

**OREGON  
ENVIRONMENTAL QUALITY  
COMMISSION MEETING  
MATERIALS 10/20/1994**



**State of Oregon  
Department of  
Environmental  
Quality**

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**REVISED AGENDA**  
**ENVIRONMENTAL QUALITY COMMISSION MEETING**

October 20-21, 1994

DEQ Conference Room 3A  
811 S. W. Sixth Avenue  
Portland, Oregon

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**THURSDAY, OCTOBER 20, 1994: Work Session beginning at 1:00p.m.**

1. ‡**Informational Item:** Report on Coastal Nonpoint Source Program
  2. ‡**Informational Item:** Rigid Plastic Container Law Workshop
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**FRIDAY, OCTOBER 21, 1994: Regular Meeting beginning at 8:30 a.m.**

Notes:

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

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

- A. Approval of Minutes
- B. Approval of Tax Credits
- C. † **Rule Adoption:** Disclosure of the Relationship between Proposed Rules and Federal Requirements

- D. †**Rule Adoption:** Federal Operating Permit Program Rule Amendments
- \*D-1 ‡**Informational Item:** Report on Environmental Equity Project  
(Report by Citizen Advisory Committee Chair, Victor Merced)
- E. †**Rule Adoption:** Gasoline Vapor Recovery Permits and Fees and Oxygenated Fuel Fees
- F. †**Rule Adoption:** Proposed Amendments to Water Pollution Control Revolving Fund Program Rules
- G. †**Rule Adoption:** Technical Corrections to Modifications of On-site Sewage Disposal Rule
- H. †**Rule Adoption:** Implementation of Oregon's Rigid Plastic Container Law  
(This item is scheduled for 10 a.m. and may be taken out of order)
- I. **Action Item:** Standards, Criteria, Policy Directives and Hiring Procedures to be used in Hiring Director of Department of Environmental Quality
- J. Commission Members Report (Oral)
- K. Director's Report (Oral)

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

‡The Commission does not usually take public comment on informational items.

\*This informational item is not related to any rule adoptions on this agenda.

The Commission has set aside December 1-2, 1994, for their next meeting. The location has not been established.

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

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

October 17, 1994

# Environmental Quality Commission

- Rule Adoption Item  
 Action Item  
 Information Item

Agenda Item 1  
October 20-21, 1994 Meeting

**Title:**

Coastal Nonpoint Pollution Control Program Status Report

**Summary:**

The Department of Environmental Quality and the Department of Land Conservation and Development are required by federal law to develop a coordinated state program to protect and enhance coastal waters. The program, called the Coastal Nonpoint Pollution Control Program, is intended to address the growing threat to coastal waters from population growth and development. Federal law requires states to implement measures to control pollution from agriculture, forestry, marinas, urban sources, and hydromodification (dams and channels), and to protect wetlands and riparian areas. These measures must be implemented through enforceable state laws or regulations.

Oregon has already implemented many of the required measures through a variety of state programs, including the Forest Practices Act, the Agricultural Water Quality Management Act, and the Department's storm water program and 401 certification process. Gaps remain, however, particularly in implementing the measures regarding urban development.


The report summarizes the Department's work in developing programs and measures to meet federal requirements and to address pollution problems from urban development, including onsite disposal systems, erosion and runoff control, riparian protection, and roads, highways, and bridges.

**Department Recommendation:**

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

  
Report Author

  
Division Administrator

  
Director

October 3, 1994

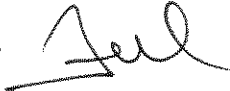
†Accommodations for disabilities are available upon request by contacting the Public Affairs Office at (503)229-5317(voice)/(503)229-6993(TDD).



State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: September 21, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item #1, October 20-21, EQC Meeting

Coastal Nonpoint Pollution Control Program Status Report

**Statement of Purpose**

This item is on the agenda to provide the Commission with advance notice and background information on the development of a coordinated state program to protect and enhance coastal waters. Federal legislation requires Oregon to submit such a program to the Environmental Protection Agency and the National Oceanic and Atmospheric Administration by July, 1995.

This agenda item is intended to inform the Commission of the general direction of the work by Department and other state agency staff in developing federally-required state authorities to address nonpoint source pollution from agriculture, forestry, urban areas, marinas, and hydromodification (dams and channels), and to protect wetlands and riparian areas. Enforceable state authorities (statutes, administrative rules) are required to implement federal management measures. The most significant policy development within the Department relates to urban management measures addressing erosion from new construction, urban runoff, roads, highways and bridges, and on-site disposal (septic) systems. The Commission may want to give informal direction and guidance to the staff regarding program development in these areas.

**Background**

In 1990, Congress passed the Coastal Zone Act Reauthorization Amendments (CZARA). Section 6217 of the amendments is known as the Coastal Nonpoint Pollution Control Program, and is intended to address the growing threat to coastal waters from population growth and development. In states with coastal management programs approved under the Coastal Zone Management Act, including Oregon, CZARA requires that the state coastal management agency and the state water quality agency work together to

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

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coordinate development of the state's Coastal Nonpoint Pollution Control Program. In Oregon, the Department of Land Conservation and Development (DLCD) administers the state's coastal management program, first approved under the CZMA in 1977.

In Oregon, nonpoint source water quality problems have impaired beneficial uses and produced severe impacts on coastal natural resources. Increased stream temperatures from the loss of streamside vegetation make it difficult for cold water fish species to survive. Sediment from forestry, agriculture, and construction activities has fouled salmon spawning gravels, contributing to the general decline in coastal salmon runs. Bacterial contamination from human and animal waste has caused numerous closures of shellfish harvesting beds, and threatens drinking water supplies. Nutrients from runoff and on-site disposal systems have caused numerous problems in coastal lakes, and the increased pace of development at the coast presents a serious threat to aquatic ecosystems.

CZARA requires states to implement 56 separate management measures in the categories of agriculture, forestry, marinas, wetlands, urban sources, and hydromodification. Each management measure, similar to a goal or objective, must be implemented through an enforceable state legal authority. While this does not mean that a state must emphasize enforcement in its nonpoint source control program, it does mean that enforcement be available to compel compliance if education and technical assistance are not successful in inducing proper land management practices to protect water quality. The text of the 56 management measures is set out in Attachment A.

There are additional statutory requirements regarding coordination with existing programs, monitoring, administrative coordination, and public participation. A summary of those program requirements is contained in Attachment B.

The geographic scope for implementation of the management measures includes Oregon's official Coastal Zone pursuant to the Coastal Zone Management Act. The Coastal Zone generally includes all regions west of the crest of the Coast Range (with the boundary closer to the coast in the Columbia, Umpqua, and Rogue valleys). In addition, NOAA has recommended that Oregon expand implementation to the Bonneville Dam in the Columbia basin, and slightly further inland in the Umpqua and Rogue basins. Consideration is being given to including the entire Umpqua and Rogue basins in the management area due to the presence of water-quality impaired streams in those basins and the degradation of coastal salmon habitat. Discussions are continuing among the state and federal agencies to resolve the boundary question.

**Program Development:**

The first major step in developing this program was to prepare an inventory of existing state statutes and regulations which implement portions of the coastal nonpoint program. The inventory showed that many of the measures are already implemented in Oregon through a variety of state programs managed by various state agencies, including the Department of Forestry, Department of Agriculture, Division of State Lands, Department of Transportation, Water Resources Department, DLCD, DEQ and others. The inventory also identified a number of management measures where the state does not have enforceable legal authorities, and other measures where the state has the enforceable legal authority but has not yet implemented the management measure.

Summaries of the inventory sections for the major land use categories are included as Attachment C, and are summarized further in the matrices in Attachment D. Briefly, the inventory showed that Oregon's recently amended Forest Practices Act will meet most, if not all, the requirements for forestry; the state's wetlands program and 401 certification process meet most of the requirements for protection of wetlands; and a variety of authorities exist relating to the hydromodification measures. The major gaps in enforceable authorities relate to nonpoint sources from agriculture, marinas, and urban development. Technical advisory groups were formed in each of these three land use types. The groups developed recommendations for filling the gaps in enforceable authorities. Summaries of the recommendations of the three technical groups are included as Attachment E.

**Agriculture:**

The Agricultural Technical Advisory Group identified the Oregon Department of Agriculture as the appropriate state agency to implement the agricultural management measures. The group recommended that ODA employ the Agricultural Water Quality Management process established by ORS 568.900 to 568.933 (Senate Bill 1010 passed by the 1993 Legislature) to develop water quality management area plans. These plans would then be the vehicle for implementation of the agriculture management measures. The Attorney General has confirmed that the requirements of the Coastal Nonpoint Pollution Control Program provide the necessary foundation for ODA to use this process.

The key to success in reducing polluted runoff from agricultural lands will be the water quality management area plans developed by ODA. By law, ODA must consult with the Department or the Commission in the adoption of these plans. The Department has been and needs to remain involved in the plan development and implementation process. The

key legal authorities and structure are now in place; it remains to be seen whether implementation will fully address all the sources contributing to current impairment of beneficial uses.

**Marinas:**

The Marinas Technical Advisory Group recommended that the Department and the Oregon State Marine Board implement the marinas management measures. Regarding fish waste, which has been an issue in both Yaquina and Depoe Bays, the group recommended that the Department develop and implement a permit that would prescribe uniform guidelines for the proper handling and disposal of fish waste from non-commercial operations (commercial operations are already regulated through individual permits). In addition, the group recommended that the Department enhance its inspection and monitoring of marinas with hull maintenance areas, which are regulated by the storm water permit process; that the Department seek increased funding to provide better monitoring of marinas' solid waste practices; and that the Department seek increased funding to improve its monitoring and technical support to marina operators regarding compliance with the general waste water permit governing boat cleaning.

**Urban:**

The Urban Technical Advisory Group's recommendations identified the Department of Environmental Quality as the appropriate state agency to implement a number of the urban management measures. In addition to advising the Commission on the status of this program, this report is intended to focus on the staff's approach to developing the needed authorities to implement the measures, which range from on-site disposal (septic) system inspection and maintenance, to urban runoff from development and from roads, highways, and bridges. The Alternatives and Evaluation section below will concentrate on these urban management measures.

**Federal Program Approval Process:**

In August, officials from NOAA and EPA came to Oregon for a three-day threshold review of Oregon's progress in developing its coastal nonpoint program. NOAA and EPA will provide written comments later, but in an oral briefing, federal officials indicated that Oregon is ahead of most states in regard to agriculture and forestry. They also indicated that at the time of program submission, they will closely scrutinize each state's program to determine not only whether the requisite legal authorities are in place, but also whether the state has committed the necessary resources to implementing the management measures. Department staff agree that while the development of

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enforceable authorities is a necessary foundation, whether or not the program succeeds in its goal of restoring and protecting coastal waters depends far more on the way programs are put into operation.

The deadline for program submission is July, 1995. The federal agencies then have six months to review the state's program for compliance. If the state's program is approved, the state must immediately implement the management measures for new pollutant sources, and must implement the measures for all existing sources by three years from the date of federal program approval.

If program approval is denied, federal funds for both Oregon's Clean Water Act Section 319 nonpoint source grant and the Coastal Zone Management Act Section 306 coastal program grant will be reduced starting in fiscal year 1996. The first year's reduction is 10%, and increases over the next several years to a maximum reduction of 30%.

Some proposals pending in Congress as part of the Clean Water Act reauthorization would expand the requirement for enforceable nonpoint source programs nationwide. The timing of program implementation may also be affected by amendments during the 1995 reauthorization of the Coastal Zone Management Act.

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

ORS 468.020 authorizes the Commission to adopt such rules and standards as are necessary and proper in performing its functions. ORS 468B.020(2) further authorizes the Commission to take such action as is necessary for the prevention of new pollution and the abatement of existing pollution.

Further, the Commission is authorized by ORS 468B.035 to "perform or cause to be performed any and all acts necessary to be performed by the state to implement within the jurisdiction of the state the provisions of the Federal Water Pollution Control Act [Clean Water Act], enacted by Congress, October 18, 1972, and Acts amendatory thereof or supplementary thereto, and federal regulations and guidelines issued pursuant thereto. The commission may adopt, modify or repeal rules, pursuant to ORS 183.310 to 183.550, for the administration and implementation of this section."

ORS 454.615 directs the EQC to adopt standards which prescribe minimum requirements for on-site sewage disposal (septic) system design and construction, prescribe minimum requirements for on-site system operation and maintenance, and prescribe minimum requirements for the pumping out or cleaning of on-site systems.

## Alternatives and Evaluation

### **I. ON-SITE DISPOSAL SYSTEMS**

#### **A. Background:**

On-site sewage disposal (septic) systems can contribute to nonpoint source pollution in several ways. System failures result in the surfacing of pollutants which can carry pathogens and nutrients to surface waters. Standard on-site systems are inefficient removers of nitrates, even when operating properly, and can therefore contribute to eutrophication. Also, there are some regions, for example the drainages around some of the coastal lakes, where lot sizes are small and septic systems, while legally permitted, are nevertheless significant contributors to nutrients in the watershed.

National studies indicate that on-site systems fail at the rate of 1 to 5 percent per year. In Oregon, sanitary surveys conducted for the Shellfish Sanitation Program have at times revealed failure rates significantly higher than this. For example, a survey of 174 residences in the South Slough area of Coos Bay in 1988-89 resulted in referral of 23 systems, or approximately 13% of the systems surveyed, to the Department for correction. A 1991 survey of Yaquina Bay found that 8.7% of systems were failing and an additional 25% were marginal.

#### **B. Federal Program Requirements:**

The coastal program federal guidance contains two measures relating to on-site systems. The first specifies criteria for siting and design; this measure is fully implemented in Oregon through the Department's on-site permitting program. The second measure contains requirements for operation and maintenance of existing on-site systems. This measure is not fully implemented in Oregon. In particular, Oregon lacks an enforceable program of periodic inspections of small (daily flows of 2,500 gallons or less) standard on-site disposal systems.

OAR 340-71-130(13) requires that all on-site systems be operated and maintained so as not to create a public health hazard or cause water pollution. This rule is the only operation and maintenance requirement applicable to standard on-site disposal systems with flows less than 2,500 gallons per day.

Any sand filter system or aerobic system with daily flows of more than 600 gallons per day is required to obtain an operating permit which specifies operation and maintenance requirements; OAR 340-71-305 (sand filters); OAR 340-71-345 (aerobic systems). Further, large standard systems (those with flows greater than 2,500 gallons per day) are also required to have operating permits with inspection, operation, and maintenance requirements. OAR 340-71-130. No inspection requirement applies to standard systems with flows of less than 2,500 gallons per day.

Although not currently mandated by state law, some inspections of small standard systems are occurring now. The state Department of Agriculture's Shellfish Program coordinates sanitary surveys along the shores of all commercial shellfish harvesting areas. Federal food safety regulations require physical inspection at least every twelve years. Further, many financial institutions are requiring some sort of septic inspection as a condition of financing. However, there are no established standards for either training of those who inspect the systems or for the inspections themselves.

Other aspects of Oregon's law which implement the measure include the ban on high-phosphate detergents, and the Department's application of current policy supporting system upgrades to a sand filter system when the site warrants such a system.

**C. Technical Group Recommendations:**

The Coastal program's Urban Technical Advisory Group recommended that the Department be the lead agency in developing and implementing the on-site systems operation and maintenance requirements. The TAG recommended the following to implement the measure:

- That the Department develop and implement a program of education and technical assistance for on-site system users stressing proper operation and maintenance;

- That the Commission impose a requirement that any on-site disposal system be inspected as a condition of transfer of ownership, in conjunction with development of standards for inspectors and inspections; and
- That both the Environmental Quality Commission and the Land Conservation and Development Commission take actions necessary to phase out the use of on-site systems inside Urban Growth Boundaries.

**D. Options:**

1. One option would have Department staff (or local government designees) perform periodic inspections. This would require a large expansion of the on-site program, and the imposition of new fees to support the expansion.
2. Another approach would require certification of a septic system inspection periodically in connection with real estate tax payments. At least one state is pursuing this approach.
3. Another option is to require an inspection of any on-site system located on property whenever that property is transferred. The Technical Advisory Group recommended that the Commission adopt such a requirement, and also develop and implement an education program aimed at homeowners. Several states have taken this approach, including New York. There are several benefits to this kind of system:
  - At the time of a property transfer, funds are generally available to pay for an inspection;
  - Many lending institutions already require inspection of on-site systems as a condition of financing.
4. A variation of the preceding option would encourage but not require inspections. Since many financial institutions already require inspections, it would be possible to build on this program by working jointly with lenders to develop criteria for the inspections and certification of inspectors so that there is an effective and



standardized protocol to follow in inspections. This approach would not meet federal criteria for enforceable authorities; the state would need to convince the federal agencies that this approach would be as effective as mandatory inspections.

5. Sanitary districts and authorities are created under state law (ORS Chapter 450) to provide treatment for domestic and commercial wastes. Thus the legal framework exists for the formation of districts which could regulate themselves regarding on-site system inspection, operation, and maintenance. The district would have the legal authority to tax residents to raise fees for the district's operations.

