a course for training workers on Small-Scale projects;
  - (d) ~~\$1250~~320 for a one year accreditation to provide a course for refresher training for any level of certification.
- (5) Requests for waiver of fees shall be made in writing to the Director, on a case-by-case basis, and be based upon financial hardship. Applicants for waivers must describe the reason for the request and certify financial hardship. The Director may waive part or all of a fee.

**NOTE:** The requirements and jurisdiction of the Department of Insurance and Finance, Oregon Occupational Safety and Health Division and any other state agency are not affected by this Division.

Stat. Auth.: ORS Ch. 468 & 468A

Hist.: DEQ 10-1988, f. & cert ef. 5-19-88 (and corrected 6-3-88); DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90); DEQ 18-1991, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93

**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:** July 18, 1994      **TIME:** 1:00 p.m.      **LOCATION:** Department of Environmental Quality  
811 S.W. Sixth Avenue, Room 3A  
Portland

**HEARINGS OFFICER(s):**      David Berg

**STATUTORY AUTHORITY:**      ORS 468.065, ORS 468A.745, and 468A.750

**AMEND:**      OAR 340-28-1750  
OAR 340-28-1750, Table 4  
OAR 340-32-5620  
OAR 340-32-5630  
OAR 340-33-010  
OAR 340-33-100

- This hearing notice is the initial notice given for this rulemaking action.  
 Auxiliary aids for persons with disabilities are available upon advance request.

**SUMMARY:**

This proposed rulemaking is intended to recover projected deficits for two programs administered by the Air Quality Division. The Department is proposing to increase by 54% all Air Contaminant Discharge Permit (ACDP) fees listed in OAR 340-28-1750, Table 4 Part II and the Temporary Closure fee. An increase is also proposed for all asbestos project notification, worker certification, and contractor licensing fees; addition of three new notification categories; new fees for residential and non-friable projects; and reduction of training accreditation fees.

**LAST DATE FOR COMMENT:** July 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:** Christopher Rich (503) 229-6775  
**AGENCY CONTACT FOR THIS PROPOSAL:** Terri Sylvester  
**ADDRESS:** Air Quality Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204  
**TELEPHONE:** (503) 229-5181  
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.

Terri Sylvester  
Signature

6/10/94  
Date

*Oregon Department of Environmental Quality*

## **A CHANCE TO COMMENT ON . . .**

**Air Contaminant Discharge Permit Fee and  
Asbestos Abatement Fee Rules Revisions**

Date Issued:	June 13, 1994
Public Hearing:	July 18, 1994
Comments Due:	July 25, 1994

**WHO IS  
AFFECTED:**

Facilities that are required to have Air Contaminant Discharge Permits and Asbestos Abatement contractors, workers and service providers.

**WHAT IS  
PROPOSED:**

The Department proposes to increase Air Contaminant Discharge Permit (ACDP) fees by 54% and revise Asbestos Abatement and Certification fees.

**WHAT ARE THE  
HIGHLIGHTS:**

The Department is proposing to increase all ACDP Application Processing and Compliance Determination fees listed in OAR 340-28-1750, Table 4, Part II and the Temporary Closure fee by 54%.

An increase is also proposed for all asbestos project notification fees, worker certification fees and contractor licensing fees; three new notification categories have been added; new fees have been added for residential and non-friable projects; and training accreditation fees have been reduced.

**HOW TO  
COMMENT:**

A Public Hearing to provide information and receive public comment is scheduled as follows:

Department of Environmental Quality  
811 SW 6th Avenue, Room 3A  
Portland, OR  
July 18, 1994  
1:00 p.m.



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

11/1/88

**FOR FURTHER INFORMATION:** 1 -

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.

Written comments must be received by 5:00 p.m. on July 25, 1994 at the following address:

Terri Sylvester  
Department of Environmental Quality  
Air Quality Division  
811 S. W. 6th Avenue  
Portland, Oregon, 97204

A copy of the Proposed Rules may be reviewed at the above address. A copy may be obtained from the Department by calling the Air Quality Division at 229-5464 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.

AISC\AH73553

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Air Contaminant Discharge Permit and  
Asbestos Abatement Fee Rules Revisions

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 twofold. One aspect of it is to adopt changes in Oregon Administrative Rule (OAR) 340-28-1750 to provide replacement funding for General Funds that the Air Contaminant Discharge Permit (ACDP) program will be losing in the 1995-1997 biennium, and to eliminate a projected program deficit for the current biennium. It is proposed under the authority of ORS 468.065 and 468.065(2).

The second part of the proposal is to adopt changes in OAR 340-32-010, 340-32-100, and 340-32-5630 to provide for revisions in Asbestos Abatement fees to adjust the fee funding level of the program back to 100%. It is proposed under the authority of ORS 468A.745 and 468A.750.

2. Need for the Rule

The 1995 Legislature will be decreasing the amount of General Fund dollars allocated to the ACDP program by approximately \$0.4 million. In addition, the ACDP program is currently operating at a projected deficit of \$0.25 million. The Asbestos Abatement and Certification program is projected to have a \$0.19 million deficit for the 1995-1997 biennium. The program is funded 100% by fees which have not been increased since 1988. While the program has been reduced by a total of 4 FTE, it is currently staffed at a level that will meet the minimum standards for both program delegation and State EPA (SEA) Agreements.

Without the fee increases, the Department will not be able to maintain the ACDP or Asbestos programs as they now exist. The result will be a deterioration of air quality within the state of Oregon, especially in populated areas.



3. Principal Documents Relied Upon in this Rulemaking

- OAR Chapter 340, Division 28
- OAR Chapter 340, Division 32
- OAR Chapter 340, Division 33
- ORS Chapter 468
- ORS Chapter 468A

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.

tsle:\wp51\nced

June 6, 1994

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Air Contaminant Discharge Permit Fee and  
Asbestos Abatement Fee Rules Revisions

Fiscal and Economic Impact Statement

Introduction

A. Fee Rules:

Currently, the Air Contaminant Discharge Permit program is funded with 17% federal funds, 17% general funds and 66% fees; and the Asbestos program is funded by 15% federal funds, 0% general funds and 85% fees. The Oregon Department of Environmental Quality proposes revisions to existing rules in OAR Divisions 28, 32 and 33, and new rules in OAR Division 32. The revisions to Division 28 will result in the Air Contaminant Discharge Permit program being funded by 8% federal funds, 8% general funds, and 84% fees. These revisions will eliminate a projected \$0.25 million deficit in the current biennium and the loss of \$0.4 million in general funds in the 1995-1997 biennium. The 54% fee increase will result in \$0.65 million in additional revenues.

Revisions to Divisions 32 and 33 rules are intended to restructure Asbestos program fee revenues to the existing market and distribute increased fees to those abatement projects with higher potential revenues to the service providers. Revisions to Division 32 also expand the project notification classes and include a requirement and fee for residential and non-friable removal notifications. These revisions were based upon the input of two advisory groups representing various interests within the asbestos service industry and their clients. Revisions to Division 33 increase fees for Asbestos certification but reduce fees for training providers. The fee reduction is proposed due to a disincentive that exists due to small class sizes in certain categories.

### Summary of Proposed ACDP Fees

Air Contaminant Discharge Permit Program Fee	Fee Level	Anticipated Fee Revenue
Permit Processing & Compliance Determination Fee OAR 340-28-1750, Table 4, Part II, and Temporary Closure Fee OAR 340-28-1750.	Increases in both permit processing and compliance determination fees of 54%. Total anticipated revenue from these fees is \$1.85 million. Rules propose collection upon adoption. Anticipated revenue from the fee increase is \$650,000 to recover a projected \$250,000 deficit and a \$400,000 loss in general funds.	\$922,500 (annual)  (\$1,850,000 for 1995-1997)
<b>TOTAL</b>		<b>\$1,850,000</b>

### Summary of Proposed Asbestos Fees

Activity (per biennium)	Proposed Asbestos Fee Assessment (\$/per activity)	Estimated Total Revenue from Asbestos Program Assessments  (\$/per activity x actions/year)*
Project Notification Fees (1364 notifications + 315 residential/non-friable) = 1679 total	\$35 to \$2,500	\$479,000
Contractor License Fees (70)	\$1,000	\$70,000
Worker Certification Fees (1100)	\$90-130	\$109,000
Training provider Accreditation (22)	\$320	\$7,040
<b>TOTAL</b>		<b>\$665,000</b>

\*Numbers rounded

### General Public

Air Contaminant Discharge Permit (ACDP) fee increases would produce no direct economic impact to the general public as a result of these proposed rules. The only costs to the general public would be possible pass-through costs to customers of the over 900 permitted facilities, but the impact is assessed to be negligible.

Asbestos fee increases would produce no direct economic impact on the general public as a result of these proposed rules. Costs to the general public might be possible pass-through costs to property owners and renters of facilities where asbestos abatement has been performed.

### Small Business and Medium Business

The primary types of companies in the private sector affected by the ACDP fee increases include, but are not limited to: wood products, chemical manufacturing, mineral products, crematories, printing, electronics, and food products firms. The Department estimates that a total of approximately 900 permittees would be impacted by these rules. The majority of the permittees are small to medium sized businesses with one or more operations.

Asbestos fees have been restructured in an attempt to reduce the burden on small projects while recovering appropriate fees from larger projects. Wherever possible the Department attempted to limit the fee burden to 10% of the projected revenue from specific types of projects. By incorporating residential and non-friable notification requirements the Department is attempting to address concerns that it is in the best interest of the public to require that the Department be notified of these projects. The new fee for notifications on residential and non-friable asbestos projects is limited to mitigate the impact on small businesses. The proposed accreditation fee revisions also reduce the fees of training providers which are considered small businesses in an attempt to stimulate trainer presence in key courses essential to maintaining the quality of the program.

### Large Business

The increases only affect large businesses if they are required to have an ACDP to construct in addition to a Title V operating permit, or if they become a Synthetic Minor source to avoid the Title V program.

### Local Governments and State Agencies

In the public sector, only those local and state government agencies that are subject to the ACDP program or remove asbestos would be affected. Agencies that operate permitted fuel burning equipment, for example, Oregon State Penitentiary and Oregon State Hospital would be subject to the ACDP fee increases. In addition, the Oregon Department of Transportation and several counties operate rock crushers and asphalt plants to maintain public roads, and these agencies would also be impacted by these increases.

The various school districts that support worker certification to conduct asbestos repair and removal would be marginally affected by increased worker certification fees. Since school districts do not currently perform many large scale abatement projects, increased notification fees would have a negligible impact.

### Department of Environmental Quality

The economic impacts to the Department of Environmental Quality will be an increase in ACDP and Asbestos revenues. The Department estimates fee revenue, including the ACDP increases during the 1995-1997 biennium to be \$1.85 million, and the expenses to be \$2.2 million. Without the increases, the Department estimates the revenue to be \$1.2 million.

The Department estimates revenue, including the Asbestos fee revisions during the 1995-1997 biennium, to be \$665,000, and the expenses to be \$665,000. Without the increases, the Department estimates the revenue to be \$467,500.

### Assumptions

This fiscal analysis assumes that the number of permitted sources remains approximately 1100, including 200 sources which are Title V (Federal Operating Permit) sources. The number of sources was derived from sources currently holding Air Contaminant Discharge Permits and Federal Operating Permit projections. The analysis also assumes that the number of asbestos projects and their respective sizes remains consistent with projected trends over the past two biennia.

dbb-tse:\wp51\fiscal.fin  
June 7, 1994

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Air Contaminant Discharge Permit Fee and  
Asbestos Abatement Fee Rules Revisions

Land Use Evaluation Statement

**1. Explain the purpose of the proposed rules.**

Oregon Revised Statutes (ORS) 468.065 and 468.065(2) authorizes the Department to collect fees for Air Contaminant Discharge Permits. The proposed rules contain a 54% fee increases necessary to eliminate a \$0.4 million reduction in General Funding for the 1995-1997 biennium and a \$0.25 million projected Air Contaminant Discharge Permit program deficit for the current (1993-1995) biennium.

ORS 468A.745 and 468A.750 authorizes the Department to collect fees for Asbestos Abatement activities. The proposed rules contain fee rules revisions necessary to recover a projected deficit of \$0.19 million for the 1995-1997 biennium.

**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:**

These rules apply to fee revisions and, as such, have no direct impact to any DEQ land use actions or programs. However, there is an indirect relationship in that the issuance of an Air Contaminant Discharge Permit affects land use. The DEQ Asbestos program has been previously evaluated and determined not to have significant impacts to local land use.

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

Yes X No      (if no, explain):

The proposed rules are for increases in fees for all facilities that have to have an Air Contaminant Discharge Permit. The DEQ State Agency Coordination Program requires local government land use compatibility review and approval for all Air Contaminant Discharge Permits.

**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.

6/7/94  
Date

ts/e:\wp51\landuse  
June 7, 1994

## Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.

The following questions should be clearly answered, so that a decision regarding the stringency of a proposed rulemaking action can be supported and defended:

Note: If a federal rule is relaxed, the same questions should be asked in arriving at a determination of whether to continue the existing more stringent state rule.

1. *Are there federal requirements that are applicable to this situation? If so, exactly what are they?*

Yes. The State Implementation Plan (SIP) requires that we have adequate funding to implement the Industrial Source Program.

Yes. We have National Emission Standards for Hazardous Air Pollutants (NESHAP) delegation of the Asbestos program. Maintaining delegation requires adequate funding of the program.

2. *Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?*

The Air Contaminant Discharge Permit (ACDP) program is performance based and technology based with the most stringent controlling.

The NESHAP requirements for asbestos abatement are performance based only.

3. *Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?*

ACDP: The federal requirements in the SIP are based on Oregon regulations which are equivalent to federal regulations. Oregon's concern and situation are the basis for the SIP.

Asbestos: The NESHAP for asbestos abatement is a federal standard which Oregon must meet to satisfy the minimum requirements for delegation of that standard.

4. *Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?*



Yes. The fee revisions will allow the Department to maintain adequate resources to clearly communicate and clarify requirements in both the ACDP and Asbestos programs.

5. *Is there a timing issue which might justify changing the time frame for implementation of federal requirements?*

No.

6. *Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?*

No. The proposed fee revisions allow the Department to maintain minimum existing resources to implement both the ACDP and Asbestos programs.

7. *Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)*

Yes.

8. *Would others face increased costs if a more stringent rule is not enacted?*

The proposed revisions to fees do not directly affect stringency, but provide the Department minimum resources to implement the existing programs in both ACDP and Asbestos.

9. *Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?*

No.

10. *Is demonstrated technology available to comply with the proposed requirement?*

Yes.

11. *Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?*

Yes. Revised fee rules allow the Department to implement the minimum program requirements and represent a cost effective control strategy for Oregon in both industrial emissions and asbestos abatement.

State of Oregon  
Department of Environmental Quality

## Memorandum

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**Date:** July 25, 1994  
**To:** Environmental Quality Commission  
**From:** David B. Berg, Air Quality Program Operations Manager  
**Subject:** Presiding Officer's Report For Rulemaking Hearings  
Title of Proposal: Air Contaminant Discharge Permit  
Fee and Asbestos Abatement Fee Rules Revisions

A Public Hearing was held at the DEQ Offices, 811 S.W. Sixth Avenue, Portland, OR. The hearing was convened at 1:00 p.m. in Conference Room 3A. Approximately six local citizens attended. In addition to the Hearings Officer, Air Quality Division personnel attending the hearing included Greg Green, Alice Dehner, Terri Sylvester, John Mathews, Sarah Armitage, Dave Whitford, and Patti Seastrom.

Two people presented oral testimony. No additional written testimony was presented at the hearing.

Following is the oral testimony which was presented:

1. Susan Menley  
Humane Society of the Willamette Valley

I am Susan Menley and I represent the Humane Society of the Willamette Valley which is based in Salem. This is the first time I've been up and talked to you in person. I've written letters before and I know you have dealt with some of my associates from the Oregon Humane Society. It was important enough that I drive up today to tell you in person a little about animal control work and I think you have a basis for this having dealt with the Oregon Humane Society.

Our shelter in Salem handles around 12,000 animals a year. We service Marion and Polk counties and we do contract with Marion county for dog control services. They pay us per dog and they also pay for some of the disposal fee. That doesn't cover any of the other strays that are brought to us. Stray cats and

Memo To: Environmental Quality Commission  
July 25, 1994  
Page 2

surrendered animals, people not wanting their animals any more and bringing them in to us. So what we do as a private non-profit is take in animals that nobody wants anymore. The government, at least in the Salem area, shares no part in that. They really don't want to do animal control, they're not interested in it. They're glad we're out there but they don't want too much to do with us and they certainly don't give us any financial support.

So, two methods of disposal that we use are rendering and we run a crematorium, which we do general and some private cremations. The privates offset a little bit of the revenue but the general cremations are, obviously, the way we take care of our bulk dead animals. Of course, being the shelter manager, I am the overseer of the crematorium and I get packets like this in my mailbox quite often. I have to sit down and sort of decipher them or I call Paul and say, "What does this mean?" What it means to me is that I have to do revisions in order to keep this permit. The last revision, before the last permit was paid and given to us, we had to put a chart recorder on and we had to do some major revisions of our equipment. That ran to about \$7,000 just so we could have a permit. Then we got to pay a substantial increase in our permit fee that time for, the luxury or whatever, the privilege of having this machine so we can take care of these animals that nobody else wants to take care of. So, when I got this packet and I realized that somebody wanted to charge us even more money to do something that they didn't want to do themselves I felt that it was worth a trip up to Portland to let you know that reasonable fees, we pay utility bills, we pay fees, we're members of the community and we don't mind paying fees but we need to pay fees within reason and a 54% charge, I understand you're running in a deficit well so are we. We are chronic deficit. And I can speak for Oregon Humane, there is nothing money making in the animal control business. So, we're working with a deficit. As far as I'm concerned these are just as much the state of Oregon's animals as they are our animals. We're doing this because we care about animals but we're doing this for the state of Oregon as well. I would really like to see some sort of exemption for the private non-profit animal shelters. Do you have any questions? I think that is all I have to say.

2. Sharon Harmon  
Oregon Humane Society

Good afternoon. This is your day to learn about the world of animal welfare. I'm Sharon Harmon the operations director for the Oregon Humane Society. We are the largest animal protection organization in the state. We were incorporated in 1868

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primarily to do the job that no one else wants. The role of the Humane Society in our community is to fill the gap between what they are willing to pay for in terms of their tax dollars for animal control and what really needs to be done and what they would like pay for with their heart. Our organization is 100% donor funded. We receive no tax dollars and our work is charitable. If someone can't afford to have the service provided we provide it at no cost to them. Besides receiving animals for adoption we also receive animals for disposal as a compassionate alternative to putting your pet in the garbage can, sending it to the landfill, or even sending it out to be made into other products through the rendering service. So, we offer a dignified alternative. We do not charge for this service because our clients cannot afford it. Less than half of the people will leave a donation toward the care of their pet, whether it be live or for the cost of the service in terms of disposal. We too are members of the community. We pay our bills. We're not asking for anything, we only ask that we be charged reasonable fees. In our opinion the fees have gone up incredibly so and they are into the point of being unreasonable. In 1989 the renewal of our permit cost us \$390 for application processing, annual compliance determination and renewal fees. It was a reasonable amount of fees for the DEQ to insure the quality of our environment.

In 1994 these fees were raised substantially. The application processing fee went up 300%, the annual compliance determination fee went up 221%, and during this same time period, to prove to the DEQ that we were complying with your rules it cost us over \$7,500 in construction, testing, and chart recorders. Not that we are doing business any differently, we're still doing it the same way we were doing it in 1989 but now we are able to prove to you that we're doing it and that we comply with all your rules. A year later you're asking for a 54% increase. We feel that this substantial increase is unreasonable and it is an unnecessary burden put on the nonprofit community. In your June 10th memo DEQ stated that "the impact is assessed to be negligible in terms of economics". We disagree with that. When you start talking that amount of money, it is not negligible to a small nonprofit. It is not negligible to a charity. It might be if you are a steel plant, if you are a gasoline refinery or some other enormous business. Also in terms of environmental impact we are small time and yet our fees exorbitant.

When you say the impact is negligible and that the clients wouldn't be affected, well, we can't really pass this on to our clients. They can't afford it anyway. In fact our work is done, as I said, in the absence of community service provided by government agencies. Our humane society serves the state of Oregon but primarily Clackamas, Washington, and Multnomah

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Page 4

counties. Two of those counties don't accept cats. We receive the bulk of those cats. In fact we received 11,000 stray, unwanted, abandoned cats. That is a service we are providing to the community that the government has chosen not to take on. Now we are being asked to pay more fees to provide that charitable service. Again, I think in the spirit of measure 5 I don't think it was meant to really stick the nonprofit community with the cost of doing business. I like what Susan said, I don't begrudge you reasonable fees to do your job but the 54% increase is unreasonable. Thank you. Here is a packet of testimony.