Other special districts could also be employed to address the problems associated with on-site systems. Special service districts (such as the Unified Sewerage Agency) could be established in coastal regions and would also have taxing and regulatory authority. Soil and Water Conservation Districts have already been established in each county pursuant to state law, and have the legal authority to work with the Department of Agriculture in implementing the agricultural components of the Coastal Nonpoint Pollution Control Program. They could address on-site system problems as well.

In addition to their ability to address needs for proper operation and maintenance of septic systems, sanitary districts, special districts, or Soil and Water Conservation Districts could be useful in dealing with stormwater runoff.

Current legislation, however, allows the formation of sanitary districts and other special districts but does not require them. Even where such districts already exist, the law does not mandate their compliance with federal program requirements. In their present format, therefore, the laws authorizing the formation of these districts are not state-level enforceable authorities and would likely not meet federal requirements for the Coastal Nonpoint Pollution Control Program.

## **II. EROSION AND RUNOFF CONTROL AND RIPARIAN PROTECTION**

### **A. Background:**

The earth disturbance associated with development and the replacement of natural drainage with impervious surfaces increases the amount of soil which is exposed to rain, wind and snow and which erodes into surface waters. The soil itself physically clogs spawning gravels as it carries adsorbed pollutants (such as phosphorus) into surface water, resulting in both a physical and a chemical assault on aquatic habitat. Hydrographic changes also often accompany development, which can then inflict further damage on already fragile riparian ecosystems.

Urban runoff has been recognized as a problem for many years, and the Department's stormwater program contains requirements that have resulted in considerable local planning for stormwater control. Currently, large municipalities must develop and implement stormwater control programs, and certain industrial facilities must develop plans to treat their stormwater. Permits are required by the Department for any construction activity which disturbs more than five acres of land, and it is likely that size threshold will be reduced to one acre pursuant to anticipated federal rulemaking.

### **B. Federal Program Requirements:**

Section 6217 contains several urban measures which require runoff control, as well as two measures requiring protection and restoration of riparian areas and wetlands. Three urban runoff measures address new development, watershed protection, and site development. These measures are intended to be applied at various stages of the planning and development process: comprehensive planning, site planning, and actual development. The construction site measures require controls on erosion as well as use of chemicals, and contains a numeric standard, 80%, for the reduction of total suspended solids. This standard is based on best available technology.

**C. Technical Group Recommendations:**

The Technical Advisory Group recommended that the Department be the lead agency in implementing the urban runoff management measures and the new construction measure. The Technical Advisory Group recommended that the Commission require local governments to implement these measures. The group urged the Department to provide technical assistance to local governments, as well as sample ordinances.

**D. Options:**

1. One option would be for the Commission to adopt rules, similar to those in effect in the Tualatin basin, requiring local governments to adopt erosion control and riparian protection ordinances. There are a number of advantages to this approach:
  - Although there was initial resistance by contractors to erosion control requirements for construction, the jurisdictions involved in Tualatin implementation have succeeded in obtaining good compliance with control measures.
  - Local implementation through existing processes like the building permit process are expected to be more effective than a centralized program.
  - There are good local examples (e.g., Tualatin) of practices and procedures which are consistent with state law as well as being similar geographically.
2. A variation of the first option would link the requirements on local governments with the periodic review process of the state's land use system. Since periodic review only occurs every 7-10 years, this could delay implementation in some areas. Also, it is unlikely that all jurisdictions in a basin or watershed would undergo periodic review at the same time, making coordination problematic and delaying uniformity.

On the other hand, a link with the land use process would mean that erosion control would be considered at the same time as other changes to the land use plans. Periodic review requires the

development of a work program to respond to new programs (like the Coastal Nonpoint Program) and changed circumstances. The Department plays an important role in the periodic review process by making local governments aware of their obligations to meet water quality requirements. This process occurs presently through the implementation of Goal 6.

3. A different option would be to build on the Department's storm water permit program to encompass additional sources. Construction sites which disturb five acres or more are now required to have a permit, and the threshold may drop to one acre as a result of anticipated changes in federal regulations. Expanding the program to include all new construction, including roads, highways, and bridges, would build on existing efforts. A general permit process could be used to encourage local government to implement appropriate erosion controls and riparian protection through local planning and building codes.

### **III. ROADS, HIGHWAYS, AND BRIDGES**

#### **A. Background:**

Road construction, operation, and maintenance can impact water quality in a variety of ways. Site disturbance during construction and during grading can be a significant source of sedimentation. Oils and heavy metals from vehicle operation accumulate on roadways and then reach surface waters via runoff. Pesticides and other chemicals in the construction phase and for maintenance are also of concern.

#### **B. Federal Program Requirements:**

The Coastal Program includes six management measures addressing the planning, siting, design, operation, and maintenance of roads, highways, and bridges to reduce nonpoint source pollution. These measures are to be implemented on each road, highway, or bridge in the 6217 management area.

The Oregon Department of Transportation is involved in all road construction projects that use state or federal funds. Sites that disturb five acres or more are covered under the stormwater permit program. In addition, ODOT has agreed that as a matter of policy, it will implement nonpoint source controls in compliance with the coastal program management measures on all of its sites west of the Cascades.

ODOT has no jurisdiction over local roads or highways. The Commission has adopted OAR 340-41-026(10), which provides: "Road building and maintenance activities shall be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces." Other than this standard, the Department does not currently regulate roadbuilding activities.

**C. Technical Group Recommendations:**

Since the coastal program requires a state-level enforceable mechanism to implement each management measure, the Urban TAG recommended that the Commission adopt a rule requiring local jurisdictions to comply with requirements based on ODOT standards.

**D. Options:**

1. The Urban TAG considered implementing these measures through Goal 12 of the state's land use planning system. Goal 12 deals with transportation. However, DLCDC staff have subsequently investigated and determined that Goal 12 is not an appropriate method for implementing these management measures because its primary purpose is coordinating development of transportation systems with other land use goals.
2. Another possibility is the use of Goal 6 of the state's land use planning system. DLCDC and Department staff will be examining the feasibility of this approach, which has not yet been fully explored.

3. Another option discussed by the TAG was the possibility of ODOT enforcing its standards on local governments. ODOT representatives indicated strongly that ODOT is not an enforcement agency, does not have the statutory or administrative authority to be an enforcement agency, and has no desire to be an enforcement agency.
4. The final option is the one recommended by the technical group, implementation through a Commission rule requiring local governments to comply with requirements based on guidance from ODOT. ODOT standards themselves might not be appropriate for the smaller roads outside ODOT's jurisdiction, but that agency's standards can provide a guide for the Department in developing its requirements.

### **Summary of Public Input Opportunity**

The federal statute which requires coastal states to implement coastal nonpoint programs also requires that each state provide opportunities for public participation in all aspects of the program.

Department of Land Conservation and Development staff have made numerous presentations about the Coastal Nonpoint Pollution Control Program requirements to local government officials, the agricultural community, port officials, and groups and organizations with interest in coastal issues.

The Department and DLCD staff conducted half-day workshops in May, 1994, regarding the three categories where Oregon has the largest gaps, agriculture, urban, and marinas. Notice of these workshops was sent to appropriate interest groups and state and federal agencies. Those workshops solicited members for the three technical advisory groups.

Between May and August, the three TAGs each met three or four times. Each meeting was open to the public, and notice was sent to all known interested persons.

The Department and DLCD jointly funded development of a Nonpoint Source Pollution Control Guidebook for Local Governments, which described procedures and practices useful in planning for and implementing various kinds of nonpoint source control measures. Department and DLCD staff and the consultants who produced the guidebook presented it to local government officials at two public workshops in August, 1994. Further workshops for local officials are in the planning stage.

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Notice of the Threshold Review in August, 1994, was sent to the mailing lists for the technical advisory groups, and an opportunity for public comment was provided during each day of the threshold review meetings.

Department staff are developing a public involvement plan that will include fact sheets, public meetings, and coordination with existing groups to explain program requirements and solicit public input.

Proposed rule changes will go through the public notice and hearing process. In addition, the entire program will be presented for public comment and hearing before it is submitted to NOAA and EPA in July, 1995.

### **Conclusions**

- The Coastal Nonpoint Pollution Control Program represents an opportunity for the Department, in conjunction with the other state natural resource agencies, to address longstanding nonpoint source water quality problems in a coordinated way.
- Oregon has been active in developing measures to deal with urban, agricultural and forestry land management practices which contribute to water quality problems, through the refinement of the Forest Practices Act (Senate Bill 1125) the adoption of the Agricultural Water Quality Management Act (Senate Bill 1010), and the development of the Storm Water program.
- The Department, in conjunction with other state agencies, needs to move forward to develop enforceable authorities to address nonpoint problems from on-site systems and urban development, both to meet federal program requirements and to deal effectively with longstanding problems from cumulative impacts.
- Extensive technical assistance, information transfer, and the provision of model local ordinances developed in partnership with local governments and other interested groups must accompany the creation of enforceable authorities.
- Success in reducing water quality problems from nonpoint sources depends on persistent, long-term, coordinated efforts by the Department, other state, federal, and local agencies, and explicit efforts to foster public stewardship of the state's waters.

### **Intended Future Actions**

- Department staff will continue development of the necessary rules, policies, and procedures needed to implement the Coastal Nonpoint Pollution Control Program management measures discussed above.
- Department and DLCDC staff will convene a local government advisory group to assist with the development of rules to implement the management measures discussed above.
- Department and DLCDC staff will proceed with a public involvement program with the goals of raising public awareness of nonpoint source water quality problems at the coast, the sources of those problems, and the ways in which the Coastal Nonpoint Pollution Control Program can contribute to solving those problems. Public meetings are planned for late November and December, 1994.
- The Department will submit draft rules for public review as required by law, requesting the Commission for hearing authorization no later than March, 1995.
- Following public hearings and analysis of public input, Department staff will prepare a rule package to present to the Commission no later than the meeting scheduled for June 29-30, 1995.
- The Department and DLCDC will submit a program to EPA and NOAA by the July, 1995 deadline.

### **Department Recommendation**

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

### **Attachments**

- A. Text of 56 Coastal Nonpoint Pollution Control Program Management Measures
- B. Specific Requirements for State Coastal Nonpoint Pollution Programs
- C. Summaries of Inventories of Oregon's Implementation of Coastal Nonpoint Pollution Control Program Management Measures



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- D. Matrices Summarizing Oregon's Implementation of Management Measures
- E. Summaries of Recommendations of Technical Advisory Groups: Urban, Agriculture, Marinas

**Reference Documents (available upon request)**

Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance, Environmental Protection Agency, 1993.

Coastal Nonpoint Pollution Control Program: Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters, Environmental Protection Agency, 1993.

Coastal Nonpoint Pollution Control Program: Oregon Program Inventory, 1993.

Approved:

Section:

Michael Brown

Division:

Michael Brown

Report Prepared By: Bobbi Lindberg

Phone: 686-7838, x242

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## 6217 Management Measures

### AGRICULTURE:

#### A. Erosion and Sediment Control Management Measure:

Apply the erosion component of a Conservation Management System (CMS) as defined in the Field Office Technical Guide of the U.S. Department of Agriculture - Soil Conservation Service (see Appendix 2A of this chapter) to minimize the delivery of sediment from agricultural lands to surface waters, or

Design and install a combination of management and physical practices to settle the settleable solids and associated pollutants in runoff delivered from the contributing area for storms of up to and including a 10-year, 24-hour frequency.

#### B1. Management Measure for Facility Wastewater and Runoff from Confined Animal Facility Management (Large Units):

Limit the discharge from the confined animal facility to surface waters by:

- (1) Storing both the facility wastewater and the runoff from confined animal facilities that is caused by storms up to and including a 25-year, 24-hour frequency storm. Storage structures should:
  - (a) Have an earthen lining or plastic membrane lining, or
  - (b) Be constructed with concrete, or
  - (c) Be a storage tank;

and

- (2) Managing stored runoff and accumulated solids from the facility through an appropriate waste utilization system.

#### B2. Management Measure for Facility Wastewater and Runoff from Confined Animal Facility Management (Small Units):

Design and implement systems that collect solids, reduce contaminant concentrations, and reduce runoff to minimize the discharge of contaminants in both facility wastewater and in runoff that is caused by storms up to and including a 25-year, 24-hour frequency storm. Implement these systems to substantially reduce significant increases in pollutant loadings to ground water.

Manage stored runoff and accumulated solids from the facility through an appropriate waste utilization system.

#### C. Nutrient Management Measure:

Develop, implement, and periodically update a nutrient management plan to: (1) apply nutrients at rates necessary to achieve realistic crop yields, (2) improve the timing of nutrient application, and (3) use agronomic crop production technology to increase nutrient use efficiency. When the source of the nutrients is other than commercial fertilizer, determine the nutrient value and the rate of availability of the nutrients. Determine and credit the nitrogen contribution of any legume crop. Soil and plant tissue testing should be used routinely. Nutrient management plans contain the following core components:

- (1) Farm and field maps showing acreage, crops, soils, and waterbodies.
- (2) Realistic yield expectations for the crop(s) to be grown, based primarily on the producer's actual yield history, State Land Grant University yield expectations for the soil series, or SCS Soils-5 information for the soils series.
- (3) A summary of the nutrient resources available to the producer, which at a minimum include:
  - Soil test results for pH, phosphorus, nitrogen, and potassium;
  - Nutrient analysis of manure, sludge, mortality compost (birds, pigs, etc.), or effluent (if applicable);
  - Nitrogen contribution to the soil from legumes grown in the rotation (if applicable);
  - Other significant nutrient sources (e.g., irrigation water).
- (4) An evaluation of field limitations based on environmental hazards or concerns, such as:
  - Sinkholes, shallow soils over fractured bedrock, and soils with high leaching potential,
  - Lands near surface water,
  - Highly erodible soils, and
  - Shallow aquifers.
- (5) Use of the limiting nutrient concept to establish the mix of nutrient sources and requirements for the crop based on a realistic yield expectation.
- (6) Identification of timing and application methods for nutrients to: provide nutrients at rates necessary to achieve realistic crop yields; reduce losses to the environment; and avoid applications as much as possible to frozen soil and during periods of leaching or runoff.
- (7) Provisions for the proper calibration and operation of nutrient application equipment.

#### **D. Pesticide Management Measure:**

To reduce contamination of surface water and ground water from pesticides:

- (1) Evaluate the pest problems, previous pest control measures, and cropping history;
- (2) Evaluate the soil and physical characteristics of the site including mixing, loading, and storage areas for potential leaching or runoff of pesticides. If leaching or runoff is found to occur, steps should be taken to prevent further contamination;
- (3) Use integrated pest management (IPM) strategies that:
  - (a) Apply pesticides only when an economic benefit to the producer will be achieved (i.e., applications based on economic thresholds); and
  - (b) Apply pesticides efficiently and at times when runoff losses are unlikely;
- (4) When pesticide applications are necessary and a choice of registered materials exists, consider the persistence, toxicity, runoff potential, and leaching potential of products in making a selection;
- (5) Periodically calibrate pesticide spray equipment; and
- (6) Use anti-backflow devices on hoses used for filling tank mixtures.

## **E. Grazing Management Measure:**

Protect range, pasture, and other grazing lands:

- (1) By implementing one or more of the following to protect sensitive areas (such as streambanks, wetlands, estuaries, ponds, lake shores, and riparian zones):
  - (a) Exclude livestock,
  - (b) Provide stream crossings or hardened watering access for drinking,
  - (c) Provide alternative drinking water locations,
  - (d) Locate salt and additional shade, if needed, away from sensitive areas, or
  - (e) Use improved grazing management (e.g., herding)

to reduce the physical disturbance and reduce direct loading of animal waste and sediment caused by livestock; and
- (2) By achieving either of the following on all range, pasture, and other grazing lands not addressed under (1):
  - (a) Implement the range and pasture components of a Conservation Management System (CMS) as defined in the Field Office Technical Guide of the USDA-SCS (see Appendix 2A of this chapter) by applying the progressive planning approach of the USDA-Soil Conservation Service (SCS) to reduce erosion, or
  - (b) Maintain range, pasture, and other grazing lands in accordance with activity plans established by either the Bureau of Land Management of the U.S. Department of the Interior or the Forest Service of USDA.

## **F. Irrigation Water Management:**

To reduce nonpoint source pollution of surface waters caused by irrigation:

- (1) Operate the irrigation system so that the timing and amount of irrigation water applied match crop water needs. This will require, as a minimum: (a) the accurate measurement of soil-water depletion volume and the volume of irrigation water applied, and (b) uniform application of water.
- (2) When chemigation is used, include backflow preventers for wells, minimize the harmful amounts of chemigated waters that discharge from the edge of the field, and control deep percolation. In cases where chemigation is performed with furrow irrigation systems, a tailwater management system may be needed.

The following limitation and special conditions apply:

- (1) In some locations, irrigation return flows are subject to other water rights or are required to maintain stream flow. In these special cases, on-site reuse could be precluded and would not be considered part of the management measure for such locations.
- (2) By increasing the water use efficiency, the discharge volume from the system will usually be reduced. While the total pollutant load may be reduced somewhat, there is the potential for an increase in the concentration of pollutants in the discharge. In these special cases, where living resources or human health may be adversely affected and where other management measures (nutrients and pesticides) do not reduce concentrations in the discharge, increasing water use efficiency would not be considered part of the management measure.
- (3) In some irrigation districts, the time interval between the order for and the delivery of irrigation water to the farm may limit the irrigator's ability to achieve the maximum on-farm application efficiencies that

are otherwise possible.

- (4) In some locations, leaching is necessary to control salt in the soil profile. Leaching for soil control should be limited to the leaching requirement for the root zone.
- (5) Where leakage from delivery systems or return flows supports wetlands or wildlife refuges, it may be preferable to modify the system to achieve a high level of efficiency and then divert the "saved water" to the wetland or wildlife refuge. This will improve the quality of water delivered to wetlands or wildlife refuges by preventing the introduction of pollutants from irrigated lands to such diverted water.
- (6) In some locations, sprinkler irrigation is used for frost or freeze protection, or for crop cooling. In these special cases, applications should be limited to the amount necessary for crop protection, and applied water should remain on-site.

## **FORESTRY:**

### **A. Preharvest Planning:**

Perform advance planning for forest harvesting that includes the following elements where appropriate:

- (1) Identify the area to be harvested including location of waterbodies and sensitive areas such as wetlands, threatened or endangered aquatic species habitat areas, or high-erosion-hazard areas (landslide-prone areas) within the harvest unit.
- (2) Time the activity for the season or moisture conditions when the least impact occurs.
- (3) Consider potential water quality impacts and erosion and sedimentation control in the selection of silvicultural and regeneration systems, especially for harvesting and site preparation.
- (4) Reduce the risk of occurrence of landslides and severe erosion by identifying high-erosion-hazards areas and avoiding harvesting in such areas to the extent practicable.
- (5) consider additional contributions from harvesting or roads to any known existing water quality impairments or problems in watersheds of concern.

Perform advance planning for forest road systems that includes the following elements where appropriate:

- (1) Locate and design road systems to minimize, to the extent practicable, potential sediment generation and delivery to surface waters. Key components are:
  - locate roads, landing, and skid trails to avoid to the extent practicable steep grades and steep hillslope areas, and to decrease the number of stream crossings;
  - avoid to the extent practicable locating new roads and landings in Streamside Management Areas (SMAs); and
  - determine road usage and select the appropriate road standard.
- (2) Locate and design temporary and permanent stream crossings to prevent failure and control impacts from the road system. Key components are:
  - size and site crossing structures to prevent failure;
  - for fish-bearing streams, design crossing to facilitate fish passage.
- (3) Ensure that the design of road prism and the road surface drainage are appropriate to the terrain and that road surface design is consistent with the road drainage structures.
- (4) Use suitable materials to surface roads planned for all-weather use to support truck traffic.
- (5) Design road systems to avoid high erosion or landslide hazard areas. Identify these areas and consult a qualified specialist for design of any roads that must be constructed through these areas.

Each state should develop a process (or utilize an existing process) that ensures that the management measures in this chapter are implemented. Such a process should include appropriate notification, compliance audits, or other mechanisms for forestry activities with the potential for significant adverse nonpoint source effects based on the type and size of operation and the presence of stream crossings or SMAs.

## **B. Streamside Management Areas (SMAs):**

Establish and maintain a streamside management area along surface waters, which is sufficiently wide and which includes a sufficient number of canopy species to buffer against detrimental changes in the temperature regime of the waterbody, to provide bank stability, and to withstand wind damage. Manage the SMA in such a way as to protect against soil disturbance in the SMA and delivery to the stream of sediments and nutrients generated by forestry activities, including harvesting. Manage the SMA canopy species to provide a sustainable source of large woody debris needed for instream channel structure and aquatic species habitat.

## **C. Road Construction/Reconstruction:**

- (1) Follow preharvest planning (as described under Management Measure F1) when constructing or reconstructing the roadway.
- (2) Follow designed planned under Management Measure F1 for road surfacing and shaping.
- (3) Install road drainage structures according to designs planned under Management Measure F1 and regional storm return period and installation specifications. Match these drainage structures with terrain features and with road surface and prism designs.
- (4) Guard against the production of sediment when installing stream crossings.
- (5) Protect surface waters from slash and debris material from roadway clearing.
- (6) Use straw bales, silt fences, mulching, or other favorable practices on disturbed soils on unstable cuts, fills, etc.
- (7) Avoid constructing new roads in SMAs to the extent practicable.

## **D. Road Management:**

- (1) Avoid using roads where possible for timber hauling or heavy traffic during wet or thaw periods on roads not designed and constructed for these conditions.
- (2) Evaluate the future need for a road and close roads that will not be needed. Leave closed roads and drainage channels in a stable condition to withstand storms.
- (3) Remove drainage crossings and culverts if there is a reasonable risk of plugging or failure from lack of maintenance.
- (4) Following completion of harvesting, close and stabilize temporary spur roads and seasonal roads to control and direct water away from the roadway. Remove all temporary stream crossings.
- (5) Inspect roads to determine the need for structural maintenance. Conduct maintenance practices, when conditions warrant, including cleaning and replacement of deteriorated structures and erosion controls, grading or seeding of road surfaces, and, in extreme cases, slope stabilization or removal of road fills where necessary to maintain structural integrity.
- (6) Conduct maintenance activities, such as dust abatement, so that chemical contaminants or pollutants are not introduced into surface waters to the extent practicable.
- (7) Properly maintain permanent stream crossings and associated fills and approaches to reduce the likelihood (a) that stream overflow will divert onto roads, and (b) that fill erosion will occur if the drainage structures become obstructed.

## **E. Timber Harvesting:**

The timber harvesting management measure consists of implementing the following:

- (1) Timber harvesting operations with skid trails or cable yarding follow layouts determined under Management Measure F1.
- (2) Install landing drainage structures to avoid sedimentation to the extent practicable. Disperse landing drainage over sideslopes.
- (3) Construct landings away from steep slopes and reduce the likelihood of fill slope failures. Protect landing surfaces used during wet periods. Locate landings outside of SMAs.

- (4) Protect stream channels and significant ephemeral drainages from logging debris and slash material.
- (5) Use appropriate areas for petroleum storage, draining, dispensing. Establish procedures to contain and treat spills. Recycle or properly dispose of all waste materials.

For cable yarding:

- (1) Limit yarding corridor gouge or soil plowing by properly locating cable yarding landings.
- (2) Locate corridors for SMAs following Management Measure F2.

For groundskidding:

- (1) Within SMAs, operate groundskidding equipment only at stream crossings to the extent practicable. In SMAs, fell and endline trees to avoid sedimentation.
- (2) Use improved stream crossings for skid trails which cross flowing drainages. Construct skid trails to disperse runoff and with adequate drainage structures.
- (3) On steep slopes, use cable systems rather than groundskidding where groundskidding may cause excessive sedimentation.

## **F. Site Preparation and Forest Regeneration:**

Confine on-site potential NPS pollution and erosion resulting from site preparation and the regeneration of forest stands. The components of the management measure for site preparation and regeneration are:

- (1) Select a method of site preparation and regeneration suitable for the site conditions.
- (2) Conduct mechanical tree planting and ground-disturbing site preparation activities on the contour of sloping terrain.
- (3) Do not conduct mechanical site preparation and mechanical tree planting in streamside management areas.
- (4) Protect surface waters from logging debris and slash material.
- (5) Suspend operations during wet periods if equipment used begins to cause excessive soil disturbance that will increase erosion.
- (6) Locate windrows at a safe distance from drainages and SMAs to control movement of the material during high runoff conditions.
- (7) Conduct bedding operations in high-water-table areas during dry periods of the year. Conduct bedding in sloping areas on the contour.
- (8) Protect small ephemeral drainages when conducting mechanical tree planting.

## **G. Fire Management:**

Prescribe fire for site preparation and control or suppress wildfire in a manner which reduces potential nonpoint source pollution of surface waters:

- (1) Intense prescribed fire should not cause excessive sedimentation due to the combined effect of removal of canopy species and the loss of soil-binding ability of subcanopy and herbaceous vegetation roots, especially in SMAs, in streamside vegetation for small ephemeral drainages, or on very steep slopes.
- (2) Prescriptions for prescribed fire should protect against excessive erosion or sedimentation to the extent practicable.
- (3) All bladed firelines, for prescribed fire and wildfire, should be plowed on contour or stabilized with water bars and/or other appropriate techniques if needed to control excessive sedimentation or erosion of the fireline.
- (4) Wildfire suppression and rehabilitation should consider possible NPS pollution of watercourses, while recognizing the safety and operational priorities of fighting wildfires.

## **H. Revegetation of Disturbed Areas:**

Reduce erosion and sedimentation by rapid revegetation of areas disturbed by harvesting operations or road

construction:

- (1) Revegetate disturbed areas (using seeding or planting) promptly after completion of the earth-disturbing activity. Local growing conditions will dictate the timing for establishment of vegetative cover.
- (2) Use mixes of species and treatments developed and tailored for successful vegetation establishment for the region or area.
- (3) Concentrate revegetation efforts initially on priority areas such as disturbed areas in SMAs or the steepest areas of disturbance near drainages.

## **I. Forest Chemical Management:**

Use chemicals when necessary for forest management in accordance with the following to reduce nonpoint source pollution impacts due to the movement of forest chemicals off-site during and after application:

- (1) Conduct applications by skilled and, where required, licensed applicators according to the registered use, with special consideration given to impacts to nearby surface waters.
- (2) Carefully prescribe the type and amount of pesticides appropriate for the insect, fungus, or herbaceous species.
- (3) Prior to applications of pesticides and fertilizers, inspect the mixing and loading process and the calibration of equipment, and identify the appropriate weather conditions, the spray area, and buffer areas for surface waters.
- (4) Establish and identify buffer areas for surface waters. (This is especially important for aerial applications.)
- (5) Immediately report accidental spills of pesticides or fertilizers into surface waters to the appropriate State agency. Develop an effective spill contingency plan to contain spills.

## **J. Wetlands Forest:**

Plan, operate, and manage normal, ongoing forestry activities (including harvesting, road design and construction, site preparation and regeneration, and chemical management) to adequately protect the aquatic functions of forested wetlands.

## **URBAN:**

### **Urban Runoff:**

#### **A. New Development Management Measure:**

- (1) By design or performance:
  - (a) After construction has been completed and the site is permanently stabilized, reduce the average annual total suspended solid (TSS) loadings by 80 percent. For the purposes of this measure, an 80 percent TSS reduction is to be determined on an average annual basis,\* [\*Based on the average annual TSS loadings from all storms less than or equal to the 2-year/24-hour storm. TSS loadings from storms greater than the 2-year/24-hour storm are not expected to be included in the calculation of the average annual TSS loadings.] or
  - (b) Reduce the postdevelopment loadings of TSS so that the average annual TSS loadings are no greater than predevelopment loadings, and
- (2) To the extent practicable, maintain postdevelopment peak runoff rate and average volume at levels that are similar to predevelopment levels.



Sound watershed management requires that both structural and nonstructural measures be employed to mitigate the adverse impacts of storm water. Nonstructural Management Measures U2 and U3 can be effectively used on conjunction with Management Measure U1 to reduce both the short- and long-term costs of meeting the treatment goals of this management measure.

**B. Watershed Protection Management Measure:**

Develop a watershed protection program to:

- (1) Avoid conversion, to the extent practicable, of areas that are particularly susceptible to erosion and sediment loss;
- (2) Preserve areas that provide important water quality benefits and/or are necessary to maintain riparian and aquatic biota; and
- (3) Site development, including roads, highways, and bridges, to protect to the extent practicable the natural integrity of waterbodies and natural drainage systems.

**C. Site Development Management Measure:**

Plan, designs, and develop sites to:

- (1) Protect areas that provide important water quality benefits and/or are particularly susceptible to erosion and sediment loss;
- (2) Limit increases of impervious areas, except where necessary;
- (3) Limit land disturbance activities such as clearing and grading, and cut and fill to reduce erosion and sediment loss; and
- (4) Limit disturbance of natural drainage features and vegetation.

**Construction Activities:**

**A. Construction Site Erosion and Sediment Control Management Measure:**

- (1) Reduce erosion and, to the extent practicable, retain sediment onsite during and after construction, and
- (2) Prior to land disturbance, prepare and implement an approved erosion and sediment control plan or similar administrative document that contains erosion and sediment control provisions.

**B. Construction Site Chemical Control Management Measure:**

- (1) Limit application, generation, and migration of toxic substances;
- (2) Ensure the proper storage and disposal of toxic materials; and
- (3) Apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface waters.

## **Existing Development:**

### **A. Existing Development Management Measure:**

Develop and implement watershed management programs to reduce runoff pollutant concentrations and volumes from existing development:

- (1) Identify priority local and/or regional watershed pollutant reduction opportunities, e.g., improvements to existing urban runoff control structures;
- (2) Contain a schedule for implementing appropriate controls;
- (3) Limit destruction of natural conveyance systems; and
- (4) Where appropriate, preserve, enhance, or establish buffers along surface waterbodies and their tributaries.

## **Onsite Disposal Systems:**

### **A. New Onsite Disposal Systems:**

- (1) Ensure that new Onsite Disposal Systems (OSDS) are located, designed, installed, operated, inspected, and maintained to prevent the discharge of pollutants to the surface of the ground and to the extent practicable reduce the discharge of pollutants into ground waters that are closely hydrologically connected to surface waters. Where necessary to meet these objectives: (a) discourage the installation of garbage disposals to reduce hydraulic and nutrient loadings; and (b) where low-volume plumbing fixtures have not been installed in new developments or redevelopments, reduce total hydraulic loadings to the OSDS by 25 percent. Implement OSDS inspection schedules for preconstruction, construction, and postconstruction.
- (2) Direct placement of OSDS away from unsuitable areas. Where OSDS placement in unsuitable [sic] areas is not practicable, ensure that the OSDS is designed or sited at a density so as not to adversely affect surface waters or ground water that is closely hydrologically connected to surface water. Unsuitable areas include, but are not limited to, areas with poorly or excessively drained soils; areas with shallow water tables or areas with high seasonal water tables; areas overlaying fractured bedrock that drain directly to ground water; areas within floodplains; or areas where nutrient and/or pathogen concentrations in the effluent cannot be sufficiently treated or reduced before the effluent reaches sensitive waterbodies.
- (3) Establish protective setbacks from surface waters, wetlands, and floodplains for conventional as well as alternative OSDS. The lateral setbacks should be based on soil type, slope, hydrologic factors, and type of OSDS.
- (4) Establish protective separation distances between OSDS system components and groundwater which is closely hydrologically connected to surface waters. The separation distances should be based on soil type, distance to ground water, hydrologic factors, and type of OSDS;
- (5) Where conditions indicate that nitrogen-limited surface waters may be adversely affected by excess nitrogen loadings from ground water, require the installation of OSDS that reduce total nitrogen loadings by 50 percent to ground water that is closely hydrologically connected to surface water.

## **B. Operating Onsite Disposal Systems Management Measure:**

- (1) Establish and implement policies and systems to ensure that existing OSDS are operated and maintained to prevent the discharge of pollutants to the surface of the ground and to the extent practicable reduce the discharge of pollutants into ground waters that are closely hydrologically connected to surface waters. Where necessary to meet these objectives, encourage the reduced use of garbage disposals, encourage the use of low-volume plumbing fixtures, and reduce total phosphorus loadings to the OSDS by 15 percent (if the use of low-level phosphate detergents has not been required or widely adopted by OSDS users). Establish and implement policies that require an OSDS to be repaired, replaced, or modified where the OSDS fails, or threatens or impairs surface waters;
- (2) Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing;
- (3) Consider replacing or upgrading OSDS to treat influent so that total nitrogen loadings in the effluent are reduced by 50 percent. This provision applies only:
  - (a) where conditions indicate that nitrogen-limited surface waters may be adversely affected by significant ground water nitrogen loadings from OSDS, and
  - (b) where nitrogen loadings from OSDS are delivered to ground water that is closely hydrologically connected to surface water.

## **Pollution Prevention:**

### **A. Pollution Prevention Management Measure:**

Implement pollution prevention and education programs to reduce nonpoint source pollutants generated from the following activities, where applicable:

- The improper storage, use, and disposal of household hazardous chemicals, including automobile fluids, pesticides, paints, solvents, etc.;
- Lawn and garden activities, including the application and disposal of lawn and garden care products, and the improper disposal of leaves and yard trimmings;
- Turf management on golf courses, parks, and recreational areas;
- Improper operation and maintenance of onsite disposal systems;
- Discharge of pollutants into storm drains including floatables, waste oil, and litter;
- Commercial activities including parking lots, gas stations, and other entities not under NPDES purview; and
- Improper disposal of pet excrement.