There was no further testimony and the Hearing was adjourned at 1:30 p.m.

LIST OF WRITTEN COMMENTS RECEIVED

Permit Fee Comments

P001

Jerry J. Ritter  
1865 Yolanda  
Springfield, OR 97477

P002

Harry A. Boosey  
Aqua Glass  
Industrial Park  
Adamsville, TN 38310

P003

Jeff K. Yutani  
Biomass One, L.P.  
2350 Avenue "G"  
White City, OR 97503

P004

A. Walter Long  
Owens-Illinois  
One SeaGate  
Toledo, Ohio 43666

P005

Gregory E. Ogden, P.E.  
Southwest Soil Remediation, Inc.  
3951 E. Columbia Street  
Tucson, AR 85714

P006

James E. Whitty  
Associated Oregon Industries  
1149 Court Street, NE  
Salem, OR 97309

P007

Paulette L. Pyle  
Oregonians for Food and Shelter  
567 Union Street, NE  
Salem, OR 97301

P008

Beverly Clarno  
Majority Leader  
House of Representatives  
State Capitol  
Salem, OR 97310

P009

Theodore K. Running  
Riverside Pet Crematory  
34685 Riverside Drive  
Albany, OR 97321

P010

Gordon Ross  
Board of Commissioners  
Coos County Courthouse  
Coquille, OR 97423

P011

J. Michael Paisley  
Time Oil Co.  
2737 West Commodore Way  
Seattle, WA 98199-1233

P012

Mark Slezak  
Columbia Forest Products  
Klamath Plywood Division  
Weed Highway 97  
Klamath Falls, OR 97601

P013

Bob Van Leer  
Curry County Reporter  
510 N Ellensburg, Box 766  
Gold Beach, OR 97444

P014

Russell W. Larkin, CPA  
Fremont Sawmill  
Soft Ponderosa Pine Lumber  
PO Box 1340  
Lakeview, OR 97630

P015

Sharon M. Harmon  
Oregon Humane Society  
1067 NE Columbia Blvd  
Portland, OR 97211

P016

John M. Grace  
Greater Eastern Oregon Development Corp.  
P.O. Box 1041  
Pendleton, OR 97801

P017  
Barbara Michels, Jim Boylan, and Fritz Skirvin  
DEQ Western Region  
Salem

**Asbestos Fee Comments**

A001  
Andrew Fridley  
Portland Public Schools  
PHYSICAL PLANT DIVISION  
PO Box 3107  
Portland, OR 97208-3107

A002  
Donald A. Haagensen  
Cable Huston Benedict Haagensen & Ferris  
representing Chemical Waste Management of the Northwest, Inc.  
1001 S.W. Fifth Avenue, Suite 2000  
Portland, OR 97204-1136



## WRITTEN TESTIMONY

The Department received nineteen letters regarding both the asbestos and ACDP fee revisions. Eleven letters opposed the ACDP fee increase with one conditionally supporting it. Two letters questioned specific provisions within the fee structure and requested clarifications. One letter, requested category changes and deletions be made. Two letters commented on the asbestos rule revisions. The asbestos rule comments and responses follow the ACDP Fees issue.

### A. AIR CONTAMINANT DISCHARGE PERMIT FEE RULES

#### Comment

All of the letters opposed to the ACDP fee increases questioned the need for such a large increase. Several suggested that any increases be comparable to the consumer price index (CPI). Most were opposed to the concept of passing along the cost of the program when the subsidy of general funds was removed. They also indicated that this magnitude had negative impacts on business and that businesses would not be allowed to increase their prices by such a large amount. One letter indicated that the local government requires advance notice of such fee increases to include them in their budget and suggested that fees should not be increased until July 1995. One letter indicated that fee increases should be consistent across the board and that the proposed fee increase for their respective facility should be adjusted to reflect the 54%, rather than a higher amount.

Another letter agreed that fees should be increased but suggested that the increase be phased-in over time. Another letter indicated that 54% was outrageous and indicated that if the legislature was unwilling to fund the program, the Department should reduce it. A final letter questioned whether the DEQ considered the expenditure side to restructure and reduce expenditures. It also opposed the fee increase unless an independent consultant reviewed the Department's process for evaluating the need for the increase. In general it indicated that DEQ was implementing the easy option, to raise fees.

#### Department Response

It is important to recognize that the regulated community, the users of this program, have not paid fees commensurate with the costs of the air permitting program. As the

Department has lost General Funds which were used to subsidize the unrecovered costs, it has been required to recover an increasing share from the regulated community through fees. The magnitude of the increase is only partially representative of the level of subsidy provided by General Funds to the regulated community. The Department is committed to streamlining the air permitting process as well. As this increase does not accompany any increases in resources, it truly reflects the magnitude of subsidization. In addition, some resources have been shifted to the major source Federal Operating Permit program and as such the ACDP program has been restructured to further reduce the magnitude of the required increase.

#### **Comment**

One letter requested that several categories be changed or deleted on the Table. All of the categories are seed and grain related. One suggestion was to change category 57 to exclude grain elevators and make it grain and seed terminal elevators. Another was to delete current categories 3, 4, 5 and 6. The final suggestion was to change category 1 to include the current categories 3, 4, 5 and 6.

#### **Department Response**

Making category 57 into terminal elevators and excluding grain elevators is a good suggestion and can easily be done. The second suggestion, modifying category 1 to include 3, 4, 5 and 6, is also a good one but is not as easily accomplished because the fees are not the same in each of the categories. A compromise would be to add the wording "and associated grain elevators" to categories 1, 3, 4, 5 and 6.

#### **B. ASBESTOS PROGRAM FEE RULES**

##### **Comment**

One commenter expressed concerns about the change of language in the fee section for a small-scale asbestos removal fee. They indicated that the proposed language changed the definition of a small-scale removal from 40 linear or 80 square feet or less of asbestos material to be removed to 3 linear or 3 square feet of asbestos material or less by changing this language. (OAR 340-32-5630(1)(B))

##### **Department Response**

OAR 340-32-5590(23) defines a small-scale asbestos removal.

However, we can see that this may cause some confusion until the Department adopts the full MAP regulation. The language in OAR 340-32-5630(1)(a)(A) & (B) is being revised in order to eliminate confusion.

#### Comment

Another comment indicated that the definition for exempt non-friable removal in OAR 340-32-5620(4)(a) is too broad and may allow the removal of non-friable materials that are in bad condition by non-licensed or uncertified people.

#### Department Response

The Department agrees with this assessment and has changed the language to clarify this rule.

#### Comment

One commenter suggested changes in the rules governing waste that is characterized as hazardous and is also mixed with asbestos. (e.g. lead contaminated soil mixed with asbestos) They proposed that the following specific rule language be added:

OAR 340-32-5650(2)(d)

"Where the asbestos-containing waste materials are stabilized in accordance with the requirements of 40 CFR Part 268 (as adopted in OAR 340-100-002), the asbestos-containing waste materials may be transported without further processing, packaging or containerization and directly land disposed."

OAR 340-32-5650(7)(d)

"A completed Uniform Hazardous Waste Manifest complying with 40 CFR Part 262 (as adopted by OAR 340-100-002) and OAR 349-0-102-060 may be used for waste generation, waste transportation and waste disposal in place of the Department form specified in this section."

OAR 340-32-5650(10)(b)

Maintain, until closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area. "Compliance with the requirements of 40 CFR § 264.309 (as adopted by OAR 340-100-002) at a facility permitted under ORS 466.005 to 466.385 to dispose hazardous waste constitutes compliance with this paragraph."

## Department response

Situations where hazardous waste is mixed with asbestos happen very infrequently. To date there has been only one instance where asbestos was mixed with lead contaminated soil. OAR 340-32-5650(13) allows for alternate methods of disposal as listed below:

"Rather than meet the requirements of this rule, an owner or operator may elect to use an alternative storage, transport, or disposal method which has received prior written approval by the Department."

The Department does not feel that the rule additions proposed by the commenter are necessary to maintain compliance with the asbestos regulations. The provisions in the existing regulations for handling and disposal of asbestos waste that is also contaminated with hazardous waste are sufficient for the protection of the public and the environment.

CHANGES MADE TO PROPOSED RULES  
 BASED ON PUBLIC COMMENT

RULE CITATION	DETAILS OF CHANGES
340-28-1750 Table 4, Part I. Section F	Change "Initial Permitting and Construction" to "Initial Permitting or Construction".
340-28-1750 Table 4, Part II. Source Category 65	Change Annual Compliance Determination Fee to "2664".
340-32-5620(1) (b)	Replace existing wording in this subsection with: <u>Mastics and roofing products that are fully encapsulated with a petroleum-based binder that are not hard, dry, and brittle. This exemption shall end whenever these materials are burned, shattered, crumbled, pulverized, or reduced to dust.</u>
340-32-5620	Add new section: <u>(4) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-32-5620(1) shall comply with the following:</u> <u>(a) Submit notification and fee to the Department Business Office on a Department form in accordance with OAR 340-32-5630.</u> <u>(b) Removal of non-friable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until delivered to an authorized disposal site is exempted from OAR 340-32-5640(10) and OAR 340-33-030. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.</u>
340-32-5630(1) (a) (A)	Replace with: <u>\$35 for each small-scale, residential, or non-friable asbestos abatement project.</u>
340-32-5630(1) (a) (B)	Amend to say: <u>\$70 for each project greater than a small-scale asbestos abatement project but less than 260 linear or 160 square feet of asbestos-containing material.</u>

DEPARTMENT'S EVALUATION OF PUBLIC COMMENT

ORAL TESTIMONY

Comment

Both commenters who provided testimony at the Public Hearing were opposed to the fee increase, especially for non-profit organizations (such as Humane Societies) because they are providing a public service.

Department Response

The Department recognizes the unique situation that Humane Society facilities encounter with fee increases. During the past year we have responded to requests for relief by the Oregon Humane society. At the EQC session the Director and the EQC recognized the problems but also indicated that by exempting non-profit institutions from the air contaminant discharge permit fees, other for profit businesses would be effectively subsidizing non-profit entities. It has been against the direction of the EQC to follow this course of action.

This testimony also indicates that fee increases have been of large magnitudes over the past few years. Fees were increased over 200% in 1991 to recover general fund losses and have the regulated community share more of the burden of the costs of this program. This proposed increase in fees of 54% further reflects the need to have the Department recover the costs of the program from the regulated community. Despite the increases in 1991 and the proposed increase in 1994 the regulated community still only covers 84% of the cost of the air contaminant discharge permit program. In prior years fees paid by the regulated community reflected very low cost recoveries in the 20-60% range. Consequently, the magnitude of the fees was very low.

## **WRITTEN TESTIMONY**

The Department received nineteen letters regarding both the asbestos and ACDP fee revisions. Eleven letters opposed the ACDP fee increase with one conditionally supporting it. Two letters questioned specific provisions within the fee structure and requested clarifications. One letter, requested category changes and deletions be made. Two letters commented on the asbestos rule revisions. The asbestos rule comments and responses follow the ACDP Fees issue.

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Another letter agreed that fees should be increased but suggested that the increase be phased-in over time. Another letter indicated that 54% was outrageous and indicated that if the legislature was unwilling to fund the program, the Department should reduce it. A final letter questioned whether the DEQ considered the expenditure side to restructure and reduce expenditures. It also opposed the fee increase unless an independent consultant reviewed the Department's process for evaluating the need for the increase. In general it indicated that DEQ was implementing the easy option, to raise fees.

#### **Department Response**

It is important to recognize that the regulated community, the users of this program, have not paid fees commensurate with the costs of the air permitting program. As the

Department has lost General Funds which were used to subsidize the unrecovered costs, it has been required to recover an increasing share from the regulated community through fees. The magnitude of the increase is only partially representative of the level of subsidy provided by General Funds to the regulated community. The Department is committed to streamlining the air permitting process as well. As this increase does not accompany any increases in resources, it truly reflects the magnitude of subsidization. In addition, some resources have been shifted to the major source Federal Operating Permit program and as such the ACDP program has been restructured to further reduce the magnitude of the required increase.

#### **Comment**

One letter requested that several categories be changed or deleted on the Table. All of the categories are seed and grain related. One suggestion was to change category 57 to exclude grain elevators and make it grain and seed terminal elevators. Another was to delete current categories 3, 4, 5 and 6. The final suggestion was to change category 1 to include the current categories 3, 4, 5 and 6.

#### **Department Response**

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##### **Comment**

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##### **Department Response**

OAR 340-32-5590(23) defines a small-scale asbestos removal.



However, we can see that this may cause some confusion until the Department adopts the full MAP regulation. The language in OAR 340-32-5630(1)(a)(A) & (B) is being revised in order to eliminate confusion.

#### Comment

Another comment indicated that the definition for exempt non-friable removal in OAR 340-32-5620(4)(a) is too broad and may allow the removal of non-friable materials that are in bad condition by non-licensed or uncertified people.

#### Department Response

The Department agrees with this assessment and has changed the language to clarify this rule.

#### Comment

One commenter suggested changes in the rules governing waste that is characterized as hazardous and is also mixed with asbestos. (e.g. lead contaminated soil mixed with asbestos) They proposed that the following specific rule language be added:

OAR 340-32-5650(2)(d)

"Where the asbestos-containing waste materials are stabilized in accordance with the requirements of 40 CFR Part 268 (as adopted in OAR 340-100-002), the asbestos-containing waste materials may be transported without further processing, packaging or containerization and directly land disposed."

OAR 340-32-5650(7)(d)

"A completed Uniform Hazardous Waste Manifest complying with 40 CFR Part 262 (as adopted by OAR 340-100-002) and OAR 349-0-102-060 may be used for waste generation, waste transportation and waste disposal in place of the Department form specified in this section."

OAR 340-32-5650(10)(b)

Maintain, until closure, record of the location, depth and area, and quantity in cubic yards of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area. "Compliance with the requirements of 40 CFR § 264.309 (as adopted by OAR 340-100-002) at a facility permitted under ORS 466.005 to 466.385 to dispose hazardous waste constitutes compliance with this paragraph."

## Department response

Situations where hazardous waste is mixed with asbestos happen very infrequently. To date there has been only one instance where asbestos was mixed with lead contaminated soil. OAR 340-32-5650(13) allows for alternate methods of disposal as listed below:

"Rather than meet the requirements of this rule, an owner or operator may elect to use an alternative storage, transport, or disposal method which has received prior written approval by the Department."

The Department does not feel that the rule additions proposed by the commenter are necessary to maintain compliance with the asbestos regulations. The provisions in the existing regulations for handling and disposal of asbestos waste that is also contaminated with hazardous waste are sufficient for the protection of the public and the environment.

CHANGES MADE TO PROPOSED RULES  
BASED ON PUBLIC COMMENT

RULE CITATION	DETAILS OF CHANGES
340-28-1750 Table 4, Part I. Section F	Change "Initial Permitting and Construction" to "Initial Permitting or Construction".
340-28-1750 Table 4, Part II. Source Category 65	Change Annual Compliance Determination Fee to "2664".
340-32-5620 (1) (b)	Replace existing wording in this subsection with: <u>Mastics and roofing products that are fully encapsulated with a petroleum-based binder that are not hard, dry, and brittle. This exemption shall end whenever these materials are burned, shattered, crumbled, pulverized, or reduced to dust.</u>
340-32-5620	Add new section: <u>(4) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-32-5620(1) shall comply with the following:</u> <u>(a) Submit notification and fee to the Department Business Office on a Department form in accordance with OAR 340-32-5630.</u> <u>(b) Removal of non-friable asbestos-containing materials that are not shattered, crumbled, pulverized or reduced to dust until delivered to an authorized disposal site is exempted from OAR 340-32-5640(10) and OAR 340-33-030. This exemption shall end whenever the asbestos-containing material becomes friable and releases asbestos fibers into the environment.</u>
340-32-5630 (1) (a) (A)	Replace with: <u>\$35 for each small-scale, residential, or non-friable asbestos abatement project.</u>
340-32-5630 (1) (a) (B)	Amend to say: <u>\$70 for each project greater than a small-scale asbestos abatement project but less than 260 linear or 160 square feet of asbestos-containing material.</u>

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State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Air Contaminant Discharge Permit Fee and  
Asbestos Abatement Fee Rules Revisions

Rule Implementation Plan

**Summary of the Proposed Rule**

The Department proposes to increase Air Contaminant Discharge Permit (ACDP) Application Processing and Compliance Determination fees listed in OAR 340-28-1750, Table 4, Part II and the Temporary Closure fee by 54%.

Fee increases are also proposed for all asbestos project notification fees, worker certification fees and contractor licensing fees. Three new notification categories have been added, a fee has been added for residential and non-friable removal notifications, and training accreditation fees have been reduced.

**Proposed Effective Date of the Rule**

The effective dates for both the ACDP increase and Asbestos revisions will be upon adoption by the Environmental Quality Commission in August 1994.

**Proposal for Notification of Affected Persons**

All known affected parties were mailed notices of the proposed rulemaking on June 13, 1994.

**Proposed Implementing Actions**

For all new permits and modifications, the Permit Coordinators will implement the increases when they mail the applications to the sources. The increases associated with renewal permits and annual compliance determination fees, will be implemented upon adoption for the next invoice due date which will be January 1, 1995.

Upon adoption, the Asbestos fee revisions will be implemented by Asbestos program staff.

There are no implementing actions that have to be undertaken by the regulated community.

**Proposed Training/Assistance Actions**

No training is needed because these are revisions of current rules.

GEL:feerule/ruleimp  
July 27, 1994



# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D  
August 25-26, 1994 Meeting

**Title:**

Proposed Adoption of Rule Amendments to Wastewater System Operator Certification Fees and Applications

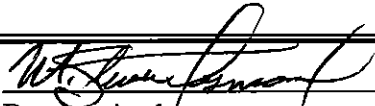
**Summary:**

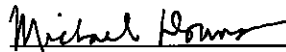
The Department proposes that the Environmental Quality Commission adopt a rule amendment which would substantially increase the various fees charged to individuals for certification as an operator of a sewage treatment works (domestic wastewater collection and/or treatment system). The proposed increase in fees is necessary to reduce program reliance on significant supplemental funding and move the program closer to a self-supporting target as required by the enabling legislation under ORS 448.410.

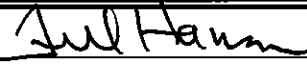
To improve certification program efficiency and effectiveness, the Department also proposes companion rule amendments that would change the application submittal deadline for admission to a certification examination, clarify proposed application and fee options, and specify that applications submitted incomplete would be returned to the applicants without further processing until deficiencies are corrected.

**Department Recommendation:**

It is recommended that the Commission adopt the rule amendments regarding wastewater system operator certification fees and applications as presented in Attachment A of the Department Staff Report, subject to the conditions precedent that the Department obtain approval from the Department of Administrative Services for establishment of fees and submit a report to the Emergency Board as required by ORS 448.410(1)(d).

  
Report Author

  
Division Administrator

  
Director

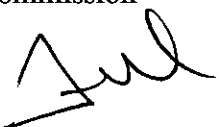
August 9, 1994

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

State of Oregon  
Department of Environmental Quality

Memorandum<sup>1</sup>

Date: August 9, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item D, August 25-26, 1994, EQC Meeting

Proposed Adoption of Rule Amendments to Wastewater System Operator  
Certification Fees and Applications

**Background**

The Department of Environmental Quality (Department) is responsible for implementing the provisions of ORS 448.405 to 448.430 and 448.992, and OAR Chapter 340, Division 49, which regulate persons who may operate and/or supervise the operation of domestic wastewater systems, and establishes a wastewater system operator certification program (program). The purpose of the statute and implementing rules is to help protect public health and the environment, including Oregon's water resources, through proper operation and maintenance of these wastewater systems.

The statute directs the Environmental Quality Commission (Commission) to establish a schedule of fees the Department charges persons to be certified as qualified to supervise the operation of wastewater collection and/or treatment systems. The current (initial) fee schedule was adopted by the Commission in 1988, and includes fees for various certification applications including new, upgrade (advanced), reciprocity, renewal and reinstatement.

In accordance with the statute, the fees are established to generate sufficient revenue to cover the costs incurred by the Department for administering the program, and be within the Legislative Assembly's authorized budget as may be modified by the Emergency Board. All fees received are appropriated to the Department and dedicated to cover program expenditures.