## **Roads, Highways, and Bridges:**

### **A. Management Measure for Planning, Siting, and Developing Roads and Highways:**

Plan, site, and develop roads and highways to:

- (1) Protect areas that provide important water quality benefits or are particularly susceptible to erosion or

sediment loss;

- (2) Limit land disturbance such as clearing and grading and cut and fill to reduce erosion and sediment loss; and
- (3) Limit disturbance of natural drainage features and vegetation.

**B. Management Measure for Bridges:**

Site, design, and maintain bridge structures so that sensitive and valuable aquatic ecosystems and areas providing important water quality benefits are protected from adverse effects.

**C. Management Measure for Construction Projects:**

- (1) Reduce erosion and, to the extent practicable, retain sediment onsite during and after construction and
- (2) Prior to land disturbance, prepare and implement an approved erosion control plan or similar administrative document that contains erosion and sediment control provisions.

**D. Management Measure for Construction Site Chemical Control:**

- (1) Limit the application, generation, and migration of toxic substances;
- (2) Ensure the proper storage and disposal of toxic materials; and
- (3) Apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface water.

**E. Management Measure for Operation and Maintenance:**

Incorporate pollution prevention procedures into the operation and maintenance of roads, highways, and bridges to reduce pollutant loadings to surface waters.

**F. Management Measure for Road, Highway, and Bridge Runoff Systems:**

Develop and implement runoff management systems for existing roads, highways, and bridges to reduce runoff pollutant concentrations and volumes entering surface waters.

- (1) Identify priority and watershed pollutant reduction opportunities (e.g., improvements to existing urban runoff control structures); and
- (2) Establish schedules for implementing appropriate controls.

**MARINAS:**

**Marina Siting and Design:**

**A. Marina Flushing Management Measure:**

Site and design marinas such that tides and/or currents will aid in flushing of the site or renew its water regularly.

**B. Water Quality Assessment Management Measure:**

Assess water quality as part of marina siting and design.

**C. Habitat Assessment Management Measure:**

Site and design marinas to protect against adverse effects on shellfish resources, wetlands, submerged aquatic vegetation, or other important riparian and aquatic habitat areas as designated by local, State, or Federal governments.

**D. Shoreline Stabilization Management Measure:**

Where shoreline erosion is a nonpoint source pollution problem, shorelines should be stabilized. Vegetative methods are strongly preferred unless structural methods are more cost effective, considering the severity of wave and wind erosion, offshore bathymetry, and the potential adverse impact on other shorelines and offshore areas.

**E. Storm Water Runoff Management Measure:**

Implement effective runoff control strategies which include the use of pollution prevention activities and the proper design of hull maintenance areas.

Reduce the average annual loadings of total suspended solids (TSS) in runoff from hull maintenance areas by 80 percent. For the purposes of this measure, an 80 percent reduction of TSS is to be determined on an average annual basis.

**F. Fueling Station Design Management Measure:**

Design fueling stations to allow for ease in cleanup of spills.

**G. Sewage Facility Management Measure:**

Install pumpout, dump station, and restroom facilities where needed at new and expanding marinas to reduce the release of sewage to surface waters. Design these facilities to allow ease of access and post signage to promote use by the boating public.

**Marina and Boat Operation and Maintenance:**

**A. Solid Waste Management Measure:**

Properly dispose of solid wastes produced by the operation, cleaning, maintenance, and repair of boats to limit entry of solid wastes to surface waters.

**B. Fish Waste Management Measure:**

Promote sound fish waste management through a combination of fish-cleaning restrictions, public education, and proper disposal of fish waste.

**C. Liquid Material Management Measure:**

Provide and maintain appropriate storage, transfer, containment, and disposal facilities for liquid material, such

as oil, harmful solvents, antifreeze, and paints, and encourage recycling of these materials.

**D. Petroleum Control Management Measure:**

Reduce the amount of fuel and oil from boat bilges and fuel tank air vents entering marina and surface waters.

**E. Boat Cleaning Management Measure:**

For boats that are in the water, perform cleaning operations to minimize, to the extent practicable, the release to surface waters of (a) harmful cleaners and solvents and (b) paint from in-water hull cleaning.

**F. Public Education Management Measure:**

Public education/outreach/training programs should be instituted for boaters, as well as marina owners and operators, to prevent improper disposal of polluting material.

**G. Maintenance of Sewage Facilities Management Measure:**

Ensure that sewage pumpout facilities are maintained in operational condition and encourage their use.

**H. Boat Operation Management Measure (applies to boating only):**

Restrict boating activities where necessary to decrease turbidity and physical destruction of shallow-water habitat.

**HYDROMODIFICATION:**

**Channelization and Channel Modification:**

**A. Management Measure for Physical and Chemical Characteristics of Surface Waters:**

- (1) Evaluate the potential effects of proposed channelization and channel modification on the physical and chemical characteristics of surface waters in coastal areas;
- (2) Plan and design channelization and channel modification to reduce undesirable impacts; and
- (3) Develop an operation and maintenance program for existing modified channels that includes identification and implementation of opportunities to improve physical and chemical characteristics of surface waters in those channels.

**B. Instream and Riparian Habitat Restoration Management Measure:**

- (1) Evaluate the potential effects of proposed channelization and channel modification on instream and riparian habitat in coastal areas;
- (2) Plan and design channelization and channel modification to reduce undesirable impacts; and
- (3) Develop an operation and maintenance program with specific timetables for existing modified channels that includes identification of opportunities to restore instream and riparian habitat in those channels.

## **Dams:**

### **A. Management Measure for Erosion and Sediment Control:**

- (1) Reduce erosion and, to the extent practicable, retain sediment onsite during and after construction, and
- (2) Prior to land disturbance, prepare and implement an approved erosion and sediment control plan or similar administrative document that contains erosion and sediment control provisions.

### **B. Management Measure for Chemical and Pollutant Control:**

- (1) Limit application, generation, and migration of toxic substances;
- (2) Ensure the proper storage and disposal of toxic materials; and
- (3) Apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface waters.

### **C. Management Measure for Protection of Surface Water Quality and Instream and Riparian Habitat:**

Develop and implement a program to manage the operation of dams in coastal areas that includes an assessment of:

- (1) Surface water quality and instream and riparian habitat and potential for improvement and
- (2) Significant nonpoint source pollution problems that result from excessive surface water withdrawals.

## **Streambank and Shoreline Erosion:**

### **A. Management Measures for Eroding Streambanks and Shorelines:**

- (1) Where streambank or shoreline erosion is a nonpoint source pollution problem, streambanks and shorelines should be stabilized. Vegetative methods are strongly preferred unless structural methods are more cost-effective, considering the severity of wave and wind erosion, offshore bathymetry, and the potential adverse impact on other streambanks, shorelines, and offshore areas.
- (2) Protect streambank and shoreline features with the potential to reduce NPS pollution.
- (3) Protect streambank and shorelines from erosion due to uses of either the shorelands or adjacent surface waters.

## **PROTECTION OF WETLANDS AND RIPARIAN AREAS:**

### **A. Management Measure for Protection of Wetlands and Riparian Areas:**

Protect from adverse effects wetlands and riparian areas that are serving a significant NPS abatement function and maintain this function while protecting the other existing functions of these wetlands and riparian areas as measured by characteristics such as vegetative composition and cover, hydrology of surface water and ground

water, geochemistry of the substrate, and species composition.

**B. Management Measure for Restoration of Wetland and Riparian Areas:**

Promote the restoration of the preexisting functions in damaged and destroyed wetlands and riparian systems in areas where the systems will serve a significant NPS pollution abatement function.

**C. Management Measure for Vegetated Treatment Systems:**

Promote the use of engineered vegetated treatment systems such as constructed wetlands or vegetated filter strips where these systems will serve a significant NPS pollution abatement function.



**SPECIFIC REQUIREMENTS FOR STATE COASTAL NONPOINT  
POLLUTION CONTROL PROGRAMS**

due to NOAA and EPA in July, 1995

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**SPECIFIC REQUIREMENTS FOR STATE COASTAL NONPOINT  
POLLUTION CONTROL PROGRAMS**

**due to NOAA and EPA in July, 1995**

This material is a summary of significant parts of the *Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance*, particularly Section III, "Specific Coastal Nonpoint Program Requirements". This summary lists "... the minimum criteria that the state coastal nonpoint program needs to meet to obtain Federal approval."

**A. Coordination with Existing State Programs**

Involve relevant agencies in development of the CNPCP, and incorporate existing programs into the CNPCP. Section 6217 does not apply to activities permitted under the National Pollutant Discharge Elimination System (NPDES).

**B. Coastal Zone Boundaries and 6217 Management Area**

The geographic scope of the state's program must be sufficient to "restore and protect coastal waters." The statute required NOAA to determine the area encompassing the land and water uses having "significant" impact on coastal waters, and to recommend modification to the state coastal zone boundary to encompass that area. State program submittals must respond to NOAA's recommendation.

States need not apply the program within the recommended area if they can demonstrate that a smaller area would restore and protect coastal waters. However, absent such showing, NOAA and EPA expect the program to be applied within the recommended area.

If the state does not wish -- or is unable -- to amend the coastal zone boundary to incorporate the recommended area, then the state must show that it has the necessary authorities -- including enforceable policies and mechanisms -- to implement the program's management measures, and that those authorities are networked into the coastal program.

NOAA's recommendation to Oregon is to include the Rogue basin to the confluence with the Applegate; the Umpqua to its confluence with the North Umpqua; and the Columbia to Bonneville Dam, including the Willamette to Willamette Falls and the Sandy Basin.

### C. Implementation of Measures in Conformity With the (g) Guidance Measures

Section 6217(g) of the statute directs EPA to develop "... guidance for specifying management measures for sources of nonpoint pollution in coastal waters." Thus the reference to so-called "(g) guidance management measures". EPA's guidance -- the *Guidance Specifying management Measures for Sources of Nonpoint Pollution in Coastal Waters* -- contains management measures to reduce NPS pollution from agricultural activities; forestry activities; urban areas, including some rural residential activities; marinas; and hydromodification activities; and to protect wetlands from NPS pollution.

Each category in the guidance contains several management measures. Each measure contains information on the circumstances under which it must be applied, and examples of practices which can be used to implement the measure. The requirement to implement measures in conformity with the guidance does not extend to the example practices. Included with this summary are (1) examples of a few (g) guidance management measures and (2) a list of all of the (g) guidance measures.

State programs are required to "... provide for the implementation ... of management measures in conformity with the guidance published [by EPA] to protect coastal waters generally... ."

Ultimately, the statutory requirement for conformity is addressed in the guidance: "In its coastal nonpoint program document, a state must respond to each of the (g) management measures by either: (1) providing for the implementation of that measure or an alternative as effective as the (g) measure; or (2) justifying why the management measure is not included in the program."

In order to implement the (g) guidance measures, state programs must contain the following three elements:

1. Identify NPS categories or subcategories that will be addressed;

Identify the categories (e.g., Agriculture), subcategories (e.g., CAFOs), and sources (e.g., milking parlor) in the (g) guidance which will be addressed by the state's program. A category, subcategory, or source may be excluded from a state program if it is not present, not anticipated, or "... does not and is not expected to, individually or cumulatively, present significant adverse effects to living coastal resources or human health."

2. Identify management measures to be implemented for those categories and subcategories;

Specify which measures will be implemented to address the identified categories or subcategories of sources. The

measures a state selects must be "in conformity with" the measures in the (g) guidance. A measure is in conformity if it is identical to, or demonstrated to be as effective as, the (g) guidance measure.

States must choose practices to implement the (g) guidance measures. "For program approval, the coastal nonpoint program must describe the process the state will use to select practices that will result in the effective implementation of the (g) guidance management measures."

An alternative measure may be used under two conditions: "... (1) states have conditions that make the 6217(g) measures inapplicable or unsuitable, or (2) other measures that equal or exceed the effectiveness of the 6217(g) measures already exist or are scheduled to be implemented under existing state laws or programs." The effectiveness of alternative measures must be demonstrated; the guidance describes how such demonstrations are to be made.

3. Describe the process by which the state will ensure the implementation of the management measures.

For each nonpoint source category and subcategory, the program must:

- a. Describe the scope, structure, and coverage of the state implementation program.
- b. Describe the organization, structure, and authorities of the state or local agencies that will be responsible for implementing the program, including:
  - i. identification of the lead agency, and a description of how the agency and its authorities have been incorporated into the program;
  - ii. a description of how the lead agency expects to implement the program "... including, for example, the number of staff and general responsibilities, cost of the program and potential funding sources."
- c. Include a schedule for each NPS category or subcategory with milestones for achieving full implementation of the management measures within three years.
- d. Identify enforceable policies and mechanisms to ensure that each measure identified in the coastal NPS program is implemented in accordance with the guidance. Include copies of the appropriate legislative and administrative documents. If the authority will not be exercised directly by DLCD or DEQ, the program must include provisions to ensure that the governmental body

with the statutory authority exercises that authority as described in the program.

- e. Describe mechanisms to improve coordination among state agencies and among state and local officials responsible for land use programs, water quality programs, habitat protection, and public health and safety. Include copies of MOAs and provisions for joint project review.
- f. Describe a process to identify practices to achieve the management measures.
- g. Describe activities to ensure continuing performance and long term effectiveness of the measure through proper operation and maintenance.
- h. Describe state activities to monitor the effectiveness of the (g) measures based on accepted water quality monitoring protocols.

States may meet any of these requirements by: (1) identifying existing program activities currently being implemented effectively under state coastal zone management programs, state NPS programs, or other state programs; (2) provide the required information for existing programs; (3) developing new enforceable policies, as necessary; and (4) incorporating these programs into the new coastal NPS program.

#### **D. Additional Management Measures**

In addition to measures in conformity with the (g) guidance measures, state programs must also "... provide for the implementation of additional management measures where coastal water quality is impaired or threatened even after the implementation of the management measures specified in the (g) guidance."

For program approval, states must do the following:

- 1. identify coastal waters that are not attaining or maintaining applicable water quality standards or protecting designated uses, or that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources;
- 2. identify land uses that individually or cumulatively cause or threaten water quality impairments in those coastal waters;
- 3. identify critical coastal areas;

4. develop a process for determining whether additional measures are necessary to attain or maintain water quality standards in the waters identified above;
5. describe the additional management measures the state will apply to the identified land uses and critical coastal areas; and
6. develop a program to ensure implementation of the additional management measures within eight years of program approval.

The eight year schedule is intended to include three years to implement the (g) guidance measures, two years to monitor their effectiveness, and three years to implement the additional measures.

The program guidance contains additional details on these components. In particular, the guidance anticipates that some of the additional measures may need to be implemented immediately, rather than within eight years. Generally, additional measures must be implemented at the time of program approval if information indicates that the (g) guidance measures will not be adequate to attain or maintain water quality standards in a particular water body that is affected by NPS pollution.

For program approval, states are expected to provide the following information on the additional management measures that will be implemented:

- a. a discussion of the measure and the land uses and pollutants it is designed to address;
- b. evidence of the anticipated effectiveness of the measure in reducing nonpoint pollution to meet water quality standards; and
- c. a process for evaluating the effectiveness of the measures once they are implemented, and a schedule for revising such measures, as necessary, to meet water quality standards.

#### **E. Technical Assistance**

State programs must provide for technical assistance to local governments and the public for implementing the additional management measures. At a minimum, the state should discuss the types of technical assistance that will be provided to support implementation of additional management measures for each of the major land use categories identified in a state's program. The program must identify the agency that will provide the assistance, the intended recipients, and a schedule of when such assistance will be available.

## **F. Public Participation**

A state will "... need to demonstrate that it has provided opportunities for public comment prior to determining which management measures will be used, what enforceable policies and mechanisms should be employed to ensure implementation of the identified measures, the geographic scope of the coastal nonpoint program, the identification of land uses and critical coastal areas, and the selection and implementation of additional management measures."

The public involvement and education program should include a schedule for initial public contact and education activities, and milestones for further involvement throughout the development and implementation of the coastal NPS program."

The state should also describe how it expects to fund the public involvement and education programs, including both program development and implementation activities.

## **G. Administrative Coordination**

The program must include, at a minimum, a "... list of state, regional, and local agencies that will play a role in developing and implementing the coastal nonpoint program. The list should describe the mission, structure and operation of the agencies as they relate to nonpoint source pollution control, and identify the specific role to be played by each agency in the coastal nonpoint program."

"The mechanisms selected to ensure coordination among participating agencies should be in place when the coastal nonpoint program is submitted to NOAA and EPA for review and approval. The coastal nonpoint program should also explain how the state will measure the effectiveness of program coordination and should provide a schedule for periodic evaluation and reporting of the results to NOAA and EPA."

## **H. Enforceable Policies and Mechanisms**

The coastal nonpoint program must contain enforceable policies and mechanisms to implement the "applicable requirements" of the coastal nonpoint program.

An enforceable policy is a state policy which is "legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over private and public land and water uses and natural resources in the coastal zone."

For the CNPCP, NOAA interprets "applicable requirements" to include the implementation, at a minimum, of: "(1) management measures in conformity with the guidance developed under section 6217(g) in order to protect coastal waters generally, and (2) such additional management measures applicable to land uses and critical areas identified in the program as are necessary to maintain or restore coastal water quality and protect designated uses."

*"Non-regulatory approaches must be backed by enforceable state authority which ensures that the management measures will be implemented."*

Where implementation occurs at the regional or local levels, the state must be able to exert or retain authority to ensure local implementation in accordance with the federally approved coastal nonpoint program.



## **PROGRAM SUBMISSION, APPROVAL, AND IMPLEMENTATION**

Coastal nonpoint programs are not intended to replace existing programs. Rather, they are to be an "update and expansion" of existing state coastal and nonpoint source control programs. Both EPA and NOAA will review state program submittals; neither will approve a state's program unless the other concurs. Upon final approval of a state program, "... it will be automatically incorporated into the state's coastal management and nonpoint source programs."

### **A. Conditional Approvals**

States are expected to submit a program "... that meets all the requirements of section 6217 at the time of the statutory deadline for program submission." However, in certain situations, a state may need to submit an incomplete program for which NOAA and EPA grant a "conditional approval". In one case, all the enforceable policies and mechanisms necessary to implement the applicable program requirements are in place, but they require further development of state, regional, or local authorities or administrative mechanisms to ensure coordination with existing plans and programs. Under other circumstances, a state might have "a substantial majority of the required state enforceable policies and mechanisms in place, but need additional time to develop other state enforceable policies and mechanisms to ensure implementation of all applicable program requirements."

Final approval of a conditionally-approved program would be contingent on the state's ability to "... demonstrate that all necessary enforceable policies and mechanisms are in place."

### **B. Schedule for Program Implementation**

NOAA and EPA expect full implementation of the management measures in conformity with the (g) guidance within three years of federal program approval, and full implementation of additional measures within eight years of program approval.

"For new sources, NOAA and EPA interpret full implementation to mean that new sources within each identified nonpoint source category or subcategory would be subject to the management measures at the time of federal approval. Full implementation of management measures for existing sources ... means that each identified category and subcategory of existing sources is expected to implement the management measures to which they are subject not later than three years after federal approval."

The state program should include milestones by which progress toward full implementation can be assessed. "This schedule should ensure that sources having the most significant impact on coastal waters are addressed first."

### **C. Program Penalties**

If a state fails to submit an approvable program, the statute requires that NOAA reduce section 306 coastal grant funds, and that EPA reduce section 319 nonpoint source grant funds, to the state. Penalties start at 10 percent of the grant funds in FY 1996, and increase to 30 percent by FY 1999. Given the joint approval process, both grants will be cut; cuts will not be to one program only.

<NPS>CNPCP.Prog.Require

**Summary of Current Implementation of  
Section 6217(g) Guidance Management Measures  
for Agricultural Sources of Nonpoint Source Pollution**

Many of the agricultural management measures are not specifically implemented in Oregon. However, Oregon statutes do provide broad authority to control pollution. Therefore, rules could be adopted to address sources that are not now addressed through enforceable state or local programs.

Senate Bill SB 1010 from 1993 appears to create new water quality control authority for agricultural sources. The extent of this authority, and its adequacy to implement the (g) Guidance measures for agriculture, is not yet known.

**A. Erosion and Sediment Control**

Erosion and sedimentation from agricultural sources are of great concern in the coastal zone. The erosion and sedimentation measure is not implemented, and is probably necessary. Much technical assistance addresses erosion and sedimentation.

**B1. Management Measure for Facility Wastewater and Runoff from Confined Animal Facility Management (Large Units) and**

**B2. Management Measure for Facility Wastewater and Runoff from Confined Animal Facility Management (Small Units)**

Runoff from CAFOs is a major potential pollutant in some basins on the coast. Thus, the CAFO measures apply. Oregon's CAFO Program implements the CAFO measures. More technical assistance is needed in manure management.

**C. Nutrient Management Measure**

The extent of supplemental nutrient use in the coastal zone is not known. However, the application of manure to pastures is a common practice in the management of a dairy, and is addressed in Oregon's CAFO program. Otherwise, the nutrient measure is not implemented. The authority to implement it does not exist in Oregon law. Technical assistance is needed, and is available.

**D. Pesticide Management Measure**

The extent of pesticide use in the coastal zone is not known. Oregon does not have the authority to implement the pesticide management measure. Technical assistance is available.

**E. Grazing Management Measure**

The grazing measure applies to all pasturelands on the coast. Pastures represent the predominant agricultural activity in the

coastal zone. Oregon does not now have specific authority to implement the grazing management measure.

**F. Irrigation Water Management**

The full extent of irrigation in the coastal zone is not immediately known. Thus the applicability of this measure is not clear. In any case, the irrigation management measure is partially implemented through administrative rule.

Summary of Current Implementation of  
Section 6217(g) Guidance Management Measures  
for Forestry Sources of Nonpoint Source Pollution

All of the activities covered in Chapter 3 of the (g) Guidance Management Measures except one occur in the Oregon coastal zone. The single exception is mechanical tree planting, addressed in management measure F, Site Preparation and Forest Regeneration. Tree planting by mechanical means does not occur in Oregon's coastal zone.

- A. Preharvest Planning
- B. Streamside Management Areas (SMAs)
- C. Road Construction/Reconstruction
- D. Road Management
- E. Timber Harvesting
- F. Site Preparation and Forest Regeneration
- G. Fire Management
- H. Revegetation of Disturbed Areas
- I. Forest Chemical Management
- J. Wetlands Forest

Oregon's Forest Practices Act (FPA) and the Forest Practices Program implemented by the Department of Forestry are the mechanisms by which Oregon protects water quality in forested areas. In addition, the 1991 legislature adopted a process in which the Environmental Quality Commission (EQC) can petition the Board of Forestry to review its practices related to water quality.

The combination of the FPA, the Department of Forestry's *Forest Practices Strategic Plan*, the EQC's petition mechanism, and the Board of Forestry's water classification and protection rules effectively implement the general intent of the forestry management measures. Existing and draft forest practices rules are still being reviewed to identify management measures that are not fully implemented. Any adjustments in the rules will be recommended through existing mechanisms in the Forest Practices Program.

**Summary of Current Implementation of  
Section 6217(g) Guidance Management Measures  
for Urban Sources of Nonpoint Source Pollution**

The urban management measures address a variety of nonpoint sources associated with urban development; with rural residential development; and with roads, highways, and bridges.

Many of the measures are already implemented through existing programs. Principal among them are Oregon's statewide planning program and Oregon's statutes and rules governing the installation and use of on-site septic systems.

The intended application of some of the management measures for urban sources is overbroad; therefore, Oregon's program will propose to apply them only inside Urban Growth Boundaries (or their equivalent) designated in local plans. These measures may need to be applied also in rural residential subdivisions of half-acre lots.

*This is only a summary of the more detailed inventory of existing programs that address urban sources of nonpoint pollution.*

#### **URBAN RUNOFF**

##### **New Development Management Measure**

The New Development measure requires the removal of total suspended solids (TSS) loading from runoff from all new development and redevelopment. Average annual TSS loading is not known for coastal areas. The development measure would apply to development activities in the coastal zone, although Oregon's program will propose to apply the new development measure only inside UGBs.

The TSS reduction standard in the New Development measure is not implemented anywhere in the coastal zone. There is no state or local authority specifically designed to reduce TSS loading from site runoff.

##### **Watershed Protection Management Measure**

The intent of the Watershed Protection measure is to provide general nonpoint source prevention goals to a comprehensive plans. Oregon's Statewide Planning Program does not contain the specifics of the Watershed Protection Measure, but local plans developed under Oregon's program effectively meet the intent of the measure by implementing Statewide Planning Goals 5, 6, 16, and 17. In addition, Oregon's Removal-Fill Law implements provisions of this measure.

## **Site Development Management Measure**

The Site Development measure is the on-site counterpart to the Watershed Protection measure. That is, it is intended to protect watershed resources through the review of site development plans, as opposed to the more comprehensive application of the Watershed Protection measure. As such, part of the site development measure is implemented through local land use and land division ordinances. One component is not implemented through any existing state or local programs. One component of the measure, intended to address construction site erosion, is addressed below.

## **CONSTRUCTION ACTIVITIES**

### **Construction Site Erosion and Sediment Control Management Measure**

### **Construction Site Chemical Control Management Measure**

The Construction Activities measures are intended to address erosion, chemical contamination, and sedimentation resulting from construction activities that are not covered by NPDES, which applies to construction sites over five acres. There are almost no local programs or regulations to address erosion and sedimentation from construction activities on sites less than five acres in size. The Statewide Planning Goals probably provide the authority to address construction site erosion through local plans.

## **EXISTING DEVELOPMENT**

### **Existing Development Management Measure**

The Existing Development measure is essentially a watershed protection measure that appears to be intended to be applied in urban areas. Two provisions are intended to protect buffers and natural conveyance systems, and two are designed to improve stormwater quality through improvements to the stormwater conveyance system. Oregon's program will propose that the measure will only be applied inside Urban Growth Boundaries.

The protection mechanisms of this measure are implemented through the Removal-Fill Law and local plans. Otherwise, the measure is not fully implemented; there is no enforceable authority to develop and implement watershed management programs in developed areas. House Bill 2215 from the 1993 Legislative Session may help implement the measure, but it is neither mandatory nor will it necessarily result in enforceable watershed protection mechanisms.

## **ONSITE DISPOSAL SYSTEMS**

### **New Onsite Disposal Systems Management Measures**

The Onsite Disposal Systems management measures apply to all new onsite disposal systems, which are the primary means of sewage disposal in the coastal zone outside urban growth boundaries. Oregon's comprehensive onsite program fully implements the New Onsite Disposal Systems measure.

### **Operating Onsite Disposal Systems Management Measure**

While the authority exists to do so, Oregon does not require periodic inspection of all operating onsite systems. Only some alternate systems must be inspected periodically. Authority also exists to adopt rules governing the operation and maintenance of all onsite systems, but presently there are maintenance requirements for only one type of alternate system. Oregon's program does require that failing systems be repaired or replaced. A separate program, for the protection of commercial shellfish growing waters, requires periodic inspection of systems that affect shellfish growing waters.

A program to require periodic inspections of all operating onsite systems in the Oregon coastal zone would exhaust all of the resources of Oregon's program *for the entire state*.

## **POLLUTION PREVENTION**

### **Pollution Prevention Management Measure**

States are not required to have enforceable programs to implement the Pollution Prevention measure.

## **ROADS, HIGHWAYS, AND BRIDGES**

Many of the activities targeted in the measures for roads, highways, and bridges are not fully implemented.

### **Management Measure for Planning, Siting, and Developing Roads and Highways**

This measure duplicates other measures. Both local comprehensive plans and ODOT's recommended NPS control strategy for western Oregon will largely implement this measure, although its clearing and grading provisions may not be explicit in local plans.

### **Management Measure for Bridges**

This measure will be fully implemented for state and federal facilities through ODOT's recommended NPS control program for western Oregon. Local plans implement the measure for other roads. Local bridge maintenance programs and projects may not



implement the measure unless they are fully apprised of the location and extent of sensitive and valuable aquatic ecosystems, which should be indicated in local plans.

#### **Management Measure for Construction Projects**

#### **Management Measure for Construction Site Chemical Control**

These measures are intended to address erosion and contamination construction projects that are not covered by NPDES permits. ODOT's recommended program for NPS control in western Oregon will fully implemenent these measures for state and federal roads. Construction activities for other roads are not governed by any existing enforceable policies. However, this measure would be fully implemented for non-state or federal roads through local construction site erosion control measures.

#### **Management Measure for Operation and Maintenance**

ODOT's recommended policies will fully implement this measure for state and federal roads. The enforceability of local programs that implement the measure is not known.

#### **Management Measure for Road, Highway, and Bridge Runoff Systems**

This measure applies specifically to facilities that contribute to adverse effects in surface waters. The 1988 Oregon Statewide Assessment of Nonpoint Sources of Water Pollution indicates that some waters are affected by road runoff. No program presently exists to specifically address problems identified in the 1988 assessment. However, specific retrofit needs and opportunities may be identified in the course of implementing the Existing Development measure.

Summary of Current Implementation of  
Section 6217(g) Guidance Management Measures  
for Marinas and Recreational Boating

I. Measures for Siting and Design

- A. Marina Flushing Management Measure
- B. Water Quality Assessment
- C. Habitat Assessment

These three measures apply to all new marinas and expansions over a certain size.

Measures A-C appear to be fully implemented in estuarine waters through implementation of Goal 16, Estuary Resources, in local comprehensive plans. These measures do not appear to be fully implemented for non-estuarine waters. However, marinas must get a lease from the State of Oregon, and most likely require Removal-Fill, Section 404, and Section 10 permits, which are reviewed by DEQ. Processes are in place that can be used to implement the measures, but the authorities may be incomplete.

It is not known how many new non-estuarine marinas exist, or are likely to be developed in the foreseeable future.

D. Shoreline Stabilization

The Shoreline Stabilization measure is to be applied in marinas where site changes may result in shoreline erosion. It appears to be fully implemented through the Removal-Fill Law and through Goal 17, Coastal Shorelands.

E. Storm Water Runoff Management Measure

This measure requires the removal of suspended solids from runoff from boat maintenance areas. It is to be applied to new, expanding, and to existing marinas, and to any area where boat bottom scraping, sanding, and/or painting takes place. This measure is probably the most important one in Chapter 5.

Measure E does not appear to be implemented except where a port or marina owner holds an NPDES permit for a hull maintenance area.

F. Fuel Station Design Management Measure

The fuel station measure is to be applied to fueling facilities in new marinas. It is not implemented in Oregon.

G. Sewage Facility Management Measure

*Install pumpout, dump station, and restroom facilities where needed at new and expanding marinas to reduce the release of sewage to surface waters. Design these facilities to allow ease of access and post signage to promote use by the boating public.*

The Oregon Marine Board has authority to make rules to implement this measure, but it does not appear to be fully implemented. Implementation of the Clean Vessel Act should increase the opportunities for its implementation.

## **II. Marina and Boat Operation and Maintenance**

### **A. Solid Waste Management Measure**

The Solid Waste measure applies to the management of solid wastes in all marinas. It is not directly implemented, although state law prohibits disposal of wastes in waters of the state.

### **B. Fish Waste Management Measure**

The Fish Waste measure is to be applied where fish waste is determined to be a source of water pollution, which is the case in at least two estuaries. Oregon does not have a program to specifically manage fish waste disposal. An interagency team has recently begun to discuss the scope of the problem and potential solutions.

### **C. Liquid Material Management Measure**

Measure C applies to areas where liquid materials which are used in boat operation, repair, or maintenance are stored. The measure does not appear to be implemented.

### **D. Petroleum Control Management Measure**

Measure D is to be applied to boats with inboard fuel tanks. It is not now implemented.

### **E. Boat Cleaning Management Measure**

Measure E is applicable to marinas where boat topsides are cleaned and marinas where hull-scrubbing in the water has resulted in water or sediment quality problems. It is not now implemented in Oregon.

### **F. Public Education Management Measure**

Measure F is not intended to be enforceable. The marine Board conducts Boater Education Programs.

### **G. Maintenance of Sewage Facilities Management Measure**

To be applied where sewage facilities are available. No programs require maintenance of sewage facilities.

#### H. Boat Operation Management Measure

This measure applies to the operation of boats only; it is to be applied where boat traffic has harmed shallow-water habitats. It is not now implemented.

<NPS>InSum.Ch5 1/18/94

Summary of Current Implementation of  
Section 6217(g) Guidance Management Measures  
for Hydromodification

I. Channelization and Channel Modification

- A. Management Measure for Physical and Chemical Characteristics of Surface Waters
- B. Instream and Riparian Habitat Restoration Management Measure

Channelization is defined to include essentially all in-water alterations, including those for flood control, navigation, drainage improvement, and mining. The channelization measures are to be applied to proposed projects to address potential water quality and habitat changes that may result from channelization work. Both measures also apply to operations and maintenance activities, and is intended to use opportunities in the course of operation and maintenance to improve water quality and instream and riparian habitats.

Oregon's Removal-Fill Law is the predominant mechanism for implementing the channelization measures. The Removal-Fill Law implements the planning and project review components of both channelization measures for channelization activities that involve over fifty cubic yards of material. The measures are not implemented for activities that involve less than fifty cubic yards; the extent of such activities has not been determined. In addition, the State of Oregon does not have any channel operation or maintenance responsibilities, so the operation and maintenance requirements are not implemented. Army Corps of Engineers maintenance programs have not been analyzed.