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<sup>1</sup>Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice) or (503)229-6993(TDD)

Memo To: Environmental Quality Commission  
Agenda Item D  
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During the three year period immediately following adoption of the current fees schedule (1988-1990), the Department's costs for administering the program increased significantly in proportion to a large increase in the number of certified operators and certificates.

The number of active certificates increased from 908 to just over 1700 in response to the mandatory certification requirements which went into effect July 1, 1989. Program personnel services increased from 1.0 Full Time Equivalent (FTE) to a 1.5 FTE staffing level to meet the growing demand for necessary certification services.

Today, the program has a staffing level of 1.75 FTE with about 1900 active certificates. It is estimated that the net growth of certified operators/certificates during the next biennium will be around 3 per cent. With increased program efficiency, the staffing level should remain at about 1.75 FTE.

On June 13, 1994, the Director authorized the Water Quality Division to proceed to a rulemaking hearing on proposed rule amendments which would substantially increase the various fees charged to individuals for certification as an operator of a domestic wastewater systems, change the application submittal deadline for admission to an examination, and clarify that an application submitted incomplete would be returned to the applicant without further processing.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on July 1, 1994. On June 27, 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. The number of mailings exceeded 2,800 and included over 1700 certified operators (active and in-active) and more than 500 owners and permittees of domestic wastewater treatment and/or collection systems.

A Public Hearing was held on July 29, 1994, beginning at 1 pm on the Third Floor, Room 3A, of the Department's main offices located in the Executive Building, 811 SW Sixth Avenue in Portland, with Mr. Thomas J. Lucas serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through August 1, 1994, with the public comment period closed at 5 pm that day. A list and summary 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 on the evaluation, no modifications to the initial rulemaking proposal are recommended.

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

**Issue this Proposed Rulemaking Action is Intended to Address**

The current fee schedule under OAR 340-49-065, adopted by the Commission in September of 1988, generates only enough revenue to cover about one-half of the Department's costs for administering the program. This fee schedule does not specify a fee for required services such as reexamination, rescheduling of an exam, replacement of certificate documents, or issuing certificates resulting from a conversion from a provisional or "Operator-In-Training" status.

Because of the initial rapid growth in the number of certified operators and increased costs, the program has become increasingly reliant on supplemental funding from other Department revenue. This is contrary to statutory requirements for a self-supported certification program. The proposed new and expanded fee schedule under OAR 340-49-065 is necessary to move program funding closer to a self-support target as required.

Directly related to program costs, OAR 340-49-055 is difficult and costly to administer with respect to application processing. Under the present rule a person applying for a certificate that requires scheduling of an examination may file an application as late as 30 days before the date set for an examination. Given the volume of applications that come in at the deadline, 30 days is often not adequate time for completing application evaluations, notifying applicants of their status (approved, disapproved or incomplete), and making necessary arrangements for examinations.

Also related to program costs is the fact that Division 49 rules do not specify or require applicants to provide complete and accurate information about their education and experience, and submit the proper fee(s) with their applications. Substantial program costs are associated with delay and reprocessing of incomplete applications. For this reason a clear disincentive is needed and is proposed to be included under OAR 340-49-060 (Certification Application and Fees).

The Department has also proposed amendments under OAR 340-49-060 to address and clarify changes in the proposed fee schedule, so as to help expedite application processing.

**Relationship to Federal and Adjacent State Rules**

As stated, the proposed amendments would established a modified schedule of fees to fund the wastewater system operator certification program. Staff are not aware of any equivalent Federal regulations at this time (refer to Attachment B-6).

It is important to note that reauthorization of the Clean Water Act is pending before the U.S. Congress, and that draft legislation in the Senate includes provisions for training of operator personnel, a requirement that chief operators of wastewater systems be certified, establishment of guidelines for minimum standards for certification of operators by a State and recognition of qualified State certification programs.

With respect to adjacent state rules, similar certification programs do exist. In comparison with adjacent state programs and the Oregon Health Division's (OHD) Drinking Water system operator certification program fees, the Department's proposed certification fees are less than California, and equal to or higher than the States of Idaho or Washington and the OHD program. The proposed application requirements are substantially equivalent to program requirements in California, Idaho, and Washington, as well as the OHD certification program.

A Department examination of it's current certification fee schedule with similar fees of other states (adjacent and national) found Oregon's wastewater certification fees among the lowest of any wastewater certification program that is required to be self-supporting. The following table, which has been updated and expanded from the table presented in Attachment B-4 (page B-11), supports this conclusion.

**Survey of Current Wastewater Certification Fees - Self-Supported Programs  
 August 1994 Update**

<u>State</u>	<u>Application/ Examination</u>	<u>Renewal (Annual Equivalent)</u>	<u>Reinstate (Late Fee)</u>	<u>Ratio of Certificates to Staff (1 FTE)</u>	<u>Percent Fee Supported</u>	<u>Cont. Educ. Req'd</u>
CALIFORNIA	\$100-\$245	\$25-\$50	\$ 50	1500	≤100	No
FLORIDA	\$125	\$25	\$100-\$150	1200	80	No
GEORGIA	\$ 50	\$30	\$100-\$260	1000	100	Yes
IDAHO*	\$ 55	\$30	\$ 30	1030	≤100	No
MONTANA	\$ 35	\$30	\$ 10	1240	100	Yes
NEBRASKA	\$ 75	\$25	\$ 75	825	50	Yes
N. CAROLINA	\$ 75	\$30	\$ 50	1200	100	No
OKLAHOMA	\$ 40	\$30	\$ 10	1200	100	Yes
<b><u>OREGON</u></b>	<b><u>\$ 35-50</u></b>	<b><u>\$20</u></b>	<b><u>\$ 10</u></b>	<b><u>1090</u></b>	<b><u>50</u></b>	<b><u>Yes</u></b>
WASHINGTON	\$ 50	\$30	Considering	1330	≤80	Yes
VIRGINIA**	\$ 95	\$27.50	\$ 55	2330	100	No
OREGON <i>Water</i> **	\$ 35	\$40	\$ 10	1010	<100	Yes

\* The State of Idaho has the only remaining all-voluntary program in the nation. Continuing education requirements for certificate renewal eligibility is under consideration.

\*\* The State of Virginia and the State of Oregon Drinking Water Certification Program fees as shown are current. However, both programs are considering a partial fee increase.

Included for comparison above is the OHD certification program for water systems. Both the OHD's and the Department's certification programs were established under the same certification statute and are similar in size and scope. OHD reports fee revenue sufficient to cover most program costs with the exception of all costs associated with application review and issuance of certificate documents. OHD's current level of personnel services is 1.75 Full Time Equivalent (FTE) staff.

Also for comparison, the operator certification program standards developed by the Association of Boards of Certification (ABC)<sup>2</sup> were reviewed. These standards provide guidance that there should be at least one staff member per 1,000 active certificates. The national average certificate to staff ratio for wastewater programs is about 975:1. The Department's program ratio is 1090:1.

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<sup>2</sup>The Association of Boards of Certification (ABC) is an international association of environmental certification boards, authorities and professionals, recognized and supported by the US Environmental Protection Agency, Water Environment Federation (WEF), and American Water Works Association (AWWA). ABC has a large member base across Canada and the United States.

**Authority to Address the Issue**

ORS 468.020 directs the Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission. ORS 448.410(1)(d) specifically directs the Commission to establish a schedule of fees to cover the costs incurred by the Department for certifying persons qualified to supervise the operation of sewage treatment works (wastewater collection and treatment systems). In accordance with this statute, the adoption of an operator certification fee by the Commission is subject to the prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board.

The Department is presenting this rule for adoption by the Commission subject to the conditions precedent that Department staff obtain approval from the Department of Administrative Services (DAS) and submit a report to the Emergency Board on the proposed fee schedule. The Department has submitted the appropriate letters and a staff report, and has requested to be placed on the agenda for the September 1994, Emergency Board meeting.

ORS 448.410(1)(d) also stipulates that the fee schedule be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. As the proposal does not add staff, the Department's Budget Office believes the proposal complies with the present budget authorization for this biennium (FY 93-95).

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

Department staff have long been aware of the increasing costs for administering the program and the revenue shortfall resulting in substantial reliance on supplemental funding from other sources of non-dedicated revenue. The alternative to increasing revenue is either to reduce staff and services with a negative impact on the ability of the Department to carry out statutory provisions or do nothing and maintain the existing program and staffing level with a continuation of reliance on substantial future supplemental funding.

The proposed fee schedule for the Department was developed to meet projected expenditures and revenue for the next biennium (FY 95-97), and was based on an analysis that considered historical cost data, as well as history of program growth, distribution of operator personnel (certified and non-certified) and certificate levels, program services and required staff levels. The Department also included in the evaluation other similar certification programs, their program elements, staff effort and associated fees, and the operator certification program standards adopted by the ABC.

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Agenda Item D  
August 25-26, 1994 Meeting  
Page 7

In developing this rule amendment proposal the Department involved its Wastewater System Operator Certification Advisory Committee (Committee). The Department is advised in matters concerning certification program effectiveness and needs by this standing committee established under OAR 340-49-085, and composed of representatives of operators, system owners, and the educational community (refer to Attachment F for member listing).

Staff began initial discussions with the Committee of the need to increase certification fees at their October 22, 1993 meeting. The Committee endorsed an increase in fees to reduce supplemental funding and move the program toward a self-supporting target. The Committee met on May 25, 1994, to consider various proposals presented by staff. The following suggestions and recommendations were made by the Committee, and were considered in developing the proposed rule amendments:

- \* Establish a fee schedule that better reflects the increased costs for applicant evaluation and examination related to higher grade levels, and that continues to minimize fiscal impact on the entry level operator and small system operator who often is required to hold multiple certificates.
- \* The effective date for change of examination application deadline and related fees should follow the October 18, 1994 deadline which by rule has already been published for the November 1994 examination.
- \* The proposed fee increase is a big increase to get to 85 percent fee support. Although the Committee endorsed the need to move the program to 100 percent fee support, it felt this proposal was substantial and any further increase at this time would be unreasonable. The Committee recommended that the Department should continue to provide some supplemental funding to help avoid excessive fees.

There is also a statutory requirement to coordinate rules with those adopted by the State Health Division. The manager of the Health Division's drinking water operator certification program regularly attends DEQ's operator certification advisory committee meetings and was consulted in the development of this proposal.

As stated in a previous section above, pursuant to ORS 448.410(1)(d), approval of the proposed fee schedule from DAS and a report to the Emergency Board are required prior to adoption of fees by Commission. Accordingly, DEQ staff have worked closely with the Assistant Attorney General to develop an adoptive process that will assure requirements are completed.



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

Most all of the wastewater system operator certification program fees established for the Department are proposed to be increased. The proposed fee schedule includes fees for application processing actions not previously identified. Minor rule changes regarding the certificate application are also proposed including a change in the submittal date (deadline) for an application for admission to an examination, and clarification that applications received incomplete will be returned with no further processing until corrected by the applicant.

The increased revenue generated by the new schedule of fees will provide funding necessary for the Department to conduct the operator certification program in accordance with statutory requirements and implementing rules. Increased revenues resulting from the proposed increase will be used for maintenance of the existing program only.

**Summary of Significant Public Comment and Changes Proposed in Response**

Attachments E and F identify the Department's evaluation of public comment. In total, 16 commentors (including a written comment signed by ten operators) provided testimony regarding the proposed fee increases. Significant comments included the following: 1) Several commenters were troubled about the amount of the fee increase, 2) A few commented that the basis for the recovery, method of distribution (application vs. renewal revenue program area), and sliding-scale/"tiered" fee proposal, were not adequately justified and/or incorrect, and 3) Three of the commentors, while supporting the program, recommended that the Department minimize administrative costs.

The Department believes that the proposed fees, although representing a substantial overall increase, are necessary to meet statutory requirements and are reasonable and compare well with similar programs that are required to be self-supported. The data analyzed was accurate and relevant. The basis for cost recovery and the method of fee distribution endeavors to keep any one fee from being unreasonable and a barrier for those mandated to be certified under the program.

The Department is committed to assuring efficient and effective program administration, to minimizing costs where possible to keep fees from becoming excessive. The Department does not recommend any changes in the rule amendments as proposed.

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

Adoption of the proposed rules as outlined in Attachment A and subject to the requirements of ORS 448.410(1)(d), will affect all applicants for certification during this biennium, with the exception of those persons who are applying for the November 1994 examination, as that application cycle is already underway. Increased revenue the result of the amended fee schedule will reduced the amount of supplemental funding necessary to support the certification program.

To correct the problems associated with the present 30-day deadline for application for examination, the proposed amendment to the rules will change the date to the first day of the preceding month of the scheduled examination. This will allow staff between 46 and 52 days prior to examination to complete necessary processing.

Also proposed are amendments which will expedite processing of applications and fees by clarifying various options, and provide for the return to the applicant of incomplete applications. The rule amendments will place more accountability on the applicant for assuring that their applications are carefully completed or they will be returned without further processing until corrected. Incomplete applications including missing fees, incomplete statements of experience, and an absence of required supporting documentation of education, have become common, are an added expense to the program, and often result in Department action to disapprove, approve at a lower grade or postpone review.

To summarize the Rule Implementation Plan (see Attachment G), the proposed change will affect most certificate applicants either immediately or within a short period of time. The Department will stop issuing current applications for reciprocity, reinstatement and examinations (beyond November 1994) immediately upon adoption by the Commission. New applications and instructions will be developed and distributed. In addition, a special bulletin informing all potentially affected persons of the rule changes is required. Besides operator personnel, affected persons is defined to include employers (system owners), who are indirectly affected, as most of them either make certificate renewal fee payments on behalf of, or reimburse, their operating staff the cost of renewing certification.

Upon adoption of the rule proposal, to be conditioned on meeting the requirements of ORS 448.410(1)(d), and filing with the Secretary of State, it is anticipated the amended schedule of fees and rules affecting applications will be effective on or about October 21, 1994.

Memo To: Environmental Quality Commission  
Agenda Item D  
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**Recommendation for Commission Action**

It is recommended that the Commission adopt the rule amendments regarding wastewater system operator certification fees and applications as presented in Attachment A of the Department Staff Report, subject to the conditions precedent that the Department obtain approval from the Department of Administrative Services and submit a report to the Emergency Board as required by ORS 448.410(1)(d).

**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
  - 6. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
- C. Presiding Officer's Report on Public Hearing
- D. List of Written Comments Received
- E. Department's Evaluation of Public Comment
- F. Advisory Committee Membership
- G. Rule Implementation Plan

Memo To: Environmental Quality Commission  
Agenda Item D  
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**Reference Documents (available upon request)**

Written Comments Received (listed in Attachment D)  
ORS Chapter 448.405 to 448.430 and 448.992.  
OAR Chapter 340, Division 49  
Projected Expenditures/Fee Revenue FY 95-97  
"1993 Multi-State Survey of Wastewater Operator Certification Programs", August 1993,  
Washington State Department of Ecology  
"Operator/Analyst Certification Program Standards", January 1993, ABC  
DEQ Wastewater Operator Certification Program Activities

Approved:

Section:

*Thomas J. Lucas*

Division:

*Michael Horns*

Report Prepared By: M. Steven Desmond

Phone: 229-6824

Date Prepared: August 9, 1994

MSD:crw  
MW\WC12\WC12803.5  
August 9, 1994

PROPOSED AMENDMENTS TO  
OAR 340-49-055, 340-49-060, & 340-49-065

NOTE:

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

The ~~***bold italicized bracketed***~~ portions of text represent proposed deletions made to the rules.

## EXAMINATIONS

### 340-49-055

- (1) Persons applying for a new certification or to be certified at a higher grade level must be examined, except pursuant to OAR 340-49-035(4), file a completed application and payment of the fees required by OAR 340-49-065 ~~***at least 30 days before the date set for an examination***~~, and meet the education and experience qualifications for the classification and grade level sought. ***All claims for education must be documented.***
- ~~***(2) All applications for admission to the certification examinations must be submitted to the Department by the first of the month preceding the month of the scheduled examination.***~~
- ~~***(3)***~~ (3) The Department will notify the applicant of eligibility for an examination.
- ~~***(4)***~~ (4) Persons accepted for examination shall be examined at the next scheduled examination date, unless the Department at its discretion, chooses to administer an exam at times in addition to the scheduled exams.
- ~~***(5)***~~ (5) A minimum score of 70 percent correct answers is required to satisfactorily pass an examination.
- ~~***(6)***~~ (6) Any person who fails an examination may repeat such examination at a later date upon submittal of a complete application and fee.
- ~~***(7)***~~ (7) Examination shall consist of material in content and level appropriate to each classification and grade level.

- ~~(7)~~ (8) Examinations shall be administered by the Department or its designee, at places and times scheduled by the Department, with 60 days public notice of the schedule. A minimum of two examinations shall be scheduled per calendar year.
- ~~(8)~~ (9) The Department, at its discretion, may administer written or oral examinations at times other than those scheduled.
- ~~(9)~~ (10) All examinations will be graded by the Department, or its designee, and the applicant shall be notified of grade attained and pass or fail. Examinations will not be returned to the applicant.

### CERTIFICATION APPLICATION AND FEES

#### 340-49-060

- (1) All persons applying for certification shall be subject to the fee schedule contained in OAR 340-49-065.
  - (2) Upon the Department receipt of an application and fee, the fee shall be non-refundable, unless no action has been taken on the application, the Department determines that no fee is required, or the Department determines the wrong application has been filed.
  - (3) Reciprocity applicants found to be ineligible for a certificate by reciprocity, and who otherwise meet the education and experience qualifications listed in OAR 340-49-030, may be scheduled for an initial certification examination in accordance with OAR 340-49-055 without payment of an additional fee.
  - (4) Applicants found to be ineligible for admission to a certification examination at the grade level sought, and who otherwise meet the education and experience qualifications for certification at a lower grade level as listed in OAR 340-49-030, may be scheduled for an initial examination without payment of an additional fee.
  - (5) Incomplete applications and applications not accompanied by appropriate fee(s) and attachments, including documentation for all claims of education, will not be processed and will be returned to the applicant.
- ~~(3)~~ (6) All fees shall be made payable to the Department of Environmental Quality.

**FEE SCHEDULE FOR WASTEWATER TREATMENT WORKS SYSTEMS  
OPERATOR CERTIFICATION**

OAR 340-49-065

- ~~(1) Application Type~~ ~~Fee~~
- ~~(a) New Certification — Includes examination . . . . . \$ 50.00~~
  - ~~(b) Renewal Certification (2-Year Renewal Period) . . . . . \$ 40.00~~
  - ~~(c) Certification to a higher grade — Includes examination . . . \$ 35.00~~
  - ~~(d) Certification through Reciprocity . . . . . \$ 55.00~~
  - ~~(e) Reinstatement of Lapsed Certificate . . . . . \$ 50.00~~
- ~~(2) Persons applying for a Wastewater Treatment and Collection System Operator Grade Level I or Grade Level II Combination Renewal Certificate (OAR 340-49-030(1)(d)) must only submit a single renewal fee.]~~

(1) Fee Schedule:

<u>(a)</u>	<u>Provisional</u>	<u>Grade I</u>	<u>Grade II</u>	<u>Grade III</u>	<u>Grade IV</u>
<u>(A) Application Fee</u>	<u>\$ 25.00</u>	<u>\$ 25.00</u>	<u>\$ 35.00</u>	<u>\$ 45.00</u>	<u>\$ 55.00</u>
<u>(B) Examination Fee</u>	<u>\$ 35.00</u>	<u>\$ 35.00</u>	<u>\$ 45.00</u>	<u>\$ 55.00</u>	<u>\$ 65.00</u>
<u>(C) Re-Examination or Reschedule Fee</u>	<u>\$ 35.00</u>	<u>\$ 35.00</u>	<u>\$ 45.00</u>	<u>\$ 55.00</u>	<u>\$ 65.00</u>
<u>(D) Reciprocity Fee</u>	<u>\$ 60.00</u>	<u>\$ 60.00</u>	<u>\$ 80.00</u>	<u>\$100.00</u>	<u>\$120.00</u>
<u>(E) 2-Year Renewal Fee</u>	<u>N/A</u>	<u>\$ 60.00</u>	<u>\$ 60.00</u>	<u>\$ 80.00</u>	<u>\$ 80.00</u>
<u>(F) Reinstatement Fee</u>	<u>N/A</u>	<u>\$ 50.00</u>	<u>\$ 50.00</u>	<u>\$ 50.00</u>	<u>\$ 50.00</u>

- (b) All applications for a new certificate, including upgrade to a higher level, but excluding certification by reciprocity, require scheduling of an examination and shall be accompanied by fee payment equal to the sum of the appropriate application fee and examination fee as shown in subsection (1)(a) of this rule.
- (c) Grade I Conversion Fee: \$20.00. Persons applying for a Grade I certificate who hold a Provisional certificate, or are recognized as an "Operator-In-Training", and who have met all minimum

qualifications for Grade I certification under OAR 340-49-030(1)(a)(B) or OAR 340-49-030(1)(b)(B), must pay a conversion fee for issuance of a certificate.

- (d) Combination Renewal for Grades I and/or II Only: \$90.00. Persons having more than 1 (one) certificate pertaining to wastewater systems (wastewater collection and wastewater treatment) at Grades I and/or II must pay the full renewal fee for one certificate at \$60.00 and a lesser fee for the additional certificate at \$30.00.**
- (e) A reinstatement fee is payable in addition to the renewal fee for a certificate if an operator allows his/her certificate to lapse (expire). Re-examination is required for a renewal application post-marked more than 180 days after the certificate lapses (OAR 340-49-045(3)). A re-examination fee (if any) will be payable as shown in paragraph (1)(a)(C) of this rule.**
- (f) Certificate and Document Replacement – all grades: \$20. Requests for replacement of damaged, stolen, or otherwise lost certificate and renewal documents.**
- (g) Fees are non-refundable upon making application, except as provided in OAR 340-49-060(2).**



# NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality      Water Quality Division  
**OAR Chapter 340**

DATE:	TIME:	LOCATION:
July 29, 1994	1 PM	Third Floor, Room 3A Executive Building 811 SW Sixth Avenue Portland, Oregon

**HEARINGS OFFICER:** Tom Lucas

**STATUTORY AUTHORITY:**    ORS 448.410  
  ORS 468.020

**AMEND:**                    OAR 340-49-055,  
  OAR 340-49-060, and  
  OAR 340-49-065

- 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 current fee schedule for wastewater system operator certification does not provide adequate revenue to cover costs incurred by the Department of Environmental Quality to carry out statutory provisions and associated administrative rules which govern operator certification. The Department is proposing that the Environmental Quality Commission adopt an amended schedule of fees which will increase revenues for various certification actions.

The Department proposes to replace the current fee schedule with a higher fee schedule that better reflects costs associated with certification actions such as processing applications, administering exams, issuing certificates and renewals, re-examination and rescheduling of an exam, document replacement, and issuing certificates as a result of conversion from a provisional or "Operator-In-Training" status.

To equitably distribute costs and minimize the impact of fee increases on individual operators, a "sliding-scale" fee schedule is proposed for applications, examinations and renewal actions that are based on increased Department workload associated with higher level certificates. Another consideration affecting the proposed fees is that many operator personnel who work for small communities or small businesses are required to maintain multiple certificates. The proposed fee schedule includes a lesser "combined" or total renewal fee for those persons who hold both wastewater collection and treatment certificates at Grades I and/or II.

The proposed fee schedule will not result in increased revenue beyond that necessary to carry out the provisions of the certification program. The primary purpose of this rule amendment is to establish a fee schedule that will help recover existing program costs, reduce dependence on other Department funds, and move the program toward a self-support target.

The Department is also proposing minor "housekeeping" modifications affecting all applications, and submittal dates (deadlines) for applications for admission to an examination.

**LAST DATE FOR COMMENT:** Monday, August 1, 1994 at 5:00 p.m.

**DATE PROPOSED TO BE EFFECTIVE:** Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

**AGENCY RULES COORDINATOR:**

Christopher Rich, (503) 229-6775

**AGENCY CONTACT FOR THIS PROPOSAL:**

Steven Desmond, (503) 229-6824

**ADDRESS:**

Water Quality Division

811 S. W. 6th Avenue

Portland, Oregon 97204

**TELEPHONE:**

(503) 229-6824

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

# A CHANCE TO COMMENT ON...

Proposed Adoption of Rule Amendments to Wastewater System Operator Certification Fees and Applications

Date Issued:	June 28, 1994
Public Hearing:	July 29, 1994
Comments Due:	August 1, 1994

**WHO IS  
AFFECTED:**

All persons submitting applications to be certified as a wastewater system operator, all certified operator personnel, and all owners of domestic wastewater systems that are required to have their systems operated or supervised by persons certified by the Department of Environmental Quality.

**WHAT IS  
PROPOSED:**

Most all of the wastewater system operator certification program fees established for the Department are proposed to be increased. The proposed fee schedule includes fees for application processing actions not previously identified. Minor rule changes regarding the certificate application are also proposed including a change in the submittal date (deadline) for an application for admission to an examination.

The increased revenue generated by the new schedule of fees will provide funding necessary for the Department to conduct the operator certification program in accordance with statutory requirements and implementing rules. Increased revenues resulting from the proposed increase will be used for maintenance of the existing program only.

**WHAT ARE THE  
HIGHLIGHTS:**

Most fees are being increased by various amounts on a "sliding-scale" basis associated with increased Department staff workload for activities related to the higher certificate grade for applicant qualification evaluation, including examination and reciprocity, as well as certificate renewal. Proposed fee increases range from \$10.00 to \$85.00 for an application for a new certificate or certificate upgrade (includes fee for initial examination), or certification by reciprocity, and a \$20.00 to \$40.00 increase for a 2-year certificate renewal.



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

11/1/86

**FOR FURTHER INFORMATION:**

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

Many operators working for small communities and small businesses are required to maintain multiple certificates. The proposed fee schedule provides for a fee reduction for those operators who must hold wastewater collection and wastewater treatment certificates at Grade I or II. For example, the proposed renewal fee for Grades I and II are \$60.00 each.

The proposed renewal fee for operators who must hold both certificates (Grade I or II) is \$90.00 total, or a \$30.00 reduction.

Under the proposed fee schedule, a reinstatement fee of \$50.00 for a lapsed (expired) certificate will be payable in addition to the required renewal fee. This represents a substantial increase from the current reinstatement fee of \$50.00 which covers renewal of the lapsed certificate. In addition, fees are proposed for re-examination and rescheduling of examinations, replacement of certificate documents, and for issuing a certificate resulting from a change in provisional or "Operator-in-Training" status.

Another proposed rule modification will clarify that an application received incomplete (without required information, attachments, documentation of education claimed, and/or fees) will be returned to the applicant.

The Department proposes to change the deadline for submittal of an application for admission to a certification examination. Under the present rules a person applying for a certificate that requires scheduling of an examination must file a completed application and pay required fees at least 30 days before the date set for an examination. Given the volume of applications that come in at the deadline, 30 days is not adequate time for Department staff to conduct evaluations, give adequate notification to applicants, and make necessary arrangements for examinations.

The submittal deadline date is proposed to move to the first of the month preceding the month of the scheduled examination. This changes the current 30 day deadline to between 46 and 52 days prior to examination, and will allow program staff sufficient time to complete the application process, provide for earlier notifications of approved, denied or incomplete applications, as well as control costs associated with increased workload.

**HOW TO  
COMMENT:**

A Public Hearing to provide information and receive public comment is scheduled to begin at **1:00 p.m.** on Friday, July 29, 1994 at the following location:

Department of Environmental Quality  
Third Floor, Room 3A  
Executive Building  
811 SW Sixth Avenue  
Portland, Oregon

Written comments must be received by 5:00 p.m. on Monday, August 1, 1994 at the following address:

Department of Environmental Quality  
Water 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 Water Quality Division at (503) 229-6824 or calling Oregon toll free 1-800-452-4011. People with hearing impairment may call the Department's TDD at (503) 229-6993.

**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.

**ACCESSIBILITY  
INFORMATION:**

This publication is available in alternate format (e.g. large print, braille) upon request. Please contact Ed Sale in the Department's Public Affairs office at (503) 229-5766 to request an alternate format.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Proposed Adoption of Rule Amendments to Wastewater System Operator Certification Fees and Applications.

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 448.410

ORS 468.020

2. Need for the Rule

The Department of Environmental Quality is responsible for implementing the provisions of ORS 448.405 to 448.430 and 448.992, and OAR Chapter 340, Division 49, which regulate persons who may operate and/or supervise the operation of domestic wastewater systems, and establishes a wastewater system operator certification program. The purpose of the statute and implementing rules is to help protect public health and the environment, including Oregon's water resources, through proper operation and maintenance of these wastewater systems.

The statute directs the Environmental Quality Commission (EQC) to establish a fee schedule for certification at a level sufficient to cover the costs incurred by the Department for administering the program. Fees received under the schedule are appropriated to the Department by statute, and dedicated to cover certification program expenditures.

The current fee schedule was adopted by the EQC in 1988. This fee schedule generates revenues to cover only about one-half of the Department's present costs for administering the program. A comparison of the current fee schedule with similar fees of other states finds Oregon's wastewater certification fees are among the lowest of any national wastewater program that is required to be self-supporting.

The proposed fee schedule will better identify fees associated with certification actions such as processing applications, administering exams, issuing certificates and renewals, re-examination and rescheduling of an exam, document replacement, and issuing certificates as a result of conversion from a provisional or "Operator-in-Training" status. A higher fee for reinstatement of lapsed certificates (late renewals) is also proposed as an incentive for timely renewal and to reduce program workload associated with lapsed certificate notices. The proposed fee schedule represents an increase in existing fees from 20 percent to 243 percent.

Other proposed rule modifications include addition of a clarifying statement that incomplete applications (without required information, attachments, documentation of education claimed, or accompanying fee(s)) will be returned to the applicant, and a change in the deadline for submittal of a complete application for admission to the certification examination.

Under the existing rules, persons applying for a new certificate that requires a scheduled examination must file a completed application and pay all required fees at least 30 days before the date set for an examination. Given the volume of applications that come in at the deadline, 30 days is not adequate time for Department staff to conduct evaluations, give adequate notification to applicants, and make necessary arrangements for examinations.

The Department proposes to move the application submittal date to the first of the month preceding the month of the scheduled examination. This changes the current 30 day deadline to between 46 and 52 days prior to examination, and will allow Department staff sufficient time to complete the application process, provide for earlier notifications of approved, denied, or incomplete applications, and control costs associated by increased workload. This change is also consistent with the Oregon Health Division Drinking Water Certification Program application filing deadlines.

3. Principal Documents Relied Upon in this Rulemaking

- (a) ORS 448.410.
- (b) Oregon Administrative Rules 340-49-055, 340-49-060, and 340-49-065.
- (c) Minutes of the May 25, 1994 meeting of the Wastewater System Operator Certification Advisory Committee.
- (d) Department staff documents covering multi-state compilation of wastewater certification fees and program staffing level information.
- (e) Washington State Department of Ecology's "Multi-State Survey of Wastewater Certification Programs"

- (f) "Standard VI - Staffing" and "Standard VII - Funding" from "Operator and Analyst Certification Program Standards", Association of Board of Certification (ABC), January 1993.

4. Advisory Committee Involvement

The Department is advised in matters concerning certification program effectiveness and needs by a standing wastewater system operator certification advisory committee (advisory committee) established under OAR 340-49-085, and comprised of geographical representation of operators, operator organizations, system owners, and the educational community. The Department is also required by statute to coordinate rule-making with the Oregon Health Division. The Health Division is often consulted on various program actions, and a representative regularly attends and participates in advisory committee meetings.

Department staff began discussion of the need to increase fees charged for various certification actions with the advisory committee and a representative of the Health Division at a meeting of the advisory committee on October 22, 1993. This discussion assisted the Department on further development of fee increase proposals which were considered by the advisory committee on May 25, 1994.

The advisory committee was in full support of the need to increase fees to reduce supplemental Department funds and move the program toward a self-supporting target. After consideration of various Department proposals at the May 25 meeting, the committee made suggestions that are reflected in this proposal.

The advisory committee recommended that the fee schedule should reflect the increased costs for applicant evaluation and examination related to higher grade levels, minimize fiscal impact on entry level and small system operators, especially those required to hold multiple certificates, and that the Department should continue to provide some supplemental funding to help avoid excessive fees.



State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Adoption of Rule Amendments to Wastewater System Operator Certification  
Fees and Applications

**Fiscal and Economic Impact Statement**

**Introduction**

The Department is proposing to increase existing fees charged to individual wastewater system operators for various operator certification actions including application processing and evaluation, examination, and renewal and reinstatement of certificates. The Department also proposes the addition of fees to cover other actions, such as re-examination and rescheduling of examinations, replacement of certificate documents, and issuing certificates as a result of a conversion from a provisional or "Operator-In-Training" status. The wastewater system operator certification program has been supported largely by certification fees paid by individual operators supplemented by other water quality program funds.

The proposed fee increases are needed to move toward a self-supporting program and away from dependence on other funds. The proposed fee increases will result in the operator certification program being funded by individual operators at about 85 percent of total program costs.

**Individual Operators**

The proposed fee increases will have a negative fiscal impact on wastewater system operators by increasing their expenses for obtaining and maintaining certification. Fees will increase from 20 percent to about 243 percent. The average increase for all fees will be about 77 percent. The increase for renewals will be 50 percent for operators at Grades I (entry level) and II, and 100 percent for operators at Grades III and IV (highest level).

The proposed fees will help achieve fairness and equity among applicants in relation to the Department's regulatory workload associated with higher level certificates (Grades II, III and IV). Certificate application fees (including a fee for examination) will increase from a flat fee of either \$50.00 (initial certification) or \$35.00 (upgrade certification) to a "sliding-scale" fee ranging from \$60 for Provisional and Grade I operators to \$120.00 for Grade IV operators. Application and examination fees will be identified separately on the fee schedule, as these are refundable fees which will be returned to the applicant or other payee if no action is taken by the Department, such as making a determination of an applicant's qualifications for certification and/or scheduling an examination.

Certification by reciprocity will increase from a flat fee of \$55.00 to a sliding-scale ranging from \$60.00 for Grade I to \$120.00 for Grade IV. This will help defray costs for coordinating with other certification authorities, including examination evaluation, operator status verification and maintenance of reciprocity agreements.

Certificate renewal fees (two-year period) will increase from a flat rate of \$40.00 per certificate to \$60.00 for Grade I and II operators and to \$80.00 for Grade III and IV operators. Many operators working for small community or small business systems are required to maintain certificates both for wastewater collection and for wastewater treatment. These operators are traditionally on the lower end of the operator pay scale. The proposal incorporates a fee reduction of \$30.00 for an additional required wastewater certificate renewal for those operators holding wastewater collection and wastewater treatment certificates at Grade I and/or II.

Additional processing of applications such as examination rescheduling, evaluation of experience and/or educational qualifications, post-examination evaluations, issuing new or replacement certificate documents impacts staff workload. The proposal includes fees for these actions. Time and resources for processing incomplete applications is significant. The department will modify its application formats to help assure submittal of completed applications which include payment of appropriate fee(s). Identified base application fees under the schedule will be non-refundable and incomplete applications will be returned as further incentive.

Although the proposed fee increases are substantial the Department believes the new fee schedule is reasonable and reflects costs for operating the certification program at different grade levels. In comparison with other states with similar certification programs that are required to be self-supporting, Oregon's operator certification fees are among the lowest nationally. The following table is provided to support the Departments findings:

**May 1994 Wastewater Certification Fee Survey - Self-Supported Programs**

<u>State</u>	<u>Application/ Examination</u>	<u>Renewal (Annual Equivalent)</u>	<u>Reinstate (Late Fee)</u>	<u>Ratio of Certificates to Staff (1 FTE)</u>	<u>Percent Fee Supported</u>
CALIFORNIA	\$100-\$245	\$25-\$50	\$ 50	1500	≤ 100
FLORIDA	\$125	\$25	\$100-\$150	1200	80
GEORGIA	\$ 50	\$30	\$100-\$260	1000	100
IDAHO*	\$ 55	\$30	\$ 30	1030	≤ 100
MONTANA	\$ 35	\$30	\$ 10	1240	100
N. CAROLINA	\$ 75	\$30	\$ 50	1200	100
OKLAHOMA	\$ 40	\$30	\$ 10	1200	100
<b>OREGON</b>	<b>\$ 35-50</b>	<b>\$20</b>	<b>\$ 10</b>	<b>1090</b>	<b>50</b>
WASHINGTON	\$ 50	\$30	Considering	1330	≤ 80
OREGON Water	\$ 35	\$40	\$ 10	860	≤ 100

\* The State of Idaho has the only remaining all-voluntary program in the nation.

Included for comparison above is the Oregon Health Division's certification program for operators of drinking water systems. Both the Health Division's and the Department's operator certification programs were established under the same certification statute and are similar in size and scope. The Health Division reports adequate fee revenue to cover personnel services at 1.75 Full Time Equivalent (FTE) staff and associated costs.

Finally, although individuals are solely responsible for obtaining and maintaining appropriate certificates, it is estimated that as many as 70 percent of all employers currently pay or reimburse operators for certification related fees.

**General Public**

The general public may be indirectly impacted by the proposal to raise fees. Public and privately owned domestic wastewater systems may pass along the costs to system users if the systems choose to participate in paying or reimbursing individual operator their personal costs for obtaining and maintaining required certification. The actual cost are very insignificant compared to the overall costs to properly staff, operate and maintain wastewater systems. The Department believes that the goals of the certification program promote more effective and efficient system operation and maintenance which actually has a significant potential for reduction in costs to system customers.

## **Small Business**

Certification fees are charged to individuals who are required to be certified or desire to be certified. The Department is proposing a schedule of fees which is proportional to the resources needed to process certificates.

If a small business owner is the certified operator or chooses to pay or reimburse the system operator's certification fees, the increase in costs will be \$10.00 for a single initial certificate (Provisional or Grade I) and \$20.00 for a two-year certificate renewal. In very few cases, an operator of a small business wastewater system may be required to renew a wastewater collection and a wastewater treatment certificate. The increase for a two-year renewal of both certificates would be \$50 under the proposed fee schedule.

The Department estimates there are as many as 95 operators working for about 70 small privately owned wastewater systems that are certified and presently have their certification fees paid by their employer, with the potential for another 10 to become certified in the future. Of these operators, about one-half are certified in both wastewater collection and treatment.

## **Large Business**

If a private owner of a large community wastewater system chooses to pay or reimburse a system operator's initial certification fees, the proposed increase in costs will range from \$30.00 for a single Grade II certificate for one operator to a high of \$70.00 for a single Grade IV certificate. The increased cost for a two-year certificate renewal will range from \$20.00 for a Grade II certificate to \$80.00 for a collection and a treatment certificate renewal where both certificates are at Grade III and/or IV.

The Department estimates there are about 25 operators working at 6 wastewater systems owned by large businesses that are certified and presently have their certification fees paid by their employer. There is a potential for another 5 to 10 operators becoming certified in the future. Of these operators, about one-third hold wastewater collection and treatment certificates. The total fiscal impact will depend on the number of operators whose certificate fees are paid by their employer.

## **Local Governments**

If a local government chooses to pay the initial certification fees, the increased cost will range from \$10.00 for a Provisional or Grade I certificate to \$70.00 for a Grade IV certificate. Two-year renewal cost increases will range from \$20.00 for a single certificate at Grade I or II to \$50.00 for renewal of a collection and a treatment certificate at Grades I and/or II, or to \$80.00 for renewal of a collection and a treatment certificate at Grades III and/or IV. The total fiscal impact will depend on the number of persons whose certificate fees are paid by their employer.

The Department estimates that about 1250 operators working at 280 publicly owned wastewater systems that are certified at this time. Of these certified operators, the Department estimates that about 450 certified operators hold wastewater collection and treatment certificates. As many as 900 certified operators presently have their certification fees paid by their employer. The Department believes there is a potential for another 250 operators presently working in the public sector to become certified in the future.

## **State Agencies**

Other state agencies will be affected to the same extent as large and small businesses for state owned wastewater systems where the agency elects to pay certification fees for their operators or contractors.

The Department anticipates that the proposed fee schedule will generate revenues of \$164,000 for the next biennium (FY 95-97). The Department proposes to maintain a staffing level to provide as close to one full time staff person per each 1,000 active certificates in the program. Presently there are 1860 active certificates. This is consistent with model certification program standards as established by the Association of Boards of Certification (ABC), an international association representing environment occupational licensing.

The proposed fee increases will not result in additional fees beyond that needed to maintain existing and necessary certification program activities. It is anticipated that the certification program will continue to see a net growth in certificates of 3 percent over a biennium. If the fees proposed prove to be adequate to cover expenses as estimated, any increased growth should result in sufficient fees to support a corresponding increase in staff effort.