II. Dams

- A. Management Measure for Erosion and Sediment Control
- B. Management Measure for Chemical and Pollutant Control
- C. Management Measure for Protection of Surface Water Quality and Instream and Riparian Habitat

The first two dams management measures apply to the construction of dams. NPDES covers all such projects over five acres in size; therefore, these measures only apply to damsites that are smaller than five acres, but which meet the minimum size requirements for application of the management measure. Minimum size requirements for application of the measures are higher than those for the application of Oregon's dam safety regulations.

Oregon does not have a specific program that fully implements the dam construction management measures for dams that are not

governed by the NPDES. However, the Water Resources Director does have the authority to impose conditions pertaining to the construction, operation, and maintenance of dams. The conditions remain in effect through the life of the dam.

The third dams measure applies to the operation of dams that results in the loss of water quality or riparian habitat. The extent of such effects from the operation of dams in the coastal zone is not known. However, for new dams, the state does have the authority to impose conditions on the operation and maintenance of dams in order to protect water quality.

### III. Streambank and Shoreline Erosion

#### A. Management Measure for Eroding Streambanks and Shorelines

The measure for eroding streambanks and shorelines is to be applied to streambanks and estuarine shorelines where erosion is causing NPS pollution problems. Oregon's 1988 NPS Assessment includes "Riparian Disturbance" as one "Probable Cause" of NPS pollution statewide; the assessment indicates that such disturbances probably contribute to NPS problems in coastal streams.

The guidance specifically states that the measure is not intended to imply that all such erosion must be controlled, nor is it intended to supersede a state's preference to retreat rather than harden a shoreline.

The measure is intended to promote the use of setbacks or other measures to create effective riparian buffers.

Oregon's Statewide Planning Program and Removal-Fill Law together provide mechanisms to implement the streambank and shoreline erosion measure. Statewide Planning Goal 17, Coastal Shorelands, requires that riparian vegetation be maintained, and that nonstructural erosion control measures be preferred over structural measures. Goal 17 is implemented through local comprehensive plans.

Structural shoreline protection measures are governed by the Removal-Fill Law, which also implements a preference for nonstructural measures.

Summary of Current Implementation of  
Section 6217(g) Guidance Management Measures  
for Wetlands, Riparian Areas, and Vegetated Treatment Systems

- A. Management Measure for Protection of Wetlands and Riparian Areas
- B. Management Measure for Restoration of Wetlands and Riparian Areas
- C. Management Measure for Vegetated Treatment Systems

The wetlands management measures are intended to be applied to address several nonpoint pollutant sources, rather than being applied to a specific land use. The measures are to ensure that the water quality benefits of protecting and restoring wetlands and riparian areas, and of constructing vegetated treatment systems, will be considered in watershed pollution control activities.

The Wetlands Management Measures are largely implemented through three programs administered by state and local governments in Oregon. The Fill and Removal Permit Program, the Wetland Conservation Planning Program, and the Statewide Comprehensive Planning Program all implement wetland-related policies. The programs implement policies which protect wetlands and riparian vegetation in the coastal zone.

While Oregon's three programs are generally effective, they contain some important limitations. First, the Removal-Fill Program does not apply to activities that involve less than fifty yards of material. Second, Oregon has not adopted wetland water quality standards, thus restricting the scope of permit reviews of activities that may affect water quality in a wetland. And third, the Wetland Conservation Planning Program -- a comprehensive wetland planning and conservation approach which would implement the management measures in their entirety -- is still in its infancy.

**AGRICULTURAL MANAGEMENT MEASURES**

<b>MANAGEMENT MEASURES:</b>	Erosion and Sediment Control	Confined Animal Facilities	Nutrients	Pesticides	Grazing	Irrigation Water
<b>PROGRAM COMPONENTS:</b>						
Does Measure Apply?	Yes	Yes	Yes	Yes	Yes	Yes
Is there authority to implement?	Yes	Yes	Yes	Yes	Yes	Yes
Is it implemented?	No	Yes*	No*	In part	No	In part*
Statute	ORS 568.900 -568.933	ORS 468B.200 - 468B.230	ORS 568.900 - 568.933	ORS 568.900 - 568.933; ORS Chapter 634	ORS 568.900 - 568.933	ORS Chapters 536 and 537; ORS 568.900 - 568.933
Administrative Rules	OAR Ch. 603, Division 90	OAR Ch. 603, Division 74; OAR Ch. 340, Division 51	OAR Ch. 603, Division 90	OAR Ch. 603, Division 90; Division 57	OAR Ch. 603, Division 90	OAR Ch. 603, Division 90
Lead Agency	ODA	ODA	ODA	ODA	ODA	OWRD; ODA
Notes		*Some operations that confine animals do not fall under Oregon's definition of a CAFO.	*Authority exists to require proper field application of manure from CAFOs.			*Many specific parts of the measure are not implemented.
Related Programs	Conservation Reserve Program; Agricultural Conservation Program; Water Quality Incentive Program	Rural Clean Water Program; Water Quality Incentive Program	Water Quality Incentive Program	Pesticide State Management Plan; Water Quality Incentive Program	Watershed Health Program; Governor's Watershed Enhancement Program; Water Quality Incentive Program	Container Nursery Irrigation Water Program; Water Quality Incentive Program



	<b>FORESTRY MANAGEMENT MEASURES</b>					
<b>MANAGEMENT MEASURES</b>	Preharvest Planning	Streamside Management Areas	Road Construction and Reconstruction	Road Management	Timber Harvesting	Site Preparation and Forest Regeneration
<b>PROGRAM COMPONENTS</b>						
<b>Does Measure Apply?</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Is it Implemented?</b>	Yes	In draft form	Yes	Yes	Yes	Yes
<b>Is There Authority to Implement?</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Statute</b>	Oregon Forest Practices Act (FPA)*	ORS 527.710; Chapter 919, Sec. 9, Or. Laws 1991	FPA	FPA	FPA	FPA; ORS 527.745
<b>Administrative Rules</b>	OAR Ch. 629 Div. 24; Proposed rules	Proposed OAR 629-57-2000 and 629-24-302	OAR 629-24-111; 629-24-523; 629-24-623	OAR 629-24-524; 629-24-624	OAR 629-24-542 to 649; and proposed sections of OAR 629 Div. 57	OAR 629-24-301; 629-24-501 to 505; 629-24-601 to 606;
<b>Lead Agency</b>	ODOF	ODOF	ODOF	ODOF	ODOF	ODOF
<b>Notes</b>	*ORS 527.610 to .810 and 527.990 to .992. Specifically, ORS 527.670;					

<b>MANAGEMENT MEASURES</b>	Fire Management	Revegetation of Disturbed Areas	Forest Chemical Management	Wetlands Forest
<b>PROGRAM COMPONENTS</b>				
<b>Does Measure Apply?</b>	Yes	Yes	Yes	Yes
<b>Is it Implemented?</b>	Yes	Yes	Yes	Yes
<b>Is There Authority to Implement?</b>	Yes	Yes	Yes	Yes
<b>Statute</b>	FPA	FPA	FPA	FPA
<b>Administrative Rules</b>	OAR 629-24-301; 629-24-543-4; 629-24-643-4; proposed rules	OAR 629-24-501 and 601 and following sections; OAR 629-24-523, -623, -545,	OAR 629-24-200 through 209; proposed rules.	Proposed OAR 627-57-2300 through 2500
<b>Lead Agency</b>	ODOF	ODOF	ODOF	ODOF
<b>Notes</b>				

<b>URBAN MANAGEMENT MEASURES</b>						
	<b>URBAN RUNOFF</b>			<b>CONSTRUCTION ACTIVITIES</b>		
<b>MANAGEMENT MEASURES</b>	<b>New Development</b>	<b>Watershed Protection</b>	<b>Site Development</b>	<b>Construction Site Erosion Control</b>	<b>Construction Site Chemical Control</b>	<b>Existing Development</b>
<b>PROGRAM COMPONENTS</b>						
<b>Does Measure Apply?</b>	Yes	Yes	Yes; redundant	Yes	Yes	Yes
<b>Is It Implemented?</b>	No	Yes	In part	No	No	In part
<b>Is There Authority to Implement?</b>	No	Yes: Goals, HB 2215 & Removal/Fill	Yes: Goals	No	No	Removal-Fill & Goals
<b>Statute</b>		ORS Ch. 197; Removal-Fill Law	ORS Ch. 197			ORS 196.800 and HB 2215 (1993)
<b>Administrative Rules</b>		OAR Ch. 660				
<b>Lead Agency</b>	DEQ & Local gov't	DSL; Local gov't	Local gov't	DEQ & Local gov't	DEQ & Local gov't	DSL & Local gov't
<b>Notes</b>	Proposed to apply inside UGBs only.	Implemented in part through Goals 5, 6, 16, 17.	Requires that impervious surfaces be limited.	<i>This is a significant gap. Also need technical assistance.</i>	<i>This is a significant gap. Also need technical assistance.</i>	Requires local watershed management programs and programs to identify improvements to runoff control structures.

<b>URBAN MANAGEMENT MEASURES</b>							
<b>ONSITE SYSTEMS</b>			<b>ROADS, HIGHWAYS, AND BRIDGES</b>				
<b>New Onsite Disposal Systems</b>	<b>Operating Onsite Systems</b>	<b>Pollution Prevention</b>	<b>Planning, Siting, and Developing</b>	<b>Bridges</b>	<b>Construction Projects</b>	<b>Operation &amp; Maintenance</b>	<b>Road, Hwy, and Bridge Runoff Systems</b>
Yes	Yes	See Notes	Yes	Yes	Yes	Yes	Where needed
Yes	In part	In part	In part	In part	In part	In part	In part
Yes: Onsite Disposal Program	Onsite Disposal Program	Not necessary	Local plans, Removal-Fill	Removal-Fill			
ORS 464.615	ORS 464.614(2)		ORS Ch. 197; Removal-Fill Law	ORS Ch. 197; Removal-Fill Law			
OAR 340-71	OAR 340-71-130(13)		OAR Ch. 660	OAR Ch. 660			
DEQ	DEQ	DEQ	ODOT, DSL, and Local	ODOT, DSL, and Local	ODOT and Local Gov't	ODOT and Local Gov't	ODOT and Local Gov't
	Operation, maintenance, and inspection requirement is not fully implemented, although the authority exists.	Not required to have enforceable programs to implement this measure.	The Planning and Siting and Bridge measures are implemented in part through local plans and the Removal-Fill program.		The Construction measures could be implemented for state and federal roads as a result of ODOT staff's recommendation to apply the provisions of NPDES permit 1200-CA for stormwater to all activities in all areas west of the Cascades.	Probably not fully implemented for county and local roads.	To be applied where runoff contributes to adverse effects in surface waters. Probably not fully implemented for county and local roads.

<b>MARINAS AND RECREATIONAL BOATING MEASURES</b>							
<b>MEASURES FOR SITING AND DESIGN</b>							
<b>MANAGEMENT MEASURES</b>	<b>Marina Flushing</b>	<b>Water Quality Assessment</b>	<b>Habitat Assessment</b>	<b>Shoreline Stabilization</b>	<b>Storm Water Runoff</b>	<b>Fueling Station Design</b>	<b>Sewage Facility Management</b>
<b>PROGRAM COMPONENTS</b>							
<b>Does Measure Apply?</b>	Yes*	Yes*	Yes*	Yes*	Yes*	Yes	Yes
<b>Is it Implemented?</b>	In part**	Yes	Yes	Yes	No	No	No
<b>Is There Authority to Implement?</b>	Yes	Yes	Yes	Yes	No	No	No
<b>Statute</b>	ORS 196, ORS 197; Const. Art. VIII Sec. 5(2)	ORS 196 & CWA Sec 401	ORS 196 & ORS 197	ORS 196			
<b>Administrative Rules</b>	OAR 660-17; OAR 141-85	OAR 141-85	OAR 141-85	OAR 141-85			
<b>Lead Agency</b>	DSL & Local Gov't	DSL, DEQ & Local Gov't	DSL & Local Gov't	DSL	DEQ	U.S. Coast Guard?	Marine Board
<b>Notes</b>	*Applicable to new and expanding marinas. **May not be fully implemented for non-estuarine waters.	*Applicable to new and expanding marinas.	*Applicable to new and expanding marinas.	*Duplicates a measure in the Hydromodification measures.	*Applies to new or expanding marinas and to maintenance areas in existing marinas.		

**MARINAS AND RECREATIONAL BOATING MEASURES**

**MEASURES FOR MARINA AND BOAT OPERATION & MAINTENANCE**

Solid Waste Management	Fish Waste Management	Liquid Material Management	Petroleum Control	Boat Cleaning	Public Education	Sewage Facilities Maintenance	Boat Operation
Yes	Yes	Yes	Yes	Unknown	Yes	Yes	Yes
Not directly	No	No	No	No		No	In part
Indirect	Indirect	No	No	Indirect		No	Yes
ORS 468B.025(1)							ORS 830.175 to ORS 830.195
							OAR 250-20-005 through - 385
DEQ	DEQ, ODFW					Marine Board	
Disposal of wastes where they could be carried into the waters of the state is prohibited; no programs specifically implement this measure.	Disposal of wastes into the waters of the state is prohibited. Several agencies are now working to develop an acceptable method for fish waste disposal.			Applies where in-water boat cleaning has resulted in water or sediment quality problems.	Not required to have an enforceable program component.	OSMB staff anticipates developing rules for sewage facility maintenance in 1994.	Authority to restrict boating exists, but to do so to protect water quality is not explicit in statute or rule

<b>AGRICULTURAL MANAGEMENT MEASURES</b>						
<b>MANAGEMENT MEASURES</b>	Erosion & Sediment Control	Confined Animal Feeding Operations	Nutrient Management	Pesticide Management	Grazing Management	Irrigation Water Management
<b>PROGRAM COMPONENTS</b>						
<b>Does Measure Apply?</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Is It Implemented?</b>	No	Yes*	No	No	No	Partially**
<b>Is There Authority to Implement?</b>	No	Yes	No*	No	No	Yes
<b>Statute</b>		ORS 468B.200				ORS Ch 536 & 7
<b>Administrative Rules</b>		OAR 340.51				
<b>Lead Agency</b>	ODAg/ODEQ	ODAg	ODAg/ODEQ	ODAg/ODEQ	ODAg/ODEQ	OWRD
<b>Notes</b>		*Some operations that confine animals do not fall under Oregon's definition of a CAFO.	* Authority exists to require proper field application of manure from CAFOs.			** Many specific parts of the measure are not implemented.
<b>Related Programs</b>	SCS Technical Assistance and RC&D Programs; ASCS' ACP	Tillamook County RCWP	Oregon's CAFO Program; SCS Technical Assistance	ODA's Pesticide State Management Plan; SCS Assistance	SCS Technical Assistance Program; ASCS' ACP	

<b>HYDROMODIFICATION MANAGEMENT MEASURES</b>						
	<b>CHANNELIZATION AND CHANNEL MODIFICATION</b>		<b>DAMS</b>			<b>STREAMBANK &amp; SHORELINE EROSION</b>
<b>MANAGEMENT MEASURES</b>	Physical and Chemical Characteristics of Surface Waters	Instream and Riparian Habitat Restoration	Erosion and Sediment Control	Chemical and Pollutant Control	Surface Water Quality and Instream & Riparian Habitat	Eroding Streambanks and Shorelines
<b>PROGRAM COMPONENTS</b>						
<b>Does Measure Apply?</b>	Yes	Yes	Yes	Yes	Unknown	Yes
<b>Is it Implemented?</b>	In part	In part	No	No	Yes	In part
<b>Is There Authority to Implement?</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Statute</b>	ORS 196.800 through .990	ORS 196.800 through .990	ORS 537.130	ORS 537.130	ORS 537.130	ORS Ch. 197
<b>Administrative Rules</b>	OAR 141-85-005 through 090	OAR 141-85-005 through 090	OAR 690-20-025	OAR 690-20-025	OAR 690-11-185	OAR 141-85-055
<b>Lead Agency</b>	DSL	DSL	WRD	WRD	WRD	DSL
<b>Notes</b>	Part 3 of the measure is not implemented. Oregon's program does not apply to activities that involve less than 50 yards of material. Oregon's program is coordinated with those of the U.S. Army Corps of Engineers.	Part 3 of the measure is not implemented. Oregon's program does not apply to activities that involve less than 50 yards of material. Oregon's program is coordinated with those of the U.S. Army Corps of Engineers.	Authority to implement the first two Dams measures exists, but no program or rule language specifically implements the measures.		Applicability depends on whether dam operations are known to result in water quality or riparian habitat degradation.	The Removal-Fill Law governs streambank stabilization activities; however, there are not specific policies at the state or local level to require that eroding streambanks be treated to reduce



## WETLANDS, RIPARIAN AREAS, AND VEGETATED TREATMENT SYSTEMS

<b>MANAGEMENT MEASURES</b>	<b>Protection of Wetlands and Riparian Areas</b>	<b>Restoration of Wetlands and Riparian Areas</b>	<b>Vegetated Treatment Systems</b>	
<b>PROGRAM COMPONENTS</b>				
<b>Does Measure Apply?</b>	<b>Yes</b>	<b>Yes</b>	<b>Uncertain</b>	
<b>Is it Implemented?</b>	<b>In part</b>	<b>In Part</b>		
<b>Is There Authority to Implement?</b>	<b>Yes</b>	<b>Partial</b>		
<b>Statute</b>	ORS 196.800 to 990; ORS 196.668 to .692; ORS 197.005 to .860	ORS 196.830		
<b>Administrative Rules</b>	OAR 660 Div. 16 & Div. 17, and Goal 17	OAR 141-85-240		
<b>Lead Agency</b>	DSL, DLCDD, and Local Gov't.	DSL, DLCDD, and Local Gov't.	Local Gov't.	
<b>Notes</b>	The Removal-Fill Law governs all wetland fills that involve over 50 yards of material. The Wetland Conservation Planning process can protect wetlands on the basis of their functions, but it is not implemented in all coastal communities.	Mitigation for fills is required for estuarine fills. Otherwise, there is no program to specifically apply the management measure.	The measure recommends promoting the use of such systems. As such, its applicability in terms of an enforceable program is uncertain.	