## **Assumptions**

It is assumed that the level of certification activity in the coming year will equal the average activity level of the last two years, or a net growth of about 3%. If the workload is greater than expected, the proposed fee schedule should generate sufficient revenues to maintain a corresponding level of staffing effort.

It is further assumed that the Department will commit to a base level of supplemental funds sufficient to cover costs to the operator certification program for incidental permitting and permittee compliance and enforcement costs and that regional permit compliance activity with respect to certification will be charged to permit compliance fees.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

Proposed Adoption of Rule Amendments To Wastewater System Operator  
Certification Fees and Applications

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The purpose of the proposed rules is to amend a fee schedule that provides necessary revenues to cover costs of implementing the existing wastewater system operator certification program by the Department of Environmental Quality. In addition, housekeeping amendments are proposed relating to various certificate applications including filing deadlines for examination.

Operator certification helps ensure NPDES and WPCF permitted domestic wastewater systems are properly operated and maintained as required under permit. The Department regulates public and privately owned domestic wastewater systems through a plan review and permitting process which affects new and existing wastewater systems, including major additions, alterations, and extensions of services.

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 rule amendments indirectly relate to the issuance of NPDES and WPCF permits which are identified land use activities of the Department. However, the proposed amendments affect applications and the fees charged to individual operator personnel, which do not impact the land use implications of permits.

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

Yes  X  No      (if no, explain):

- 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

Thomas J. Lucas  
Division

Robert G. ...  
Intergovernmental Coord.

6/9/94  
Date



## Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.

### Proposed Adoption of Rules Amending Wastewater System Operator Certification Fees and Applications

The following questions should be clearly answered, so that a decision regarding the stringency of a proposed rulemaking action can be supported and defended:

Note: If a federal rule is relaxed, the same questions should be asked in arriving at a determination of whether to continue the existing more stringent state rule.

1. *Are there federal requirements that are applicable to this situation? If so, exactly what are they?*

Not at this time. Reauthorization of the Clean Water Act is pending before the U.S. Congress. Draft legislation in the Senate includes provisions for training of operator personnel, a requirement that chief operators of wastewater systems be certified, establishment of guidelines for minimum standards for certification of operators by a State and recognition of qualified State certification programs.

2. *Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?*

n/a

3. *Do the applicable federal requirements specifically address the issues that are of concern in Oregon? Was data or information that would reasonably reflect Oregon's concern and situation considered in the federal process that established the federal requirements?*

n/a

4. *Will the proposed requirement improve the ability of the regulated community to comply in a more cost effective way by clarifying confusing or potentially conflicting requirements (within or cross-media), increasing certainty, or preventing or reducing the need for costly retrofit to meet more stringent requirements later?*

n/a

5. *Is there a timing issue which might justify changing the time frame for implementation of federal requirements?*

n/a

6. *Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?*

n/a

7. *Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)*

n/a

8. *Would others face increased costs if a more stringent rule is not enacted?*

n/a

9. *Does the proposed requirement include procedural requirements, reporting or monitoring requirements that are different from applicable federal requirements? If so, Why? What is the "compelling reason" for different procedural, reporting or monitoring requirements?*

No. There is no federal wastewater system operator certification program at this time.

10. *Is demonstrated technology available to comply with the proposed requirement?*

n/a

11. *Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?*

Yes. The rules that govern the Department's wastewater system operator certification program establish minimum qualifying standards, including education, experience, examination and continuing professional growth, for persons who operate and/or supervise the operation of domestic wastewater systems. The consistent implementation and enforcement of these standards help

raise the level of knowledge, skill and accountability of supervisory operators and can improve the operation of wastewater systems to prevent permit violations which often result in increased pollution of Oregon's environment and water resources.

The proposed fee schedule will generate additional revenue to help support continued program administration which, in addition to certifying operators, provides for compliance oversight, development and distribution of advisory bulletins and guidance documents, coordination of training, and delivery of technical assistance.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: August 1, 1994

**To:** Environmental Quality Commission

**From:** Thomas J. Lucas

**Subject:** Presiding Officer's Report for Rulemaking Hearing  
Hearing Date and Time: July 29, beginning at 1:00 p.m.  
Hearing Location: DEQ Headquarters, Conference Room  
3A.

Title of Proposal: Revision of Fees and Applications for Wastewater  
System Operator Certification.

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.

One person was in attendance, One person signed up to give testimony.

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

1. **Stanton A. LeSieur, Acting General Manager, Unified Sewerage Agency.** Mr. LeSieur testified in favor of the proposed fee increases and suggested that the Department staff should seek ways to keep costs as low as possible and find other sources of funds when possible. He submitted additional written testimony

There was no further testimony and the hearing was closed at 1:35 p.m..

Attachments:

Written Testimony Submitted for the Record.

## SUMMARY OF WRITTEN COMMENTS RECEIVED

1. **Stephen Boynton, Environmental Health Specialist, S.W. Washington Health District.** Mr. Boynton holds certificates for Oregon, California and Washington. He opposes the fee increase and suggested that program costs could be reduced by renewing certificates less frequently.
2. **Chad Seibel, Public Works Superintendent and nine staff members, City of McMinnville.** Mr Seibel and the public works staff stated that certification program fees should be increased proportionately to the cost of administering each program area, for example, administration of exams and renewals. They also testified that grades 3 and 4 should get a discount for holding multiple certificates.
3. **John O'Neill, General Manager, Timberline Lodge.** Mr. O'Neill stated that the proposed fee increase is exorbitant. He recommended that the fee increase be reduced and that the Department should consider staff reductions.
4. **Arthur Guglielmo, Artesia New Mexico.** Mr. Guglielmo is a certified operator in Oregon. Mr. Guglielmo is opposed to the fee increase on the grounds that the high fees will restrict opportunity for new operators to enter the field.
5. **Albert Guenther, Operations Superintendent, Oak Lodge Sanitary District.** The Oak Lodge Sanitary District testified that the proposed fee increase will average about \$380 over existing fees for district employees. The District opined that the justification for the increase was inadequate and was based largely on information from other states and from the Association of Boards of Certification. The District stated that a reevaluation of the existing proposal should be considered and that the appropriate approach would be to determine what services are being provided and how DEQ can deliver the services most cost effectively.
6. **Stanton A. LeSieur, Acting General Manager, Unified Sewerage Agency.** The Unified Sewerage Agency supports the proposed fee increases and encourages the DEQ to manage the operator certification program to keep costs as low as possible, and to seek other funding sources for the program. Mr. LeSieur provided an example of a situation where DEQ did not charge the Unified Sewerage Agency for the cost of providing mailing labels but that counterparts in Washington and California did charge for the same service. He believes that DEQ should charge for all pertinent services.

7. **Rolland Baxter, Public Works Director, City of Corvallis.** The City of Corvallis recognizes the need for skilled and certified wastewater system operators. The City recommends that fees received through the program be placed in a dedicated fund and expended solely for operator certification purposes. The City also encourages DEQ to minimize administrative costs as much as possible to limit future fee increases.

## Department's Evaluation of Public Comment

**COMMENT:** One commenter (see Attachment D, No. 1) opposed the proposed fee increase and suggested that program costs could be reduced by less frequent renewal.

**RESPONSE:** The Department initially established a two-year period of professional growth (continuing education) concurrent and pre-requisite to a two-year renewal after reviewing the renewal requirements of similar programs in other states. A recent survey finds the majority of states have one or two year renewal periods, including California and Washington. The minority of states with longer renewal periods are not comparable to the Department's program which is required to support on-going program activities through operator fees. These state programs with lower fees are primarily or heavily supplemented by other state funding.

After evaluating its renewal process, the Department concluded that there is not sufficient cost savings with less frequent renewal. Given the amount of day-to-day program activities that renewal fees support, a less frequent renewal would actually result in single fee that would be considered excessive when due and payable at longer intervals, and most likely difficult for the operator to budget for.

The Department believes that the present two-year renewal term run concurrent with the professional growth renewal eligibility requirement of 2.0 Continuing Education Units (CEUs) is the simplest for certified operating personnel to plan for, an appropriate period of time for the program to evaluate training, and easiest to administer.

**COMMENT:** A group of commenters (Attachment D, No. 2) stated that the certification program fees should be increased proportionately to the cost for administering each program area.

**RESPONSE:** The Department primary goal was to reach 85% operator fee support while keeping any one fee from being excessive. The proposed application/examination and renewal fees are on a sliding-scale proportionate to increased costs for higher grade certification actions.

For example higher program costs typically result for experience and education evaluation, examination development/scoring, complaint and compliance investigation, and technical assistance for the higher certificate levels.

The Department recognizes that if the actual costs were recovered for application and examination at Grade III and IV, that the proposed fee would double and become unreasonable. Further, even though fees are lower for Grade I and II operators, their large numbers help defray (subsidize) the high cost of Grade III and IV certificate actions. The bottom line is that some application/examination cost subsidy, in addition to all other day-to-day program activity and support, must come from the renewal fee revenue base to keep application and examination fees reasonable. The Department believes the proposed fee schedule reflects a proper balance.

**COMMENT:** A group of commenters (Attachment D, No. 2) testified that Grade III and IV certified operators should get a discount for holding multiple certificates.

**RESPONSE:** While the Department was sensitive to concerns of Grade III and IV operators, a discount was not justified nor deemed reasonable given the fact that Grade I and II operators subsidize some of the Department's efforts directed toward higher level certificate activity. The Department's focus was to increase fees to move closer to a self-supporting revenue base while continuing to provide a fee discount to Grade I and II operators.

Grade I and II certified operators are by and large at the lower end of the pay scale. It is this group who represent the entry level operator, and the small community/small business wastewater system operator who is mandated to obtain and maintain multiple certificates, not only in wastewater, but in drinking water as well.

**COMMENT:** One commenter (Attachment D, No. 3) stated that the proposed fee increase was exorbitant, that the fee increase be reduced through staff reductions.

**RESPONSE:** The Department made an evaluation and comparison of other similar certification programs, their activities and associated fees, and found Oregon's current wastewater certification program fees among the lowest nationally and regionally for operator fee supported programs.



Although the proposed fee increases for the operator certification program are substantial, the Department believes this new fee schedule reflects costs for operating the program at different grade levels and is necessary toward meeting the legislative self-support mandate.

While there is ample evidence to support that a majority of employers pay operator fees, employers are not mandated by law to do so. The certificate is a personal and professional credential, and achieving and maintaining same is the sole responsibility of the individual. The Department does not consider the \$10.00 to \$85.00 increase for the certification application (includes initial examination) and the \$10.00 to \$20.00 annual equivalent increase in renewal fee, excessive nor likely to pose an economic burden on individual operator personnel required to be certified.

With respect to program staffing, the Department evaluated the existing and necessary program activities, as well as the history of staff requirements (about 1.75 FTE) to deliver services and compared the data with similar programs in other states and model certification program standards as developed by the Association of Boards of Certification (ABC). The Department has concluded that the program staffing effort and resultant program costs are not excessive or out of line.

For certification duties alone, ABC recommends one staff member per 1,000 active certificates. A comparison of 44 wastewater certification programs find the certificate ratio per staff member at about 975. The ratio of certificates to staff for the Department's operator certification program is presently about 1,090:1 and is expected to rise to about 1,120:1 during the next biennium.

**COMMENT:**

One commenter (Attachment D, No. 4) is opposed to the fee increase on the grounds that the high fees will restrict opportunity for new operators to enter the field.

**RESPONSE:**

The proposed fee structure explicitly provides for the lowest fees to be charged to Grade I operators which represent the career or entry level and is made up of students, "operators-in-training" and very small system operators. The Department does not believe that the \$10.00 increase in application fee (includes initial certification examination) or the \$10.00 annual equivalent increase in renewal will present a barrier to entry level examination and certification, as evidenced by participation levels in other similar programs with equal or higher fees.

**COMMENT:**

One commenter (Attachment D, No. 5) expressed an opinion that the justification for the fee increase was inadequate and was based largely on information from other states and from the Association of Boards of Certification (ABC). Further, that a reevaluation of the existing proposal should be considered that determines what services are being provided and how the Department can deliver the services most cost efficiently.

**RESPONSE:**

The Department believes that adequate justification exists by reason of legislative mandate to charge certification fees that cover the Department's costs for implementing the certification program as required by law. The increase to approximately 85% fee support from just under 50% was necessary. Staffing levels and the amount of supplemental funding to balance the budget have remained fairly constant since 1989. The fees have not been adjusted since adopted in September 1988, almost six years ago.

The Department believed it appropriate to include in its evaluation of the program services and staffing levels a comparison with other similar programs, as well as identifying consistency with model program standards as developed by the ABC. Existing necessary and required services for a program of about 1,900 active certificates and staffing levels (about 1.75 FTE) were evaluated and compared to similar programs regionally and nationally. After careful consideration it was determined that no reduction in staffing was possible. As staff costs, materials and services, as well as program activities are well documented by the Department, it was fairly simple to project costs for the next biennium based on a modest two-year net program growth.

**COMMENT:**

Three commenters (Attachment D, Nos. 5, 6 and 7) while stating support for the certification program, expressed concern that the Department manage the certification program to minimize and keep the administrative costs of the program low, so as to limit future fee increase requests.

**RESPONSE:**

The Department agrees with the commentator that it is appropriate to reduce costs wherever possible and the program will continue to evaluate ways to deliver services more efficiently and effectively. The Department is committed to this effort to help keep fees from becoming excessive.

Examples of the Department's certification program cost/effort reduction and efficiency improvement to date include, development of a computerized certification and system classification data base, combining Grade I collection and treatment system examinations into one, execution of a reciprocity partnership agreement for examinations with over 25 states through ABC, enhancement and improved availability and use of the Continuing Education Unit (CEU) for education through the Oregon Environmental Services Advisory Committee (ESAC) and implementation of a professional growth certification and audit process for compliance with continuing education requirements.

**COMMENT:**

One commenter (Attachment D, No. 7) who represents a large municipality that pays the costs of maintaining their staff's certifications, wanted assurance that the City's dollars were being used for the intended purpose. It was suggested that all fees generated by the program be dedicated to funding the program.

**RESPONSE:**

The certification law (ORS 448.425) provides protection assuring dedicated use of certification fees. The law states that any fees collected pursuant to the schedule adopted by the Environmental Quality Commission shall be deposited in the General Fund of the State Treasury to the credit of the Department of Environmental Quality. Further, such fees are continually appropriated to the Department to pay the costs of administering the certification program.

The Department has and will continue to comply with this legislative directive. It is estimated that the proposed fee schedule will generate revenue in the order of 85 percent of actual program costs. The shortfall will be supplemented by other Department sources of revenue.

**WASTEWATER SYSTEM OPERATOR CERTIFICATION  
ADVISORY COMMITTEE**

Holly Ploetz, Chair  
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Water/Wastewater Dept.  
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Albany, OR 97321

John Lewis  
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League of Oregon Cities'

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Public Works Department  
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Stephen R. Yoder  
City of Silverton  
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Silverton, OR 97381

(June 1994)

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Adoption of Rule Amendments to Wastewater System Operator Certification Fees and  
Applications

Rule Implementation Plan

**Summary of the Proposed Rule**

Under the proposed amendment to OAR 340-49-065, all fees charged by the Department of Environmental Quality (Department) for the certification of operators of domestic wastewater collection or treatment systems will increase. These fees help provide the necessary revenue base to cover the Department's costs of implementing the operator certification program. The present certification fee schedule generates only about 50 percent of the required program revenue. The proposed fee schedule will expand and raise fee revenue to approximately 85 percent.

To correct the problems associated with the present 30-day deadline for application for examination, the proposed amendment to OAR 340-49-055, will change the date to the first day of the preceding month of the scheduled examination. This will allow staff between 46 and 52 days prior to examination to complete necessary processing which includes application evaluation, notification to the applicant, and making various examination arrangements.

Also proposed are amendments to OAR 340-49-060, which will help expedite the processing of applications and fees by clarifying various options, and provide for the return to the applicant of incomplete applications. These rule amendments will place more accountability on the applicant for assuring that their applications are carefully completed or they will be returned without further processing until corrected.

A certificate as an operator of a wastewater collection or treatment system is a professional credential. All costs associated with certification are the sole responsibility of each individual. The proposed rule amendments will affect all persons who submit applications for acquisition, renewal and replacement of certificates as operators of domestic wastewater collection or treatment systems.

In addition to operator personnel, employers (system owners) are also affected by the proposal. Although not mandated by law to pay certification fees, a majority of system owners support the program and pay their operator's fees for renewing certification. Operator neglect of a scheduled examination deadline or the submittal of an incomplete application may also impact a system owner's ability to comply with legal requirements to have a properly certified operator in responsible charge of the system.

### **Proposed Effective Date of the Rule**

The proposed rule amendments will become effective upon filing with the Secretary of State, on or about October 21, 1991.

Note: Although the Environmental Quality Commission (Commission) will consider the proposal at their meeting of August 25-26, 1994, staff is presenting this rule for adoption by the Commission subject to the conditions precedent that staff obtain approval from the Department of Administrative Services (DAS) and submit a report to the Emergency Board on the proposed fee schedule. The next meeting of the Emergency Board is in September of 1994.

### **Proposal for Notification of Affected Persons**

Affected persons will be notified at the time they inquire about submitting an application for certification or upon receipt of notice and application for certificate renewal. In addition, the Department will endeavor to notify operators, operators-in-training, wastewater technology students and systems owners, of relevant changes through a special informational bulletin, the annual notice of scheduled examinations (to be mailed in January 1995), and various available operator publications.

### **Proposed Implementing Actions**

As the proposed change will affect most certificate applicants either immediately or within a short period of time following adoption, the Department will stop issuing current applications for reciprocity, reinstatement and examinations (beyond November 1994) upon adoption action by the Commission and after approval by the DAS and a report to the Emergency Board.

A special bulletin informing all potentially affected persons of the rule changes is appropriate as increased renewal fees for the next two-year period (begins July 1, 1995) will be due and payable prior to July 1, 1995. Late fee payments are subject to a significant reinstatement penalty of \$50 under the proposal. Large systems that pay their staff's fees will need to plan accordingly.

### Proposed Training/Assistance Actions

The certification program is staffed by two persons and is supported by two Water Quality Division clerical staff and the Department's Business Office. Early coordination with respective management and staff will be required as would pertain to proper fees, deadlines and application return procedure.

Revised rules will need to be printed, and applications and instructions developed and printed for distribution. Written procedure for the handling and evaluation for completeness of applications will also need to be developed.

Prior to the effective date of the proposed fee schedule and application amendments, all management and staff associated with the certification program will need to receive a briefing and instructions regarding: 1) the collection and return of insufficient fees, 2) checking applications for completeness, and 3) returning same if deficient (with proper notice attached). The goal of the briefing and instruction will be to assure staff action is consistent with the amended rules, instead of the present ones.

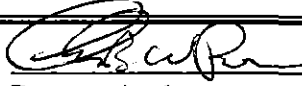
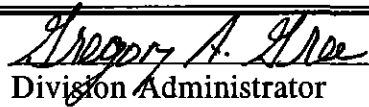
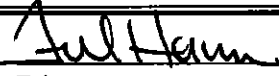
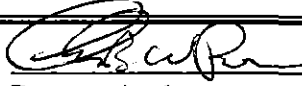
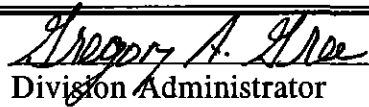
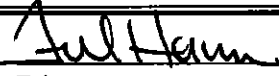
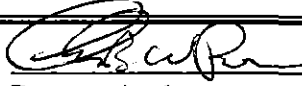
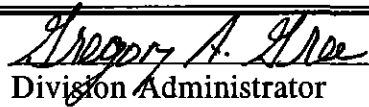
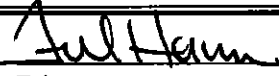
Regarding technical assistance to the regulated community and others, the Department will revise its presentation on the certification program with respect to fees and applications as may be given at short schools, community colleges, and professional and local government organizations. As previously mentioned, relevant information will be disseminated through special Department notices and bulletins, and various operator publications/newsletters. Staff will provide technical assistance that is consistent with the rules as adopted.



## Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

**Agenda Item F**  
**August 26, 1994 Meeting**

<b>Title:</b> Proposed Rule on Public Records Access and Reproduction			
<b>Summary:</b> The proposed rule would provide guidance on how members of the public can access and obtain copies of public records maintained by DEQ, and establishes a new fee schedule for these activities.			
<b>Department Recommendation:</b> The Department recommends that the Commission adopt the rules/rule amendments regarding accessing and copying public records maintained by DEQ as presented in Attachment A of the Department Staff Report.			
<table style="width: 100%; border: none;"><tr><td style="text-align: center; width: 33%;"> Report Author</td><td style="text-align: center; width: 33%;"> Division Administrator</td><td style="text-align: center; width: 33%;"> Director</td></tr></table>	 Report Author	 Division Administrator	 Director
 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: August 9, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director *Fred Hansen KO*  
Subject: Agenda Item F, EQC Meeting August 26, 1994.

Proposed Rule on Public Records Access and Reproduction.

**Background**

On May 13, 1994, the Director authorized the Management Services Division to proceed to a rulemaking hearing on proposed rules which would provide guidance on how members of the public can access and obtain copies of public records maintained by DEQ. A fee schedule is also provided for public records-related activities.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on June 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 May 20, 1994.

A Public Hearing was held July 7, 1994, at 2:00 pm, DEQ headquarters room 10A. with Chris Rich serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through July 12, 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.

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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).

Memo To: Environmental Quality Commission  
Agenda Item F  
August 26, 1994 Meeting  
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The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

### **Issue this Proposed Rulemaking Action is Intended to Address**

Under the Oregon Public Records Law, ORS 192.410 to 192.505, the Agency must facilitate public access to, and reproduction of, public records maintained by the Agency. Pursuant to this statute, the DEQ promotes a policy of actively and effectively making Agency records available to the general public. At the same time, the Agency has a strong interest in maintaining the integrity of these records, making sure that the records remain intact for future use by Agency staff and the public, and establishing fees reasonably calculated to allow the Agency to recoup its actual costs for making public records available to the public. This rulemaking also proposes a mechanism whereby waivers of copying fees are provided, or may be requested, under certain circumstances.

In recent years, increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. Accordingly, the Agency perceives the need to adopt rules to formalize policies and meet the statutory and Agency goals discussed above.

### **Relationship to Federal and Adjacent State Rules**

The Department is not aware of any conflicting requirements being imposed by the federal government or other states.

### **Authority to Address the Issue**

Oregon Revised Statutes (ORS) 468.020 authorizes the Environmental Quality Commission (EQC) of the Oregon Department of Environmental Quality (DEQ) to adopt rules and standards as considered necessary to perform its statutory functions. ORS 192.410 to 192.505 (Oregon Public Records Law) charges DEQ, as a state agency, with general responsibilities relating to public records maintained by the Agency, and provides specific authority to enact reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of Agency records personnel and staff.

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

The proposed rule was developed primarily by the Department, in consultation with the Attorney General's office. Much of the proposed rule was developed by analyzing internal Agency records systems and by applying the requirements of the Oregon Public Records Law. Agency managers and clerical staff responsible for implementing this rule were consulted during the rule drafting process. The budget office undertook a costing survey thereby reasonably calculating the costs of reimbursing the Agency for actual costs associated with making public records available. Because of the internal nature of the proposed rule, an advisory committee was not used in the development of the rule.

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

The general public, regulated community, and other agencies will be affected in substantially the same way by this proposed rule. For all groups, the proposed rule provides reasonable expectations and consistency by establishing uniform procedures, fees, and guidelines for accessing and obtaining reproductions of Department of Environmental Quality (DEQ) public records.

In recent years, increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. In accordance with the Oregon Public Records Law, ORS 192.410 to 192.505, the Agency perceives the need to adopt formal rules to meet the statutory and Agency goals of actively making Agency records available to the general public, establishing fees to recoup Agency costs, and maintaining the integrity of these records.

The proposed rule outlines how members of the public can access and obtain copies of diverse public records kept by DEQ, provides fee schedules, and other related access and fee information. The proposed rule provisions are designed to provide direction in obtaining records, and contain reasonable restrictions so that records can be protected and maintained.

The proposed rule would:

1. Establish consistent agencywide procedures for responding to public records viewing and copying requests.
2. Provide fee schedules and procedures for obtaining reproductions of public records.

3. Establish reasonable restrictions to protect the integrity of the public records maintained by the agency and prevent unreasonable interference with the regular discharge of staff duties.
4. Formalize existing agency policy which is based on requirements of the Public Records Law. Because of the internal nature of this process and the proposed rule, an advisory committee was not used in the development of the proposed rule.
5. Establish a mechanism whereby waivers of copying fees may be obtained under certain circumstances.

#### **Summary of Significant Public Comment and Changes Proposed in Response**

Written testimony was received from 5 persons. All supported the rule with modifications. Attachment A to this staff report presents the rule with changes proposed in response to testimony. Since the original proposal was an entirely new rule, the amendments are shown by underlining and strikeout reflect the changes made in response to comments.

The suggested changes fit into five main categories including 1) responding to requests, 2) fees and procedures for hardcopy reproductions, 3) on-line/electronic records, 4) fee waiver issues, and 5) records exempt from disclosure. The highlights of these changes are summarized below.

#### **1. Responding to Records Requests.**

Several comments suggested that the rule be revised to clarify how requests from the public are made and responded to by the Department. The rule has been modified in response to this comment.

One comment stated that excluding the hours scheduled for public review and copying of Department records from 12:00 - 1:00 pm daily was burdensome on requestors. The Department maintains that the hour limitations provided in the rule are necessary to respond to prior records requests and make staff copies. Additionally, it would be difficult to provide services during lunch when limited administrative help is available.

A comment suggested that the Department provide records retrieval from remote locations/regional offices in the rule. Because these files are active, the Department identifies the need to maintain these records at the locations where they are in use, and not to provide remote retrieval of records.

## **2. Fees and Procedures for Hardcopy Reproductions.**

A concern was raised that "reasonable restrictions" on self-copying using DEQ equipment should be omitted, and such copying should be non-discretionary for DEQ staff. The Department disagrees with this proposal. The Oregon Public Records Law clearly allows for such restriction to prevent such interference.

A general comment was made that the proposed fee schedule is too high, and that mandatory costs are unnecessary and prohibitive. The proposed fee schedule was generated pursuant to a costing study performed in June of 1994 for the purposes of this rule process.

A commentor also asked for clarification as to which public records requests would be subject to "excessive staff time" charges of \$18.00/hour. Such charges will apply to public record requests for documents that are not readily available to staff, such as archived or stored records, and requests for record requests that require technical researching or voluminous file review, sorting, or copying. Some concern was also raised about assessing fees for public reviewing of records that does not involve copying. It is the policy of the Department not to charge for viewing documents at agency offices.

A commentor suggested that billing be allowed on a monthly basis, or on a copy card basis. These options were examined during the rule drafting process, but the Department determined that such procedures were not consistent with current Department-wide billing practices.

Mandatory double-sided copying language was suggested. The rule has been modified to clarify that it is Department policy to provide double-sided copies when feasible.

Two comments reflected a desire by governmental agencies to receive copies of DEQ records at no charge. Appropriate rule language has been added providing copies at no charge to local, state and federal governmental bodies.

## **3. On-Line/Electronic Public Records.**

It was suggested that the Department could better serve local governments and entities throughout the state by establishing an on-line/network for all DEQ public records. While the Department agrees that this is a desirable goal, it is a project that is part of the longer-range planning of the agency.

**4. Fee Waiver Issues.**

Two commentors requested that the annual fee waiver provisions be expanded to include all IRS Code §501(c) not for profit corporations, instead of just §501(c)(3) corporations. The rule has been modified accordingly.

One comment held that language "demonstrating...that...such information is in the interest of and benefit to the public" be stricken from the rule since it might not be possible, in advance, to identify how the information will benefit the public. The rule language has been modified slightly to clarify that this demonstration need only be expressed in general terms.

There was also one comment that the fee waiver provision in the proposed rule did not provide criteria for case-by-case fee waivers. The Department holds that it is not necessary to put criteria in the rule since the agency is bound by the Oregon Public Records Law.

**5. Records Exempt from Disclosure.**

Two comments suggested that the language stating that the Department shall "consider" exemptions identified in the Public Records Law should be stricken because the exemptions are express and not mere considerations. The proposed rule language has been modified slightly to clearly reflect the intent of the agency to fully comply with the Public Records Law.

One commentor requested that the Department provide procedures for identifying and separating exempt records, and provide notice to individuals that have claimed that a record is exempt so that such individuals might have an opportunity to comment before the state disclosed the record. Exemption identification and separation are part of the Department internal implementation process (with legal counsel review) for this rule.

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

Formal rulemaking would establish uniform public records procedures, fees, and outline any restrictions. DEQ staff believe that formal rules are the best way to provide a consistent, coordinated, and efficient means of meeting the statutory goals of providing access to records, setting fees, and simultaneously protecting the records for future use.

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The proposed rule outlines how members of the public can access and obtain copies of diverse public records kept by DEQ, provides fee information, and contains reasonable restrictions so that records can be protected and maintained.

The proposed rule will be implemented through staff training, implementation guidelines, and through guidance from agency management.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rules/rule amendments regarding accessing and copying public records maintained by DEQ 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 and Response to Public Comments on Rulemaking Proposal.
- F. Rule Implementation Plan.

**Reference Documents (available upon request)**

Written Comments Received (listed in Attachment D)  
(Other Documents supporting rule development process or proposal)



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Approved:

Section:

Charles Lopez

Division:

Nyasia Taylor

Report Prepared By: Chris Rich

Phone: (503) 229-6775

Date Prepared: July 20, 1994

Proposed Rule with amendments in response to public comment.

State of Oregon  
Department of Environmental Quality

*The following is a proposed new rule for addition to Oregon Administrative Rules, Division 11, Rules of Practice and Procedure. New additions in response to public comment and other additions made pursuant to public notice appear in bold-underline, while deletions are bracketed.*

**Public Records Access and Reproduction**

**340-11-310 PURPOSE**

Increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying Department of Environmental Quality (DEQ or Agency) records. This rule allows the ~~{Agency}~~**Department** to recoup actual costs for providing these services, as authorized by Oregon statute. Further, these rules serve to ensure that all ~~{Agency}~~**Department** records remain available for viewing and remain intact for future use.

**340-11-320 SCOPE**

With some exceptions prescribed by law, every person has the right to inspect public records of a state agency in this state. State agencies are allowed to take reasonable measures to ensure the integrity of records and to maintain office efficiency. The ability of the public to view public records is limited by reasonable restrictions and other such exemptions from disclosure that may be prescribed by law or rule. Statutory guidance for this rule includes: ORS 468.020; ORS 192.410 to 192.505.

**340-11-330 PUBLIC ACCESS TO PUBLIC RECORDS**

(1) ~~{Responding to}~~ **Requests for Public Records**

- (a) Requests to view or copy public records must be made to, and shall be handled by, the appropriate Division, Section, Regional Office or ~~{Agency}~~**Department** unit maintaining the records requested. For questions, contact ~~{DEQ main receptionist}~~ **the DEQ General Information number listed in the phone book.**
- (b) Requests may be made in writing, by telephone, or in person to schedule an appointment to review records or to obtain copies.
- (c) ~~{Requestors must be specific when asking for Agency records. This information should include}~~ **Requests for Department records should be as**

*specific as possible, including* type of record, subject matter, approximate record date, and relevant names of parties.

(d) Persons may request that Department staff retrieve and make copies of public records.

## 2. Responding to Requests.

~~((d))(a)~~ The ~~{Agency}~~Department may require written clarification or specification of a record request.

~~((e))(b)~~ ~~[The following provisions shall apply to requests to view or obtain copies of Agency records:]~~

~~(A) Persons may request that Agency staff retrieve and make copies of public records.]~~ If ~~{Agency}~~Department staff cannot identify specific records *responsive to a record request*, such staff may elect to provide copies of general files or distinct sections of records that are likely to contain the requested records. For voluminous *reproduction* requests, ~~{Agency}~~Department staff may require payment in advance. ~~{(B)}~~ *In response to voluminous record requests*, the ~~{Agency}~~Department may require that a person review or obtain copies of records at designated ~~{Agency}~~Department locations where the records are maintained.

~~((f))(c)~~ Based on space ~~{availability}~~, staff and equipment availability, and ~~{priority}~~*prior record reproduction requests*, the ~~{Agency}~~Department shall make reasonable efforts to service walk-in requests for hardcopy reproductions.

~~((g))(d)~~ In order to prevent interference with the regular discharge of duties of ~~{Agency}~~Department staff, each Division, Region, Section, Branch, Laboratory, or unit of the ~~{Agency}~~Department shall limit the daily hours scheduled for public viewing and copying of ~~{Agency}~~Department records accordingly: regular business hours excluding the hours of noon to 1:00 p.m., and the last hour of the business day. *Department offices with sufficient staffing shall have the option of allowing review and copying of public records during the regular business hours of the day.*

~~((h))(e)~~ Pursuant to ORS 192.430(1) and this rule, each Division, Region, or Branch office shall designate and provide a supervised space for reviewing records. This shall accommodate at least one reviewer at a time, with space for additional reviewers provided as available.

~~{#}~~(f) The ~~[Agency]~~Department accommodates public records requests from persons with disabilities in accordance with the Americans with Disabilities Act.

(g) Prior to making record available for public review, Department staff shall ascertain whether the records requested are exempt from public disclosure under ORS chapter 192 and other applicable law.

### 340-11-340 PROCEDURES FOR HARDCOPY REPRODUCTIONS

**(1) Requests for Copying by DEQ Staff**

Persons wishing to obtain hardcopies of public records may direct such requests to appropriate DEQ designated records personnel.

**(2) Outside Copying/Loaning Records**

In order to protect the integrity of ~~[Agency]~~Department records, no records may be loaned or taken off-premises by non-agency personnel.

**(3) Persons Requesting to Make Copies Themselves:**

(a) Subject to reasonable restrictions, staff approval, staff supervision, and equipment availability, a record reviewer may use DEQ equipment and DEQ paper to make copies of ~~[Agency]~~Department records. All such requests must be approved by designated records personnel overseeing the specific records requested.

(b) Subject to reasonable restrictions, staff approval, staff supervision, and equipment and space availability, the record reviewer may use the reviewer's own equipment and paper to make copies of ~~[Agency]~~Department records. Prior notice is required, and must be approved by the Section Manager overseeing the records requested.

**(4) Double-Sided Copies.**

~~[Agency]~~Department staff ~~{may elect to}~~shall provide double-sided hardcopy pages when feasible.

(5) **Fee Schedule for Hardcopy Reproductions**

The fee schedule listed below is reasonably calculated to reimburse the ~~[Agency]~~Department for the actual costs of making records available and providing record reproduction services and products:

- Readily available pre-printed materials such as, guidance documents, statutes, forms, etc.  
\$0.10 (per page)
  
- DEQ Administrative Rule sets.
  - Complete set \$35.00
  - Update Service \$115.00 (per annum)
  - Indiv. Divisions \$0.05 per page
  
- Readily accessible records requiring average staff time to retrieve and refile documents.
  - DEQ staff copy \$0.25 (per page)
  - Self copy \$0.15 (per page)
  
- Excessive staff time performing record retrieval/sorting/ and related services.
  - DEQ staff copy \$0.25 (per page)
  - Self copy \$0.15 (per page)

In addition to per page copy charge, an hourly rate of \$18.00 per hour will be assessed with a minimum of \$4.50.

- Additional charges will be assessed as follows:

FAX charges	\$0.50 (per page)
Document Cert.	\$2.50 (per certification)
Invoice processing	\$5.00 (per invoice)
Express Mailing	actual or minimum of \$9.00
Archive Retrieval	actual or minimum of \$10.00

- (a) For purposes of this rule, a "page" shall be defined as ~~[a single sheet of paper, single or double sided]~~a single impression on one side of a piece of paper.

**340-11-350 PROCEDURES FOR ELECTRONIC RECORD REPRODUCTIONS**

The DEQ maintains numerous databases and electronic records. Different records are maintained by Divisions, Regions, Branch Offices, and Sections. Requests to obtain a copy of any electronic record shall be directed to, and obtained by, staff in the program or section overseeing the data requested.

**(1) Making Copies of Electronic Records**

- (a) As the Oregon Public Records law does not impose a duty to create public records, copies of requested data will be provided in the format/manner maintained by the {Agency}Department.
- (b) {Agency}Department staff may elect to perform all downloading, reproducing, formatting, and manipulating of data. Public access to {Agency}Department computer terminals may be possible as such terminals become available in the future.

**(2) Fee Schedule for Electronic Reproductions**

The fee schedule listed below is reasonably calculated to reimburse the {Agency}Department for the actual costs of making records available and providing record reproduction services and products.

- (a) The {agency}Department prefers that the requesting party provide the media to be used for data reproduction. If the requestor does not supply the media, the {Agency}Department may supply the media, as available, at the following rates:

**(3) Media/Charge**

<u>Media</u>	<u>Charge</u>
<b>Tapes:</b>	
9 track 1/2" reel 1600 or 6250 BPI	\$25.00 each
<b>Diskettes:</b>	
5 1/4 or 3 1/2 inch	\$1.00 each
<b>2 hr VHS Videocassette</b>	\$6.00 each
<b>Magnetic Audio Tapes:</b>	
90 minute	\$3.00 each

**(4) Reproduction Fees.**

Reproduction fees are as follows:

- Staff time to retrieve, extract, format, download, copy, and run hardcopies of database records shall be assessed at \$26.00 per hour with a minimum charge of \$6.50.

Hardcopy printouts \$0.10 (per page)

- Additional charges will be assessed as follows:

Fax charges	\$0.50 (per page)
Document Cert.	\$2.50 (per certification)
Invoice processing	\$5.00 (per invoice)
Express Mailing	actual or minimum of \$9.00
Archive Retrieval	actual or minimum of \$10.00

**340-11-360 COLLECTING FEES**

**(1) Method**

Payment may be made in the form of cash, check, or money order. Make checks payable to "Department of Environmental Quality."

**(2) Time of Payment**

Requestors shall make actual payment or make arrangements for payment before receiving the reproduced material, subject to the provisions listed in this rule.

**(3) Billing**

Requestors wishing to be billed may make such arrangements at the time of reproduction request. Purchase Orders will only be accepted for orders \$10.00 or more.

**(4) Receipts**

A receipt may be given, upon request, for charges incurred.

**(5) Refunds**

Refund of fees shall be made when pre-payment exceeds actual costs.

**(6) Costs for Other Public Records**

~~{Retrieval, copying, and}~~ ~~{r}~~ Reasonable costs associated ~~{costs}~~ with providing copies of {may be allowed for} public records not specifically addressed by this rule may be assessed.

**(7) Reviewing Records**

No charges or fees shall be assessed for reviewing public records at Department locations if reproductions of records are not requested.

**340-11-470 CERTIFIED COPIES**

**(1) Hardcopy Requests**

The ~~{Agency}~~ Department shall, upon request, provide certified copies of hardcopy records.

**(2) Electronic Records**

The ~~{Agency}~~ Department shall provide certification that a particular electronic record (on diskette or otherwise) as provided by the ~~{Agency}~~ Department, is a true and correct copy of that record at the time and date of delivery by the ~~{Agency}~~ Department. The ~~{Agency}~~ Department cannot certify as to any subsequent changes or manipulation of that electronic record. The ~~{Agency}~~ Department shall, upon request, provide certified hardcopy printouts of electronic records when feasible.

**340-11-380 FEE WAIVERS/REDUCTIONS**

The ~~{Agency}~~ Department determines that the following waivers/reductions of fees are in the public interest because making the records available at a reduced rate primarily benefits the public. All waivers/reductions shall be granted as provided by this rule unless otherwise prohibited by law:

**(1) General Fee Waivers for Hardcopy Reproductions/Printouts of Electronic Records {Only}**

Reproduction fees for hardcopy records and printouts of electronic records are subject to the following provisions:

**(a)** There shall be no charge for copies ~~{when}~~:

**(A)** When ~~{T}~~ the material requested is currently being distributed as part of, or has been prepared for distribution as a part of, the public participation process such as a news release, public notice, or other DEQ publication.



- (B) When ~~[T]~~the material requested has been distributed through a mass mailing and is readily available to DEQ staff at the time of request.
- (C) When the records request is made by a local, state, or federal public/governmental entity or a representative of a public/governmental entity acting in a public function or capacity.