**COASTAL NONPOINT POLLUTION  
CONTROL PROGRAM**

**SUMMARY OF  
RECOMMENDATIONS**

of the  
**URBAN TECHNICAL ADVISORY GROUP**

for implementation of the  
**URBAN MANAGEMENT MEASURES**

August, 1994

## **Urban Technical Advisory Group Members**

**Dave Wagner, Devil's Lake Water Improvement District**

**Chris Davies, City of Seaside**

**Walt Howell, City of Toledo**

**Joanne Dalziel, Tillamook NEP, City of Garibaldi**

**Dennis Sheldon, City of Garibaldi**

**Jon Graves, CREST**

**Tom Ascher, Tillamook County**

**Rich Gitschlag, Tillamook County**

**Tom Liptan, City of Portland**

**Deb Cannon, ODA**

**Greg Robart, ODFW**

**Sue Chase, ODOT**

**William Fletcher, ODOT**

**Dennis Illingworth, DEQ**

**Bobbi Lindberg, DEQ**

**Jeffrey Weber, OCMP**

## Urban Runoff Management Measures

### **A. New Development Management Measure**

1. By design or performance:
  - a. After construction has been completed and the site is permanently stabilized, reduce the average annual total suspended solid (TSS) loadings by 80 percent. For the purposes of this measure, an 80 percent TSS reduction is to be determined on an average annual basis\*, or
  - b. Reduce the postdevelopment loadings of TSS so that the average annual TSS loadings are no greater than predevelopment loadings, and
2. To the extent practicable, maintain postdevelopment peak runoff rate and average volume at levels that are similar to predevelopment levels.

Sound watershed management requires that both structural and nonstructural measures be employed to mitigate the adverse impacts of stormwater. Nonstructural Management Measures II.B and II.C can be effectively used in conjunction with Management Measure II.A. to reduce both the short- and long-term costs of meeting the treatment goals of this management measure.

\* Based on the average annual TSS loadings from all storms less than or equal to the 2-year/24-hour storm. TSS loadings from storms greater than the 2-year/24-hour storm are not expected to be included in the calculation of the average annual TSS loadings.

### **B. Watershed Protection Management Measure**

Develop a watershed protection program to:

1. Avoid conversion, to the extent practicable, of areas that are particularly susceptible to erosion and sediment loss;
2. Preserve areas that provide water quality benefits and/or are necessary to maintain riparian and aquatic biota; and
3. Site development, including roads, highways, and bridges, to protect to the extent practicable the natural integrity of waterbodies and natural drainage systems.

### **C. Site Development Management Measure**

Plan, design, and develop sites to:

1. Protect areas that provide important water quality benefits and/or are particularly susceptible to erosion and sediment loss;
2. Limit increases of impervious areas, except where necessary;
3. Limit land disturbance activities such as clearing and grading, and cut and fill to reduce erosion and sediment loss; and
4. Limit disturbance of natural drainage features and vegetation.

### **Management Measures:**

- ◆ Urban Runoff

### **Applicability:**

- ◆ The New Development measure should be applied:
  - ◇ Inside UGBs and their equivalents;
  - ◇ To development in RR-zoned areas where a subdivision or partition will result in a density of one dwelling unit or more per acre on any portion of the site; and
  - ◇ To all commercial and industrial development outside UGBs.
  - ◇ Improvements in platted but undeveloped subdivisions.
- ◆ The Site Development measure should apply to *all* site development.

### **Recommendations:**

- ◆ The Site Development measure should apply the 80 percent TSS reduction standard; and
- ◆ Develop minimum acceptable standards for any program component which must be implemented by local governments.
- ◆ Integrate watershed planning and intergovernmental coordination objectives into the Watershed Protection management measure.

### **Suggested Strategies for Implementation:**

- ◆ Develop administrative rules for adoption by the EQC that require implementation of the Urban Runoff measures.
- ◆ Develop administrative rules for adoption by the LCDDC to implement Statewide Planning Goal 6, Air, Water, and Land Resources Quality.

## **Construction Activities Management Measures**

### **A. Construction Site Erosion and Sediment Control Management Measure**

1. Reduce erosion and, to the extent practicable, retain sediment onsite during and after construction, and
2. Prior to land disturbance, prepare and implement an approved erosion and sediment control plan or similar administrative document that contains erosion and sediment control provisions.

### **B. Construction Site Chemical Control Management Measure**

1. Limit application, generation, and migration of toxic substances;
2. Ensure the proper storage and disposal of toxic materials; and
3. Apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface waters.

## **Management Measures:**

- ◆ Construction Activities

## **Applicability:**

- ◆ Apply to all activities that require a building permit or an equivalent permit for road construction or land clearing.

## **Recommendation:**

- ◆ Develop model ordinances for local jurisdictions.
- ◆ Provide technical assistance to local governments.

## **Suggested Strategy for Implementation:**

- ◆ Develop independent administrative rules for EQC adoption to require the implementation of construction site erosion and chemical controls.

## **Existing Development Management Measure**

### **A. Existing Development Management Measure**

Develop and implement watershed management programs to reduce runoff pollutant concentrations and volumes from existing development:

1. Identify priority local and/or regional watershed pollutant reduction opportunities, e.g., improvements to existing urban runoff control structures;
2. Contain a schedule for implementing appropriate controls;
3. Limit destruction of natural conveyance systems; and
4. Where appropriate, preserve, enhance, or establish buffers along surface waterbodies and their tributaries.

### **Management Measure:**

- ◆ Existing Development

### **Applicability:**

- ◆ The measure is to be applied "... inside a jurisdiction's UGBs and outside UGBs to the extent that the jurisdiction finds that development outside the UGB will affect pollutant loads or peak runoff rates inside UGBs."
- ◆ In addition, ensure the riparian protection provisions apply to rural developments.

### **Recommendation:**

- ◆ Provide as much guidance and technical assistance as possible for local governments.

### **Suggested Strategy for Implementation:**

- ◆ Implement through Goal 11, Public Facilities, by adding a water quality component to the requirements for Public Facility Plans.

## Onsite Disposal Systems Management Measures

### A. New Onsite Disposal Systems Management Measures

1. Ensure that new Onsite Disposal Systems (OSDS) are located, designed, installed, operated, inspected, and maintained to prevent the discharge of pollutants to the surface of the ground and to the extent practicable reduce the discharge of pollutants into ground waters that are closely hydrologically connected to surface waters. Where necessary to meet these objectives:
  - a. discourage the installation of garbage disposals to reduce hydraulic and nutrient loadings; and
  - b. where low-volume plumbing fixtures have not been installed in new developments or redevelopments, reduce total hydraulic loadings to the OSDS by 25 percent. Implement OSDS inspection schedules for preconstruction, construction, and postconstruction.
2. Direct placement of OSDS away from unsuitable areas. Where OSDS placement in unsuitable [sic] areas is not practicable, ensure that the OSDS is designed or sited at a density so as not to adversely affect surface waters or ground water that is closely hydrologically connected to surface water. Unsuitable areas include, but are not limited to, areas with poorly or excessively drained soils; areas with shallow water tables or areas with high seasonal water tables; areas overlaying fractured bedrock that drain directly to groundwater; areas within floodplains; or areas where nutrient and/or pathogen concentrations in the effluent cannot be sufficiently treated or reduced before the effluent reaches sensitive waterbodies;
3. Establish protective setbacks from surface waters, wetlands, and floodplains for conventional as well as alternative OSDS. The lateral setbacks should be based on soil type, slope, hydrologic factors, and type of OSDS. Where uniform protective setbacks cannot be achieved, site development with OSDS so as not to adversely affect waterbodies and/or contribute to a public health nuisance;
4. Establish protective separation distances between OSDS system components and groundwater which is closely hydrologically connected to surface waters. The separation distances should be based on soil type, distance to ground water, hydrologic factors, and type of OSDS;
5. Where conditions indicate that nitrogen-limited surface waters may be adversely affected by excess nitrogen loadings from ground water, require the installation of OSDS that reduce total nitrogen loadings by 50 percent to ground water that is closely hydrologically connected to surface water.

### B. Operating Onsite Disposal Systems Management Measure

1. Establish and implement policies and systems to ensure that existing OSDS are operated and maintained to prevent the discharge of pollutants to the surface of the ground and to the extent practicable reduce the discharge of pollutants into ground waters that are closely hydrologically connected to surface waters. Where necessary to meet these objectives, encourage the reduced use of



garbage disposals, encourage the use of low-volume plumbing fixtures, and reduce total phosphorous loadings to the OSDS by 15 percent (if the use of low-level phosphate detergents has not been required or widely adopted by OSDS users). Establish and implement policies that require an OSDS to be repaired, replaced, or modified where the OSDS fails, or threatens or impairs surface waters;

2. Inspect OSDS at a frequency adequate to ascertain whether OSDS are failing;
3. Consider replacing or upgrading OSDS to treat influent so that total nitrogen loadings in the effluent are reduced by 50 percent. This provision applies only:
  - a. where conditions indicate that nitrogen-limited surface waters may be adversely affected by significant ground water nitrogen loadings from OSDS, and
  - b. where nitrogen loadings from OSDS are delivered to ground water that is closely hydrologically connected to surface water.

#### **Management Measures:**

- ◆ New Onsite Disposal Systems: Already implemented.
- ◆ Operating Onsite Disposal Systems: Implement as noted below.

**Applicability:** As stated in the guidance

#### **Recommendation:**

- ◆ At a minimum:
  - ◇ Inspect all OSDS at time of property transfer; and
  - ◇ Develop an education/outreach program to inform property owners about the operation and maintenance of onsite systems.
- ◆ Develop standards for inspections and for inspectors.
- ◆ Discourage and eventually prohibit the use of OSDSs inside UGBs.

#### **Suggested Strategy for Implementation:**

- ◆ Amend administrative rules for onsite program to require inspection of all OSDS at time of property transfer.
- ◆ Amend administrative rules for onsite program to discourage and eventually prohibit the use of OSDSs inside UGBs.
- ◆ Develop a comprehensive plan requirement to discourage and eventually prohibit the use of OSDSs inside UGBs.

## **Pollution Prevention Management Measure**

### **A. Pollution Prevention Management Measure**

Implement pollution prevention and education programs to reduce nonpoint source pollutants generated from the following activities, where applicable:

1. The improper storage, use, and disposal of household hazardous chemicals, including automobile fluids, pesticides, paints, solvents, etc.;
2. Lawn and garden activities, including the application and disposal of lawn and garden care products, and the improper disposal of leaves and yard trimmings;
3. Turf management on golf courses, parks, and recreation areas;
4. Improper operation and maintenance of onsite disposal systems;
5. Discharge of pollutants into storm drains including floatables, waste oil, and litter;
6. Commercial activities including parking lots, gas stations, and other entities not under NPDES purview; and
7. Improper disposal of pet excrement.

### **Management Measure:**

- ◆ Pollution Prevention

### **Recommendation:**

- ◆ Develop programs, projects, information, and technical assistance for local officials to use and distribute in the process of their land development review processes.
- ◆ Develop and coordinate a linked public education program.
- ◆ Investigate funding sources for funding education programs.

### **Suggested Strategy for Implementation:**

- ◆ DEQ should take the lead in jointly developing and implementing education programs with local governments.

## Roads, Highways, and Bridges Management Measures

### **A. Management Measure for Planning, Siting, and Developing Roads and Highways**

Plan, site, and develop roads and highways to:

1. Protect areas that provide important water quality benefits or are particularly susceptible to erosion or sediment loss;
2. Limit land disturbance such as clearing and grading and cut and fill to reduce erosion and sediment loss; and
3. Limit disturbance of natural drainage features and vegetation.

### **B. Management Measure for Bridges**

Site, design, and maintain bridge structures so that sensitive and valuable aquatic ecosystems and areas providing important water quality benefits are protected from adverse effects.

### **C. Management Measure for Construction Projects**

1. Reduce erosion and, to the extent practicable, retain sediment onsite during and after construction and
2. Prior to land disturbance, prepare and implement an approved erosion control plan or similar administrative document that contains erosion and sediment control provisions.

### **D. Management Measure for Construction Site Chemical Control**

1. Limit the application, generation, and migration of toxic substances;
2. Ensure the proper storage and disposal of toxic materials; and
3. Apply nutrients at rates necessary to establish and maintain vegetation without causing significant nutrient runoff to surface water.

### **E. Management Measure for Operation and Maintenance**

Incorporate pollution prevention procedures into the operation and maintenance of roads, highways, and bridges to reduce pollutant loadings to surface waters.

### **F. Management Measure for Road, Highway, and Bridge Runoff Systems**

Develop and implement runoff management systems for existing roads, highways, and bridges to reduce runoff pollutant concentrations and volumes entering surface waters.

1. Identify priority and watershed pollutant reduction opportunities (e.g., improvements to existing urban runoff control structures); and
2. Establish schedules for implementing appropriate controls.

### **Management Measures:**

- ◆ Roads, Highways, and Bridges

### **Applicability:**

- ◆ To be implemented by all state and local jurisdictions.

### **Recommendation:**

- ◆ Implement all of the measures at both the state and local levels.
- ◆ All jurisdictions should implement identical management practices for roads, highways, and bridges.
- ◆ Use ODOT's program components for technical assistance.

### **Suggested Strategies for Implementation:**

- ◆ Implement the Roads, Highways, and Bridges measures through Goals 11, Public Facilities, and 12, Transportation.
- ◆ Develop rules for Goal 6, Air, Water, and Land Resources Quality.
- ◆ Develop DEQ rules to require local jurisdictions to implement Roads, highways, and Bridges measures in conformity with the CNPCP guidance.

<NPS>Urban.Recommend

7/27/04

**COASTAL NONPOINT POLLUTION  
CONTROL PROGRAM**

**SUMMARY OF  
RECOMMENDATIONS**

**of the**

**MARINAS TECHNICAL ADVISORY GROUP**

**for implementation of the**

**MARINAS MANAGEMENT MEASURES**

Marinas Technical Advisory Group Members:

Pam Blake	Department of Environmental Quality
Anne Cox	Department of Environmental Quality
Frank Flynn	Division of State Lands
Valerie Hoy	Marine Board
John Johnson	Department of Fish and Wildlife
Paul Klarin	Department of Land Conservation and Development
Jay McCaulley	Marine Environmental and Development
Jean McCrea	Department of Fish and Wildlife
Steve Morris	Old Mill Marina
Ron Nairn	City of Depoe Bay
Dave Obern	Marine Board
Jay Rasmussen	Oregon Coastal Zone Management Association
Patty Snow	Department of Fish and Wildlife
Jeff Verder Kley	Salmon Harbor Marina
Jeff Weber	Department of Land Conservation and Development
Don Yost	Port of Coos Bay

The following is a summary of the recommendations of the Marinas Technical Advisory Group for Oregon's Coastal Nonpoint Pollution Control Program:

Marinas Management Measures (as published by the U.S. Environmental Protection Agency pursuant to Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990):

**Marina Siting and Design:**

**A. Marina Flushing Management Measure:**

Site and design marinas such that tides and/or currents will aid in flushing of the site or renew its water regularly.

**Recommendations:**

- The marina flushing management measure should be applied in estuarine waters of the coastal zone. The Department of Land Conservation and Development and other state agencies should review marina developments in estuaries to ensure the appropriate application of the estuary plans.
- The Division of State Lands should improve the state submerged lands lease process with respect to the review of lease applications by affected state agencies and the adherence of the lessee to state and federal regulations.

**Strategies for Implementation:**

- Implement Goals 16 and 17 through the local comprehensive land use plans. Ensure that resource capability standards of local plans include flushing/hydrology, habitat and water quality consideration.
- ODFW adopts Waterways Habitat Alteration Policies as administrative rules.
- The State Lands Commission adopts improved administrative rules for leasing submerged lands.
- If necessary, develop or revise MOU between the relevant state and federal agencies, to ensure consideration of all comments in the permit review process and reinforce the existing state agency coordination requirements.