(2) **Fee Waivers/Reductions for Public Record Reproductions.**

The following fee waivers/reductions for public records reproductions may be granted for hardcopy and electronic records as outlined below:

(a) Annual Waiver:

- (A) Generally. An approved annual fee waiver/reduction allows the requestor to obtain hardcopy or electronic reproduction, at **no charge or at a substantially reduced rate**, subject to other provisions of this rule, per annum.
- (B) Timeframe. "Annum" is defined herein as the ~~[Agency]~~Department fiscal year (July 1-June 30) All requestors must re-apply each annum for subsequent annual fee waiver/reductions.
- (C) Documents. All fee waiver documents specified in 340-11-380(2)(a)(E)(ii) must be dated and sent, by the requestor, to the DEQ Administrator, Management Services Division for approval.
- (D) Fee Waiver Number. Each individual/group/organization shall be assigned a Fee Waiver Number. This number must be marked on all relevant forms if a fee waiver is requested.
- (E) Applicability. The following individuals, groups, and organizations may be entitled to the annual fee waiver/reduction outlined in section (2)(a) above, provided that the requested documents are submitted by the requestor and approved by the ~~[Agency]~~Department.
  - (i) Members of the News Media (Defined primarily as: a staff reporter who works for a regularly scheduled news program on television, radio, for a periodical or a newspaper); Non-profit Corporations (as defined by the I.R.S. Code §501(c)(~~3~~)); Other Individuals/groups/organizations that qualify under the Oregon Public Records Law.

- (ii) Each of the above listed individuals or groups must, in writing, ~~{demonstrate}~~identify the specific ability to disseminate information of the kind maintained by the ~~{Agency}~~Department to the general public, and that such information is generally in the interest of and benefit to the public within the meaning of the Oregon Public Records Law. Requestors shall be required to 1) fill out a DEQ Fee Waiver/Reduction Request Form, and 2) submit a letter outlining the individual's/group's background (as it relates to this fee waiver/reduction request), mission, use of information requested, and specific ability to disseminate that information to the general public.
  
- (b) Case-by-Case Waivers/Reductions. A person/group/organization that does not request, or is not approved for, an annual waiver/reduction under OAR 340-11-380(2)(a) of this rule, may request a waiver/reduction of records reproduction fees on a case-by-case basis in accordance with the Oregon Public Records Law.
  
- (c) Restrictions. The ~~{Agency}~~Department may, in its discretion, determine that all or part of the fees for a specific records request are not subject to a waiver/reduction under section 340-11-380(2) (a) or (b) of this rule pursuant to the Oregon Public Records Law. Requestors shall be responsible for payment of such fees, and may be billed accordingly.
  
- (d) Additional information may be requested by the ~~{Agency}~~Department prior to granting any fee waiver under this Rule.

### 340-11-390 ADDITIONAL PROVISIONS/LIMITATIONS

#### (1) Exempt Records

All records held by the Department are public records unless specifically exempt from disclosure under ORS chapter 192 or other applicable law. If the ~~{Agency}~~Department determines that all or part of a requested public record should not be inspected or copied, the ~~{Agency}~~Department shall notify the requestor of such fact and the reasons therefore.

- (a) In determining whether all or any part of a public record should not be inspected or copied pursuant to a request therefor, the Department shall ~~{consider the public-record exemptions specified in}~~ comply with ORS 192.410 et seq. or other applicable law.

# NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality                      Management Services Division  
OAR Chapter 340

**DATE:**                      **TIME:**                      **LOCATION:**  
July 7, 1994                      2:00pm                      Department of Environmental Quality  
811 SW 6th Avenue  
Portland, Oregon  
Conference Room #10A

**HEARINGS OFFICER(s):**                      Christopher Rich

**STATUTORY AUTHORITY:**                      ORS 468.020; ORS 192.410 to 192.505

**ADOPT:**                      340-11-310 to 340-11-390

**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:

In accordance with ORS 192.410 to 192.505, the proposed rule outlines how members of the public can access and obtain copies of diverse public records kept by DEQ, provides fee schedules, and other related access and fee information. The proposed rule provisions are designed to provide direction in obtaining records, and contain reasonable restrictions so that records can be protected and maintained intact for future use. Since the proposed rule formalizes policies required by the Oregon Public Records Law, no advisory committee was used in developing this proposed rule.

**LAST DATE FOR COMMENT:** July 12, 1994

**DATE PROPOSED TO BE EFFECTIVE:** Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

**AGENCY RULES COORDINATOR:**                      Christopher Rich, (503) 229-6775  
**AGENCY CONTACT FOR THIS PROPOSAL:**                      Christopher Rich  
**ADDRESS:**                      Management Services Division

811 S. W. 6th Avenue  
Portland, Oregon 97204  
(503) 229-6775  
or Toll Free 1-800-452-4011

**TELEPHONE:**

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

# A CHANCE TO COMMENT ON...

## Public Records Access and Reproduction Rules

Date Issued:	May 20, 1994
Public Hearings:	July 7, 1994
Comments Due:	July 12, 1994

### WHO IS AFFECTED:

The general public, regulated community, and other agencies will be affected in substantially the same way by this proposed rule. For all groups, the proposed rule provides uniform procedures, fees, and guidelines for accessing and obtaining reproductions of Department of Environmental Quality (DEQ) public records.

### WHAT IS PROPOSED:

In recent years, increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. In accordance with the Oregon Public Records Law, ORS 192.410 to 192.505, the Agency perceives the need to adopt formal rules to meet the statutory and Agency goals of actively making Agency records available to the general public, establishing fees to recoup Agency costs, and maintaining the integrity of these records.

The proposed rule outlines how members of the public can access and obtain copies of diverse public records kept by DEQ, provides fee schedules, and other related access and fee information. The proposed rule provisions are designed to provide direction in obtaining records, and contain reasonable restrictions so that records can be protected and maintained.

### WHAT ARE THE HIGHLIGHTS:

The proposed rule would:

1. Establish consistent agencywide procedures for responding to public records viewing and copying requests.
2. Provide fee schedules and procedures for obtaining reproductions of public records.
3. Establish reasonable restrictions to protect the integrity of the public records maintained by the agency and prevent unreasonable interference with the regular discharge of staff duties.



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

11/1/86

#### FOR FURTHER INFORMATION:

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

Attach B-2, page 1

4. The proposed rule formalizes existing agency policy which is based on requirements of the Public Records Law. Because of the internal nature of this process and the proposed rule, an advisory committee was not used in the development of the proposed rule.

**HOW TO  
COMMENT:**

Public Hearings to provide information and receive public comment are scheduled as follows:

A public hearing to provide information and receive public comment are scheduled as follows:

Department of Environmental Quality  
Conference Room #10A  
811 S.W. 6th Avenue  
Portland, OR  
July 7, 1994  
2:00 p.m.

Written comments must be received by 5:00 p.m. on July 12, 1994 at the following address:

Department of Environmental Quality  
Management Services Division  
811 S.W. 6th Avenue  
Portland, Oregon, 97204  
Attention: Christopher Rich

This packet contains a draft of the Proposed Rule. If you have any questions on the proposed rule, please contact Chris Rich, Management Services Division at (503) 229-6775; Oregon toll free 1-800-452-4011.

**WHAT IS THE  
NEXT STEP:**

The Department will evaluate comments received and will make a recommendation to the Environmental Quality Commission. Interested parties can request to be notified of the date the Commission will consider the matter by writing to the Department at the above address.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Public Records Access and Reproduction Rule

**Rulemaking Statements**

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

1. Legal Authority

Oregon Revised Statutes (ORS) 468.020 authorizes the Environmental Quality Commission (EQC) of the Oregon Department of Environmental Quality (DEQ) to adopt rules and standards as considered necessary to perform its statutory functions. ORS 192.410 to 192.505 (Oregon Public Records Law) charges DEQ, as a state agency, with general responsibilities relating to public records maintained by the Agency, and provides specific authority to enact reasonable rules necessary for the protection of the records and to prevent interference with the regular discharge of duties of Agency records personnel and staff.

2. Need for the Rule

Under the Oregon Public Records Law, the Agency must facilitate public access to, and reproduction of, public records maintained by the Agency. Pursuant to this statute, the DEQ promotes a policy of actively and effectively making Agency records available to the general public. The Agency may set fees reasonably calculated to recoup actual costs associated with making records available. Additionally, the Agency has a strong interest in maintaining the integrity of these records and making sure that the records remain intact for future use by Agency staff and the public.

In recent years, increased public involvement and awareness of environmental issues has placed greater demands on viewing and copying DEQ records. Accordingly, the Agency perceives the need to adopt rules to meet the statutory and Agency goals discussed above.

Formal rulemaking would provide agencywide public records procedures, fees, and any restrictions. DEQ staff believe that formal rules are the best way to meet the

statutory goals of providing access to records, recouping costs, and simultaneously protecting the records for future use.

The proposed rule outlines how members of the public can access and obtain copies of diverse public records kept by DEQ, provides fee schedules, and other related access and fee information. The proposed rule provisions are designed to provide direction in obtaining records, and contain reasonable restrictions so that records can be protected and maintained.

3. Principal Documents Relied Upon in this Rulemaking

OAR 192.410 to 192.505 (Oregon Public Records Law);  
Oregon Attorney General's Administrative Law Manual (1993).

4. Advisory Committee Involvement

The proposed rule formalizes existing agency policy which is based on requirements of the Public Records Law. Because of the internal nature of this process and the proposed rule, an advisory committee was not used in the development of the proposed rule. The proposed rule was developed by the Department in consultation with the Attorney General's office. The proposed rule was drafted by analyzing internal Agency records systems and by applying the requirements of the Oregon Public Records Law.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Public Records Access and Reproduction Rule

Fiscal and Economic Impact Statement

**Introduction**

The DEQ is required under the Oregon Public Records Law, ORS 192.410 to 192.505, to provide public access to, and copies of, public records maintained by the Agency. The Agency is authorized to adopt rules to maintain the integrity of these records and make sure that the records remain intact for future use by Agency staff and the public. Additionally, the Agency may set fees that allow the Agency to recoup the actual costs associated with providing access to and reproduction of public records.

The proposed rule is a formal adoption of policies that have been in place to meet the statutory and Agency goals. There will be essentially no net economic impact of the rule because the rule merely formalizes and continues an existing policy of recouping actual costs, and does not create any new costs or programs. Only local governments and state agencies, which had in the past been routinely exempted from paying for copies of DEQ records, could see an increase in costs.

**General Public**

Since the proposed rule is continuing the policy and formalizing the agency's authority to recoup actual costs under the Oregon Public Records Law, there will be no significant economic impact on the general public.

**Small Business**

Since the proposed rule is continuing the policy and formalizing the agency's authority to recoup actual costs under the Oregon Public Records Law, there will be no significant economic impact on small businesses.



## **Large Business**

Since the proposed rule is continuing the policy and formalizing the agency's authority to recoup actual costs under the Oregon Public Records Law, there will be no significant economic impact on the large businesses.

## **Local Governments**

Since the proposed rule is formalizing the agency's authority to recoup actual costs under the Oregon Public Records Law, there will be no significant economic impact on local governments, with the exception of the proposed fee waiver/reduction provision. Under the existing policy, local governments have received copies of agency records without charge. Under the new fee waiver provision, local governments are subject to the fee waiver provisions in the same manner as other parties. This change in policy is designed to better recoup actual costs associated with reproducing public records.

## **State Agencies**

### **Other Agencies:**

Since the proposed rule is formalizing the agency's authority to recoup actual costs under the Oregon Public Records Law, there will be no significant economic impact on state agencies, with the exception of the proposed fee waiver/reduction provision. Under the existing policy, state agencies have received copies of agency records without charge. Under the new fee waiver provision, state agencies are subject to the fee waiver provisions in the same manner as other parties. This change in policy is designed to better recoup actual costs associated with reproducing public records.

### **DEQ:**

There will be essentially no net economic impact on the DEQ in implementing the proposed rule, since revenue from fees only allow the agency to recoup actual costs associated with providing access to and copies of public records. No new full time equivalent (FTE) positions are necessary to administer this rule. All tasks will be absorbed by existing staff.

Costs that have been and continue to be associated with this rule will be mostly in staff time to assemble records requests, use of leased space for public viewing of records, supplies, and equipment costs (including purchase and maintenance of copiers and potentially public computer terminals). The fees are designed to offset these costs on a one-for-one basis.

## **Assumptions**

This fiscal impact analysis assumes that the current methods of record management, equipment used to maintain and reproduce public records, and the facilities where public records are stored, are an accurate basis for the published fee schedule. If these factors

change dramatically in the future, the fee schedule may have to be amended to recoup actual costs.

While there may be some increase in costs, the amount of this increase cannot be reasonably determined as these costs would be dependent on both the individual (agency or local government) demand for public records and the specific application of any fee waiver.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Public Records Access and Reproduction Rule

Land Use Evaluation Statement

**1. Explain the purpose of the proposed rules.**

In accordance with ORS 192.410 to 192.505, the proposed rule outlines how members of the public can access and obtain copies of diverse public records kept by DEQ, provides fee schedules, and other related access and fee information. The rule provisions are designed to provide direction in obtaining records, and contain reasonable restrictions so that records can be protected and maintained.

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

Yes \_\_\_ No X \_\_\_

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

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

Yes \_\_\_ No \_\_\_ (if no, explain):

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

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine

Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
  - a. resources, objectives or areas identified in the statewide planning goals, or
  - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

The proposed rule in no way affects any land use or land use issues. This is true because the rule only applies to public records maintained by the Agency.

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

N/A

\_\_\_\_\_  
Division

\_\_\_\_\_  
Intergovernmental Coord.

\_\_\_\_\_  
Date

State of Oregon  
Department of Environmental Quality

Memorandum

Date: 7/20/94

**To:** Environmental Quality Commission  
**From:** Christopher Rich  
**Subject:** Presiding Officer's Report for Rulemaking Hearing  
Hearing Date and Time: July 7, 1994, beginning at 2:00 pm  
Hearing Location: DEQ headquarters  
811 S.W. 6th Ave, Room 10A  
Portland, Oregon 97204

Title of Proposal: Public Records Access and Reproduction Rule.

The rulemaking hearing on the above titled proposal was convened at 2:00pm. 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.

0 people were in attendance, 0 people signed up to give testimony.

No oral or written testimony was presented.

There was no further testimony and the hearing was closed at 3:00pm.

Attachments:

Written Testimony Submitted for the Record.

(attached is written testimony submitted prior and subsequent to the public hearing)

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for a

New Rule concerning public access and copying  
of public records maintained by the agency

Index of Written Testimony

<u>No.</u>	<u>Page</u>	<u>Date Received</u>	<u>Document Description</u>
1.	1	May 26, 1994	Letter dated May 24, 1994, from Liz Frenkel, Sierra Club Oregon Chapter, 1431 NW Vista Place, Corvallis, Oregon 97330, asking for inclusion of all Internal Revenue Code §501 not-for-profit organizations in the fee waiver provisions and other fee waiver related questions.
2.	2	June 9, 1994	Letter dated June 7, 1994, from Arnold Waters, Rogue Valley COG, 155 S. Second Street, P.O. Box 3275, Central Point, OR 97502, asking for provisions to be added for on-line digital indexing and statewide network availability of electronic records. Concerned by proposed plan to charge local governments.
3.	1	May 26, 1994	Letter dated May 24, 1994 from Phillip E. Lammi, Department of the Air Force Center for Environmental Excellence, 630 Sansome St., ste. 1336, San Francisco, CA 94111-2278, asking for consideration of public record services by DEQ at no charge for governmental agencies.
4.	4	July 12, 1994	Letter dated July 12, 1994 from Bob Randall, Northwest Environmental Defense Center Student Volunteer, 10015 S.W. Terwilliger Blvd., Portland, Oregon 97219, asking for 1) less restrictive guidelines for making requests to the agency, 2) non-discretionary self-copying of records, 3) mandatory double sided copies, 4) lower fee schedule, 5) direct access to DEQ electronic records or terminals, 6) monthly

payment options or pre-paid copy cards, 7) expanding annual fee waiver to include all IRS §501 corporations, 8) no "annual waiver demonstration" language, 9) case-by-case fee waivers should be provided, 10) statutory exemptions should be firm.

5. 8 July 12, 1994

Letter dated July 12, 1994 from Sarah Munro, legal assistant, Cable, Huston, Benedict, Haagensen, & Ferris, 1001 S.W. 5th Avenue, Portland, Oregon 97204, asking DEQ 1) for separation of requesting instructions from adjacent paragraphs, 2) revise §330(1)(d) - (i) to clarify department procedures for responding to requests, revise business hours to correspond with regular business hours, provide for records retrieval from remote DEQ offices, review records for possible exemption from disclosure, 3) to make exemption language clear and corresponding disclosure language should be added, also provide opportunity to comment prior to disclosure of otherwise exempt records.

# Department of Environmental Quality

## Rulemaking Proposal for a new rule addressing Public records Access and Reproduction

### Department Evaluation and Response to Public Comments

No persons offered oral testimony at the public hearing. Five persons provided written comments. The comments received are grouped into five categories for response.

#### 1. Responding to Records Requests.

A. Several comments suggested that §340-11-330 should be revised to clarify how requests from the public are made and responded to by the Department [4,5]. One commentor [5] suggested that the rules separate instructions to the public from Department procedures/guidelines on responding to record requests. It was also suggested [5] that the rules specify the general DEQ information number listed in the phone book for records information.

##### Department Response:

The rule has been modified in response to these comments. Instructions to the public and Department procedures have been separated. Additionally, information on the Department general phone number has been clarified.

B. One comment stated [5] that limiting the hours scheduled for public review and copying of Department records from 12:00 - 1:00 pm daily was burdensome on requestors.

##### Department Response:

The Department maintains that the hour limitations provided in the rule are necessary, especially for regional or branch offices, to allow time to respond to prior records requests, make staff copies, and address limited staffing during lunchtime hours.

C. A comment [5] suggested that the Department provide records retrieval from remote locations/regional offices in the rule.

##### Department Response:

The DEQ is a de-centralized agency with active files and records maintained in distinct regional and branch offices around the state. Because these files are active, the Department identifies the need to maintain these records at the locations where they are in use, and not to provide remote retrieval of records. All DEQ offices will assist individuals in locating public records for reviewing and copying. Individuals may contact regional staff by phone to discuss public records at any time.



D. Another comment [4] stated that the requirements in §330(1)(c) for information on records requests is too limiting, as specific information might not be available.

Department Response:

The Department maintains the position that public record requests need to be as specific as possible to allow the Department to accurately respond to requests. The rule has been modified slightly to clearly reflect this position.

**2. Fees and Procedures for Hardcopy Reproductions.**

A. A concern was raised [4] that "reasonable restrictions" on self-copying using DEQ equipment should be omitted, and such copying should be non-discretionary for DEQ staff. The

Department Response:

Department disagrees with this proposal. This language simply allows the Department to reasonably restrict on public use of equipment that the Department also used in the execution of its daily business. The Oregon Public Records Law clearly allows for such restriction to prevent such interference.

B. A general comment was made [4] that the proposed fee schedule is too high, and that mandatory costs are unnecessary and prohibitive.

Department Response:

The proposed fee schedule was generated pursuant to a costing study performed in June of 1994 for the purposes of this rule process. These costs accurately reflect the total costs of making copies of public records available. This cost recovery includes record retrieval, review, staff copy time, equipment costs, and materials, as authorized by the Oregon Public Records Law.

C. A commentor [4] also asked for clarification as to which public records requests would be subject to "excessive staff time" charges of \$18.00/hour.

Department Response

Such charges will apply to public record requests for documents that are not readily available to staff, such as archived or stored records, and requests for record requests that require technical researching or voluminous file review, sorting, or copying. The Department will request such fees only after manager approval. Some concern was also raised about assessing fees for public reviewing of records that does not involve copying. It is the policy of the Department not to charge for viewing documents at agency offices. The rule has been clarified to reflect this policy.

D. A commentor held that the minimum charge of \$4.50 was unfair primarily due to Department staff discretion.

Department Response:

The purpose of the minimum charge is to recover administrative costs associated with processing complex public record requests. No one will be assessed the minimum charge unless excessive staff time is in fact required.

- E. A commentor [4] suggested that billing be allowed on a monthly basis, or on a copy card basis.

Department Response:

These options were examined during the rule drafting process, but the Department determined that such procedures were not consistent with current Department-wide billing practices and would be potentially burdensome on Business Office staff. Accordingly, these options were not included in the proposed rules.

- F. Mandatory double-sided copying language was suggested [4].

Department Response:

The rule has been modified to clarify that it is Department policy to provide double-sided copies when feasible.

- G. Two comments reflected a desire by governmental agencies [2,3] to receive copies of DEQ records at no charge.

Department Response:

Due to the frequency of intergovernmental record exchanges and the Department's desire to maintain efficient day to day working conditions, appropriate rule language has been added providing copies at no charge to local, state and federal governmental bodies.

**3. On-Line/Electronic Public Records.**

- A. It was suggested [2] that the Department could better serve local governments and entities throughout the state by establishing an on-line/network for all DEQ public records. Another comment [4] suggested that DEQ provide public access to Department computers and provide data in any format requested, as opposed to the format maintained by the agency. The Department is currently considering setting up public terminals.

Department Response:

While the Department agrees that this is a desirable goal, it is a project that is part of the longer-range planning of the agency, and is not feasible for the current proposed rules. The Department has, however, included language in the proposed rule that considers future public access terminals at DEQ offices. For complete public access to terminals, issues of confidentiality and database integrity are at issue. Due to existing equipment availability, security, and long-range planning goals, it is not

feasible for the agency to allow unrestricted access by the public to on-line data bases. The agency must also comply with all confidentiality and intellectual property laws, thereby limiting disclosure of, e.g., records such as computer software.

**4. Fee Waiver Issues.**

**A.** Two commentors [1,4] requested that the annual fee waiver provisions under §340-11-380(2)(a)(E)(i) be expanded to include all IRS Code §501(c) not for profit corporations, instead of just §501(c)(3) corporations.

Department Response:

The Department agrees with these comments, and has modified the proposed rule to include all IRS Code §501(c) corporations.

**B.** Two comments [2,3] from governmental entities have requested that a general fee waiver apply to local, state, and federal public bodies.

Department Response:

This has been the past policy of the DEQ, and the proposed rule has been modified to provide this general category of fee waivers.

**C.** A general question was raised [1] as to how the fee waiver process will be implemented.

Department Response:

An intra-agency implementation plan (summarized in attachment F) is being developed that will provide for tracking fee waivers, staff training (regional and HQ), and written guidance documents for staff that administer the rule. Centralized evaluation of fee waiver requests consistent with the Oregon Public Records Law will be overseen by the Administrator of DEQ's Management Services Division.

**D.** One comment [4] held that language "demonstrating...that...such information is in the interest of and benefit to the public" be stricken from the rule since it might not be possible, in advance, to identify how the information will benefit the public.

Department Response:

The rule language has been modified slightly to clarify that this demonstration need only be expressed in general terms, e.g., types of information that the group/individual regularly requests or has requested in the past. This language is important to allow the Department the opportunity to better evaluate annual fee waiver requests.

**E.** There was also one comment [4] that the fee waiver provision in the proposed rule did not provide criteria for case-by-case fee waivers.

Department Response:

The Department holds that it is not necessary to put criteria in the rule since the agency is bound by the Oregon Public Records Law. This law, and all relevant court opinions, Attorney General Opinions, and statutory language provide sufficient guidance to the Department to fully and fairly evaluate all case-by-case fee waivers. A group/person may request a case-by-case fee waiver at any time.

**5. Records Exempt from Disclosure.**

**A.** Several comments centered on those records that might be exempt from disclosure under the Public Records Law. Two comments [4,5] suggested that the language stating that the Depart shall "consider" exemptions identified in the Public Records Law should be stricken because the exemptions are express and not mere considerations.

Department Response:

The proposed rule language was included because the exemptions provided in the Oregon Public Records Law are generally not absolute exemptions from disclosure, but require a balancing test to determine whether such records might in fact be disclosed. Other applicable laws further restrict disclosure of records. The proposed rule language has been modified slightly to clearly reflect the intent of the agency to fully comply with the Public Records Law.

**B.** One commentor [5] requested that the Department provide procedures for identifying and separating exempt records, and provide notice to individuals that have claimed that a record is exempt so that such individuals might have an opportunity to comment before the state disclosed the record.

Department Response:

Exemption identification and separation are part of the Department internal implementation process for this rule. The exemption evaluation process will be guided by the Department's legal counsel in the Attorney General's office. If notice is required in a given case, the Department will rely on legal counsel to so advise.

**C.** It was also requested [4] that the Department establish a firm time frame for responding to requests involving possible exempt records.

Department Response:

The Department recognizes that this evaluation process will require legal counsel analysis which can be a time consuming process. The Department has a policy of responding to records requests in as reasonably timely a manner as possible, and will continue to do so.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Public Records Access and Reproduction Rule

Rule Implementation Plan

1. Summary of Proposed Rule

In accordance with ORS 192.410 to 192.505, the proposed rule outlines how members of the public can access and obtain copies of diverse public records kept by DEQ, provides fee schedules, and other related access and fee information. The proposed rule provisions are designed to provide direction in obtaining records, and contain reasonable restrictions so that records can be protected and maintained intact for future use. Since the proposed rule formalizes policies required by the Oregon Public Records Law, no advisory committee was used in developing this proposed rule.

2. Proposed Effective Date

The proposed rule goes into effect upon filing with the Secretary of State. The approximate effective date will be September 1, 1994. The rule will go into effect in all DEQ locations across the state at this time.

3. Proposed Implementing Actions

Policies and procedures for accessing and reproducing DEQ public records have, in the past, been applied without adoption of administrative rules. Accordingly, this proposed rule essentially formalizes this existing policy with some changes. Members of the public will be better able to clearly identify access procedures and fee information by reading the published rules.

4. Proposed Training/Assistance Actions

The provisions of the proposed rule will be implemented primarily through staff training. The rule author will travel to regional locations to train, answer questions, and identify the legal and policy issues surrounding public access and reproduction of public records. This training is scheduled to take place in September of 1994. This will primarily focus on working with administrative staff that will be

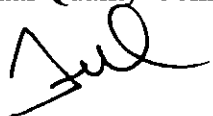
responsible for working directly with the public, responding to requests, and forwarding fee waiver and billing information to Department Headquarters. DEQ main information receptionists will also receive training on how to effectively respond to public records questions.

A staff implementation manual is being prepared to help answer questions following training. The rule author will remain available to coordinate agencywide implementation issues.

State of Oregon  
Department of Environmental Quality

Memorandum

Date: August 23, 1994

To: Environmental Quality Commission  
From: Director   
Subject: Petition to Adopt a Rule

Petition to Adopt a Rule to Enhance Current Vehicle Inspection Program  
Under OAR Chapter 340, Division 24

Background

A petition has been received from the Associated Oregon Industries asking that the EQC adopt rules to incorporate an improved Enhanced Inspection and Maintenance test procedure and necessary fees as part of the existing vehicle inspection operation. The petition requests that this improvement be adopted under OAR Chapter 340, Division 24 as it pertains to motor vehicle emissions.

The petitioner, Associated Oregon Industries, is an association representing industrial sources in the state of Oregon. The petitioner believes that the contribution of industrial sources in the Portland area to ozone pollution is small relative to the contribution of motor vehicles. The petitioner asserts that it is in the best interest of the state and its citizens in the Portland area that industrial growth impediments imposed on the area because of Portland's classification as a nonattainment area, be removed as soon as possible. Petitioner also asserts that if an air quality maintenance plan is not implemented as soon as possible, the Portland area may experience a recurrence of nonattainment with the federal ozone standards. Continued nonattainment will result in more stringent federal requirements on industry even though industry is a much smaller contributor to the problem than are motor vehicle emissions.

Evaluation

Motor vehicle emissions are a major source of pollution in Oregon. The Federal Clean Air Act requires states to submit a federally approvable 10 year air quality maintenance plan to the Environmental Protection Agency (EPA) in order for areas to be redesignated to

attainment. Redesignation is necessary before impediments to industrial growth can be removed.

House Bill 2214 [ORS 468A.363] enacted by the 1993 Oregon Legislature directed the Environmental Quality Commission to adopt specific emission reduction strategies for the Portland area including an enhanced vehicle inspection program and to submit them to EPA as part of an air quality maintenance plan.

The DEQ Vehicle Inspection Program, using funding from the 1993 legislation, is installing a prototype I/M 240 lane (enhanced testing) as an initial step in implementing an enhanced I/M program.

DEQ staff believes the petition has merit and rule making should be initiated. Implementing an enhanced I/M inspection program for vehicles in the Portland area will require a long phase in time due to many issues that need to be addressed in order to meet the emission reduction target dates in the ozone maintenance plan being developed. Thus rule making should begin.

#### Summation

The following facts and conclusions are presented:

1. A petition to establish an enhanced inspection and maintenance program with fees sufficient to support such a program has been filed.
2. Petitioners include associations representing industrial sources.
3. 1993 Oregon legislature directed the EQC to adopt specific emission reduction strategies including an enhanced vehicle inspection program, and submit them to EPA.
4. In order to stay in attainment for ozone and remove Clean Air Act constricted growth impedances, enhanced vehicle inspection should be implemented.
5. The DEQ believes the petition has merit and should be approved to initiate rule making proceedings.
6. If the petition is accepted, the DEQ would propose to:



Memo To: Environmental Quality Commission  
August 23, 1994  
Page 3

- a. Develop any necessary inspection standards or procedures;
- b. Identify and develop solutions to any inspection station operational issues;
- c. Determine the most cost effective enhanced inspection maintenance program;
- d. Determine any associated fee necessary for an enhanced inspection and maintenance program.

Director's Recommendation

Based upon the Summation, it is recommended that the Commission accept the petition and direct the Department to initiate rule making proceedings.

August 23, 1994

Jim Whitty  
Associated Oregon Industries  
317 Alder Street, Ste. 450  
Portland, Oregon 97204

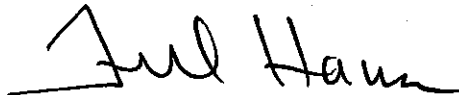
Dear ~~Mr.~~ <sup>Jim</sup> Whitty:

Pursuant to recent communications between Associated Oregon Industries ("AOI") and DEQ staff, I wanted to clarify a few points regarding the petition AOI filed with DEQ requesting rulemaking for an Enhanced Vehicle Inspection/Maintenance program.

Please disregard my letter dated August 12, 1994. In clarification, the Department requests that AOI waive the statutory thirty-day period within which to respond to your petition. This would allow the Environmental Quality Commission to consider the petition at their regularly scheduled Commission meeting on August 26, 1994.

Thank you for your time and assistance in this matter.

Sincerely,



Fred Hansen  
Director



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696



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1149 Court Street NE  
Salem, OR 97309-0519

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Portland Office  
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August 23, 1994

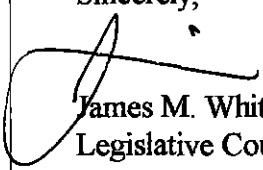
Fred Hansen  
Director  
Department of Environmental Quality  
811 SW Sixth  
Portland, Oregon 97204

Re: Vehicle Inspection Program Petition

Dear Mr. <sup>Fred</sup>Hansen:

I am in receipt of your communications of August 12 and August 23, 1994. On behalf of Associated Oregon Industries, I agree to waive the 30 day response requirement for the submitted Vehicle Inspection Program Petition. The timing of your response is not an issue; please take whatever time you find necessary to respond to the petition.

Sincerely,

  
James M. Whitty  
Legislative Counsel

JMW

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
**RECEIVED**  
AUG 23 1994

OFFICE OF THE DIRECTOR

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Tektronix, Inc.

JOHN HAMPTON  
Williamina Lumber Company

ANDREW HONZEL  
Columbia Forest Products

LINDA KOZLOWSKI  
Murphy, Symonds & Stowell Search

\*ROY MARVIN  
Precision Castparts

\*MORTON MICHELSON  
West Linn, Oregon

JOHN NEWMAN  
Target Stores

CLARIS C. POPPERT  
Benson Industries

RICHARD G. REITEN  
Portland General Electric Company

RICHARD RUDISILE  
Boise Cascade Corporation

BARBARA SUE SEAL  
Barbara Sue Seal Properties

KAREN SHERIDAN  
PayLess Drug Stores

\*DIANA SNOWDEN  
Pacific Power & Light

STEPHEN M. TELFER  
Legacy Health System

\*BILL THORNDIKE, JR.  
Medford Steel Div CSC, Inc.

\*District Vice-Chairmen

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July 15, 1994

Mr. Fred Hansen  
Director  
Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, Oregon 97204

Re: Petition to Amend Motor Vehicle Inspection & Maintenance  
Test Rule

Dear Mr. Hansen:

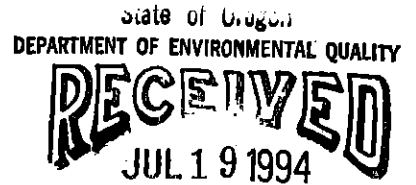
On behalf of Associated Oregon Industries, I do hereby submit the enclosed petition to amend the motor vehicle inspection & maintenance test rule to require enhanced testing. The rule amendment is necessary in order to enable the Department to submit an adequate maintenance ozone plan for the Portland non-attainment area to the Environmental Protection Agency. An acceptable maintenance plan is necessary for EPA to remove the Portland metropolitan area from nonattainment status.

Sincerely,

James M. Whitty  
Legislative Counsel

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
**RECEIVED**  
JUL 19 1994

OFFICE OF THE DIRECTOR



**PETITION TO AMEND A RULE**

**OFFICE OF THE DIRECTOR**

Department of Environmental Quality  
of the State of Oregon

In the matter of the adoption of )  
OAR Chapter 340, Division 24 )  
establishing an enhanced )  
inspection and maintenance )     Petition to Adopt new program under  
program for motor vehicles )     OAR Chapter 340, Division 340  
and fees supporting the program )     (Motor Vehicle Emissions)

1.     Petitioner's name and address is Associated Oregon Industries, represented by James M. Whitty, 1149 Court Street, N.E., Salem, Oregon.

2.     Petitioner is an association representing industrial sources in the state of Oregon. Industrial sources pay an annual membership fee to the association. In return, the association represents and advocates for its members' interests before legislative and regulatory bodies of the state.

3.     Petitioner's members are subject to various regulatory programs implemented by the Department of Environmental Quality.

4.     The Federal Clean Air Act requires states to submit a federally approvable 10 year air quality maintenance plan to the Environmental Protection Agency (EPA) in order for areas to be redesignated to attainment. Redesignation is necessary before impediments to industrial growth can be removed.

5.     House Bill 2214, enacted by the 1993 Oregon legislature, directs the Environmental Quality Commission (EQC) to adopt specific emission reduction strategies for the Portland area, including an enhanced vehicle inspection program, and to submit these strategies to EPA as part of an air quality maintenance plan as soon as possible.

6.     Oregon Revised Statutes (ORS) 468A.365 authorizes the EQC to adopt a more rigorous motor vehicle emissions control program for the Portland area. ORS 468A.370 directs the EQC to establish such a program in the most cost effective manner. ORS 468A.400 directs the EQC to establish fees to support this program once the EQC has determined the most cost effective program consistent with the Clear Air Act.

7.     Petitioner asserts that the contribution of industrial sources in the Portland area to ozone pollution is small relative to the contribution of motor vehicles. Petitioner also asserts that it is in the best interest of the state and its citizens in the Portland area

that industrial growth impediments imposed on the area because of Clean Air Act requirements be removed as soon as possible. Petitioner also asserts that if an air quality maintenance plan is not implemented as soon as possible the Portland area may experience reoccurrence of nonattainment with federal ozone standards. Continued nonattainment will result in more stringent federal requirements on industry even though industry is a much smaller contributor to the problem than are motor vehicle emissions.

8. Petitioner asserts that the adoption of a ~~centralized~~<sup>JMW</sup> enhanced vehicle inspection and maintenance program by the EQC would satisfy the requirements of ORS 468A.365, 468.370 and 468A.400.

9. Petitioner proposes the EQC adopt regulations in OAR Chapter 340, Division 24 establishing a cost effective enhanced motor vehicle inspection and maintenance program in the Portland area with fees sufficient to support such a program. Specific rule language is attached to this petition.

10. Petitioner has no personal knowledge of any person who may have a particular interest in this proposal, but acknowledges that the proposal would directly affect any owner of a motor vehicle within the boundaries of the inspection and maintenance programs in the Portland area.

Wherefore, petitioner requests the Environmental Quality Commission to adopt the proposed rules regarding an enhanced inspection and maintenance program.

Dated:

July 15, 1994

Petitioner:

Associated Oregon Industries

  
By: James M. Whitty, Legislative Counsel

## Rule Proposal

### Enhanced Motor Vehicle Inspection & Maintenance Test

OAR 340-24-307 This rule sets out the fee schedule for Certificates of Compliance, and licenses issued by or for the Department of Environmental Quality, Vehicle Inspection Program:

- (1) Certificates of Compliance .....\$10  
Issued by or for the Department for vehicles subject to the test method specified in OAR 340-24-309.
- (2) Certificate of Compliance .....\$5  
Issued by Licensed Motor Vehicle Fleet Operation for vehicles subject to the test method specified in OAR 340-24-310 or OAR 340-24-315.
- (3) Motor Vehicle Fleet Operation:
  - (a) Initial .....\$5
  - (b) Annual Renewals .....\$1
- (4) Fleet Operation Vehicle Emission Inspectors:
  - (a) Initial .....\$5
  - (b) Annual Review .....\$1
- (5) Exhaust Gas Analyzer System:
  - (a) Initial .....\$5
  - (b) Annual Review .....\$1
- (6) Certificates of Compliance .....\$ (to be established by EQC) maximum.

Issued by or for the Department for vehicles subject to the test method specified in OAR 340-24-316. The certificate fee for vehicles subject to the test method specified in OAR 340-24-316 may be reduced by the Department if the costs of administering and operating the program in the most cost effective manner consistent with the requirements of ORS 468A.370 AND 468A.400 is determined by the Department in the future to be less than the maximum fee.

(7) Consumer Price Index (CPI) fee adjustment.

The fees specified in sub-sections (1), (2), and (6) shall be adjusted by the Department on July 1, 1997 and every two years thereafter to account for inflationary impacts. The adjustment method shall be to multiply the CPI applicable to Oregon during the previous two year period by the fee in place during that period. The resultant number shall be rounded up to the nearest \$0.50 range to obtain the fee for the following two year period.

**Rule Proposal**

**Enhanced Motor Vehicle Inspection & Maintenance Test**

**Page 2**

OAR 340-24-316. Enhanced Motor Vehicle Emission Control Test Method. The Commission has determined that an enhanced inspection test method as specified by the federal Environmental Protection Agency in 40 CFR Part 85.2221 is the most effective test method to be used for the issuance of the required Certificates of Compliance for 1986 and later model year vehicles. As such, the test method to be used for the issuance of the required Certificates of Compliance for 1986 and later model year vehicles, effective on a schedule to be determined by the EOC, is that specified in 40 CFR Part 85.2221.



HANNEMAN & Associates  
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State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
**RECEIVED**  
AUG 24 1994  
OFFICE OF THE DIRECTOR

August 26, 1994

Oregon Environmental Quality Commission  
% Department of Environmental Quality  
811 S.W. Sixth Ave.  
Portland, OR 97204

Dear Commissioners:

I am writing as government-relations representative for the Tillamook County Creamery Association, to urge that you **not adopt** the proposed water-quality permit fee increases for industrial and agricultural wastewater facilities.

The TCCA, a Tillamook-based cooperative of nearly 200 dairy farmers, vigorously opposes the proposal as a great potential financial hardship for TCCA and its members.

Under the proposal, the annual permit fee for the TCCA creamery/cheese factory at Tillamook would double, from \$6,000 to \$12,000. This increase and proposed 100 percent hikes in a number of fees for permit applications and renewals pose great difficulties for TCCA. As a unit comprised of the processing facilities and dairy farms, TCCA is Tillamook County's major employer.

Our Association and its member dairies are in a unique position, due to the peculiar Federal milk-pricing and marketing system -- the constantly-increasing costs of doing business cannot be passed to the ultimate consumer, as in other industries. Federal price controls and the milk-marketing order system create a situation through which our milk prices are set in the California and Wisconsin markets. Consequently, milk prices are beyond control of our Association and dairy farmers.

**MORE**

Feed prices -- our "raw materials" -- are beyond our control as well, thanks to naturally-occurring factors such as floods, drought and the like.


Looming above these variables is the ever-growing scope of regulation at all levels of government -- Federal, state and local. These regulations and activities place costly restrictions upon our ability to operate productively and profitably, take constantly-increasing sums of money from our pockets for fees and taxes, or both. The fee-increase proposal before you today is a major example.

When such fees are levied directly upon the farmers, they mean dollars go out of the farmers' pockets. And as a cooperative, fees levied upon the TCCA mean fewer dollars going to those farmers. Either way, the Association's ability as a cooperative to produce quality products (which win Oregon international distinction), earn livelihoods and contribute to community vitality is threatened.

We are sorry that scheduling problems keep us from today's Commission meeting. Nonetheless, we hope that you will take these concerns into consideration and reject the proposed fee increases.

Sincerely,

  
Paul Hanneman

  
Mike Sims