**B. Water Quality Assessment Management Measure:**

Assess water quality as part of marina siting and design.

**Recommendations:**

- Same as in flushing measure.

**Strategies for Implementation:**

- Same as in flushing measure.

**C. Habitat Assessment Management Measure:**

Site and design marinas to protect against adverse effects on shellfish resources, wetlands, submerged aquatic vegetation, or other important riparian and aquatic habitat areas as designated by local, State, or Federal governments.

**Recommendations:**

- Same as in flushing measure.

**Strategies for Implementation:**

- Same as in flushing measure.

**D. Shoreline Stabilization Management Measure:**

Where shoreline erosion is a nonpoint source pollution problem, shorelines should be stabilized. Vegetative methods are strongly preferred unless structural methods are more cost effective, considering the severity of wave and wind erosion, offshore bathymetry, and the potential adverse impact on other shorelines and offshore areas.

**Recommendations:**

This measure is fully implemented in Oregon.

**E. Storm Water Runoff Management Measure:**

Implement effective runoff control strategies which include the use of pollution prevention activities and the proper design of hull maintenance areas.

Reduce the average annual loadings of total suspended solids (TSS) in runoff from hull maintenance areas by 80 percent. For the purposes of this measure, an 80 percent reduction of TSS is to be determined on an average annual basis.

**Recommendations:**

- The NPDES permit process needs to be improved so that the marinas that do have hull maintenance areas are informed of the regulations. DEQ should inspect maintenance and repair facilities to determine if they qualify for the exemption



status provided by the NPDES permit system or need to comply with the requirements for exempted facilities. DEQ must also consistently monitor shipyards to ensure that the BPP's are being applied and performing as designed.

**Strategies for Implementation:**

- Seek an increase in (federal) funding for DEQ to support the additional resources and staffing that will be required to perform more routine and thorough monitoring of facilities and operations.

**F. Fueling Station Design Management Measure:**

Design fueling stations to allow for ease in cleanup of spills.

**Recommendations:**

- The technical advisory committee concluded that the language of this measure should be refined to address the potential conflict between designing a fuel station for easy clean-up of spills and designing it for safe access and usage.
- ORS 480.340 and/or Uniform Fire Code should be amended to ensure that all marina fuel pumps are required to have automatic shut-off nozzles, regardless of latch type.

**Strategies for Implementation:**

- Support Pacific States Marine Fisheries Commission (PSMFC) legislative effort to amend state statute.
- The state should seek funding to assist marinas in upgrading their fuel pump equipment. This could be achieved by expanding and completing the pilot program began by the Pacific States Marine Fisheries Commission, Fishing Industry Pollution Prevention Project, that provides automatic shut-off nozzles to facilities that currently don't have them and to promote the use of simple pollution control devices in fueling operations. While the total number of fueling stations on the coast is declining for various reasons, many of the smaller operators still have older equipment that should be upgraded. This task should be carried out as part of a comprehensive program that includes a reach-out educational component to both marina operators and the boating community.

**G. Sewage Facility Management Measure:**

Install pumpout, dump station, and restroom facilities where needed at new and expanding marinas to reduce the release of sewage to surface waters. Design these facilities to allow ease of access and post signage to promote use by the boating public.

**Recommendations:**

- Expand the funding of pumpout stations to private marinas.

**Strategies for Implementation:**

- Support a Marine Board proposal to amend ORS 830.110 to extend these grant funds to private marinas.

**Marina and Boat Operation and Maintenance:****A. Solid Waste Management Measure:**

Properly dispose of solid wastes produced by the operation, cleaning, maintenance, and repair of boats to limit entry of solid wastes to surface waters.

**Recommendations:**

- Improve and expand educational outreach to marina operators and boaters on proper above water boat repair techniques and collection and disposal of solid waste materials.
- The DSL submerged lands leasing process could be modified to strengthen the lease condition stipulating that lessees must adhere to state and federal water quality regulations.
- Marina operators should be encouraged to stipulate that boat owners are responsible for adhering to state water quality laws as a condition of their moorage contract.

**Strategies for Implementation:**

- Seek increased DEQ staff funding to provide more routine and thorough facilities monitoring and to improve the level of technical support to operators.
- Support Marine Board and PSMFC educational efforts directed to the recreational and commercial boating communities.
- Amend the DSL submerged lands leasing process to strengthen compliance with existing environmental regulations and water quality standards and provide lessees with guidance on proper resource management and best management practices.

**B. Fish Waste Management Measure:**

Promote sound fish waste management through a combination of fish-cleaning restrictions, public education, and proper disposal of fish waste.

### **Recommendations:**

- Manage fish waste under a NPDES permit process that provides uniform guidelines for the proper handling and disposal.
- Solid waste disposal and recycling of fish waste has been found to be impractical and costly because of the odor and consistency of the decaying fish waste. Generally speaking, it takes too long for smaller facilities to collect a sufficient quantity of fish waste to transport and it is a nuisance to collect or store. In addition, transporting fish waste for disposal has been found to be highly impractical or economically infeasible.

### **Strategies for Implementation:**

- DEQ should develop and implement a NPDES permit for managing fish waste through their permit development process.
- Seek increased Marine Board funding to construct additional fish cleaning and disposal facilities at public ports where fish waste may contribute to a water quality problem.
- Make CZM Section 306A funds available for joint ventures with the Marine Board and ports to support fish cleaning stations that have grinders and are hooked up to the sewage system. To qualify for 306A funds, the new stations would need to be part of a waterfront redevelopment project.

### **C. Liquid Material Management Measure:**

Provide and maintain appropriate storage, transfer, containment, and disposal facilities for liquid material, such as oil, harmful solvents, antifreeze, and paints, and encourage recycling of these materials.

### **Recommendations:**

- Develop a system for hazardous waste recycling and disposal, for specific types of materials produced by small quantity generator marinas, that will service facilities on the coast.
- Educate and inform private boat owners on the proper use and disposal of household hazardous wastes such as oil, antifreeze, solvents and paints.

### **Strategies for Implementation:**

- Study the hazardous waste recycling and disposal system for coastal communities, and especially for small marinas that are not part of larger port operations. Determine the scale of the problems and the cost of collecting and disposal of waste.

- Conduct a pilot program for hazardous waste disposal for selected marinas.

**D. Petroleum Control Management Measure:**

Reduce the amount of fuel and oil from boat bilges and fuel tank air vents entering marina and surface waters.

**Recommendations:**

- Amend statute and fire code to require all fuel pumpouts to have automatic shut-off nozzles.

**Strategies for Implementation:**

- Expand PSMFC program to distribute automatic shut-off nozzles to fuel stations that don't have them.
- Support PSMFC legislative effort to amend ORS 480.340.

**E. Boat Cleaning Management Measure:**

For boats that are in the water, perform cleaning operations to minimize, to the extent practicable, the release to surface waters of (a) harmful cleaners and solvents and (b) paint from in-water hull cleaning.

**Recommendations:**

- Improve and expand educational outreach to marina operators and boaters on proper above water boat repair techniques and collection and disposal of solid waste materials.
- The DSL submerged lands leasing process could be modified to strengthen the lease condition stipulating that lessees must adhere to state and federal water quality regulations. Marina operators should be encouraged to stipulate that boat owners are responsible for adhering to state water quality laws as a condition of their moorage contract.

**Strategies for Implementation:**

- Seek increased DEQ staff funding to provide more routine and thorough facilities monitoring and to improve the level of technical support to operators.
- Support Marine Board and PSMFC educational efforts directed to the recreational and commercial boating communities.
- Amend the DSL submerged lands leasing process to strengthen compliance with existing environmental regulations and water quality standards and provide lessees with guidance on proper resource management and best management practices.

**F. Public Education Management Measure:**

Public education/outreach/training programs should be instituted for boaters, as well as marina owners and operators, to prevent improper disposal of polluting material.

**Recommendations:**

- Seek additional state and federal funding and ensure that the various efforts that are planned are coordinated and focused on the known causes of nonpoint source pollution.

**G. Maintenance of Sewage Facilities Management Measure:**

Ensure that sewage pumpout facilities are maintained in operational condition and encourage their use.

**Recommendations:**

- Condition Marine Board grants to ensure proper maintenance of pumpout systems.

**H. Boat Operation Management Measure (applies to boating only):**

Restrict boating activities where necessary to decrease turbidity and physical destruction of shallow-water habitat.

**Recommendations:**

- This measure is fully implemented in Oregon.

**COASTAL NONPOINT POLLUTION  
CONTROL PROGRAM**

**SUMMARY OF  
RECOMMENDATIONS**

**of the**

**AGRICULTURAL TECHNICAL ADVISORY GROUP**

**for implementation of the**

**AGRICULTURAL MANAGEMENT MEASURES**

Agricultural Technical Advisory Group Members:

Rick Barney, Lincoln SWCD Conservationist, USDA/SCS

Dale Buck, Tillamook NEP, Oregon Farm Bureau

Rudy Fenk, Tillamook SWCD, NEP

Don Greiner, USDA/SCS

Noland Huntington, Siuslaw SWCD

Ernest Josi, Tillamook SWCD

Bobbi Lindberg, DEQ

Marc Liverman, ODFW

David Priebe, ODA

Steve Reid, Siuslaw SWCD

Joe Steenkolk, Lincoln SWCD

Deborah Sturdevant, DEQ

Mike Wolf, ODA

Roger Wood, DEQ

Alan Youse, ODA

The following is a summary of the recommendations of the Agricultural Technical Advisory Group for Oregon's Coastal Nonpoint Pollution Control Program:

Agricultural Source Management Measures (as published by the U.S. Environmental Protection Agency pursuant to Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990):

**A. Erosion and Sediment Control:**

Apply the erosion component of a Conservation Management System (CMS) as defined in the Field Office Technical Guide of the U.S. Department of Agriculture - Soil Conservation Service (see Appendix 2A of (g) guidance) to minimize the delivery of sediment from agricultural lands to surface waters, or

Design and install a combination of management and physical practices to settle the settleable solids and associated pollutants in runoff delivered from the contributing area for storms of up to and including a 10-year, 24-hour frequency.

**Applicability:**

- Apply this measure to agricultural cropland with the exception of pasturelands associated with livestock operations. Pasturelands are infrequently tilled, and erosion problems associated with livestock operations will be addressed under the Grazing Management Measure.

**Recommendation:**

- Recognize that the vast majority of agricultural activity in Oregon's coastal zone consists of livestock operations and pasturelands associated with those operations.
- Address erosion problems associated with livestock operations and associated pasturelands under the Grazing Management Measure.
- Evaluate cropland for sediment delivery and prioritize implementation activities accordingly.
- Expand implementation of planning, educational, technical assistance, and voluntary incentive-driven programs.

**Suggested Strategies for Implementation:**

- Implement through water quality management plans adopted by the Department of Agriculture pursuant to Senate Bill 1010.



**Rationale:**

- Approximately two percent of Soil Conservation Service technical assistance in the coastal zone goes to cropland operations. The majority of agriculturally-related erosion problems in Oregon's coastal zone will be addressed through the Grazing Management Measure.

**B1. Management Measure for Facility Wastewater and Runoff from Confined Animal Facility Management (Large Units)**

Limit the discharge from the confined animal facility to surface waters by:

1. Storing both the facility wastewater and the runoff from confined animal facilities that is caused by storms up to and including a 25-year, 24-hour frequency storm. Storage structures should:
  - a. Have an earthen lining or plastic membrane lining; or
  - b. Be constructed with concrete, or
  - c. Be a storage tank;

and

2. Managing stored runoff and accumulated solids from the facility through an appropriate waste utilization system.

**B2. Management Measure for Facility Wastewater and Runoff from Confined Animal Facility Management (Small Units)**

Design and implement systems that collect solids, reduce contaminant concentrations, and reduce runoff to minimize the discharge of contaminants in both facility wastewater and in runoff that is caused by storms up to and including a 25-year, 24-hour frequency storm.

Implement these systems to substantially reduce significant increases in pollutant loadings to ground water.

Manage stored runoff and accumulated solids from the facility through an appropriate waste utilization system.

**Applicability:**

- Apply this measure as stated in the (g) guidance.

**Recommendation:**

- Maintain the coastal zone as a priority geographic area for Oregon Department of Agriculture's inspections for compliance with Oregon's Confined Animal Feeding Operations (CAFO) program regulations.
- Expand implementation of planning, educational, technical assistance, and voluntary incentive-driven programs.

## Suggested Strategy for Implementation:

- Authorities in Oregon's current CAFO program already implement these measures.

## C. Nutrient Management Measure:

Develop, implement, and periodically update a nutrient management plan to (1) apply nutrients at rates necessary to achieve realistic crop yields, (2) improve the timing of nutrient application, and (3) use agronomic crop production technology to increase nutrient use efficiency. When the source of the nutrients is other than commercial fertilizer, determine the nutrient value and the rate of availability of the nutrients. Determine and credit the nitrogen contribution of any legume crop. Soil and plant tissue testing should be used routinely. Nutrient management plans contain the following core components:

1. Farm and field maps showing acreage, crops, soils and waterbodies.
2. Realistic yield expectations for the crop(s) to be grown, based primarily on the producer's actual yield history, State Land Grant University yield expectations for the soil series, or SCS Soils-5 information for the soil series.
3. A summary of the nutrient resources available to the producer, which at a minimum include:
  - a. Soil test results for pH, phosphorus, nitrogen, and potassium;
  - b. Nutrient analysis of manure sludge, mortality compost (birds, pigs, etc.), or effluent (if applicable);
  - c. Nitrogen contribution to the soil from legumes grown in the rotation (if applicable); and
  - d. Other significant nutrient sources (e.g., irrigation water).
4. An evaluation of field limitations based on environmental hazards or concerns, such as:
  - a. Sinkholes, shallow soils over fractured bedrock, and soils with high leaching potential,
  - b. Lands near surface water,
  - c. Highly erodible soils, and
  - d. Shallow aquifers.
5. Use of the limiting nutrient concept to establish the mix of nutrient sources and requirements for the crop based on a realistic yield expectation.
6. Identification of timing and application methods for nutrients to: provide nutrients at rates necessary to achieve realistic crop yields; reduce losses to the environment; and avoid applications as much as possible to frozen soil and during periods of leaching or runoff.
7. Provisions for the proper calibration and operation of nutrient application equipment.

## Applicability:

- Apply this measure as stated in the (g) guidance.

## Recommendations:

- Prioritize agricultural lands receiving nutrient applications which are not

covered by the CAFO program according to their use of nutrients and their potential for nutrient loading.

- Base priorities for implementation on nutrient loading or potential for nutrient loss and water quality impacts.
- Expand implementation of planning, educational, technical assistance, and voluntary incentive-driven programs.

#### **Suggested Strategies for Implementation:**

- Many components of this management measure are already implemented for livestock operations, through the state's Confined Animal Feeding Operations program and its requirement of agronomic utilization of animal wastes and waste management plans as part of permit requirements.
- Implement the measure through water quality management plans adopted by the Oregon Department of Agriculture pursuant to Senate Bill 1010.

#### **Rationale:**

- The Senate Bill 1010 process, coordinated by the Oregon Department of Agriculture, has both the flexibility to take local conditions into consideration and the enforcement authority to require compliance, when necessary, to protect and improve water quality.

#### **D. Pesticide Management Measure**

To reduce contamination of surface water and ground water from pesticides:

1. Evaluate the pest problems, previous pest control measures, and cropping history;
2. Evaluate the soil and physical characteristics of the site including mixing, loading, and storage areas for potential leaching or runoff of pesticides. If leaching or runoff is found to occur, steps should be taken to prevent further contamination.
3. Use integrated pest management (IPM) strategies that:
  - a. Apply pesticides only when an economic benefit to the producer will be achieved (i.e., applications based on economic thresholds); and
  - b. Apply pesticides efficiently and at times when runoff losses are unlikely.
4. When pesticide applications are necessary and a choice of registered materials exists, consider the persistence, toxicity, runoff potential, and leaching potential of products in making a selection;
5. Periodically calibrate pesticide spray equipment; and
6. Use anti-backflow devices on hoses used for filling tank mixtures.

### **Applicability:**

- Apply this measure as stated in the (g) guidance to the degree possible, based on available scientific information for crops grown in the coastal zone.

### **Recommendations:**

- For many of the crops grown in Oregon, there is little data on the economic threshold for use of pesticides. Consequently, research followed by public education and technical assistance are critical in implementing component 3A of this measure.
- Expand implementation of planning, educational, technical assistance, and voluntary incentive-driven programs. Utilize emerging tools such as the Oregon Water Quality Decision Aid, or OWQDA (for components 2 and 4), and the Oregon Homestead Assessment System, or HOME\*A\*SYST (for part of component 2).
- Utilize the well-established pesticide applicator certification program to implement components 5, 6, and (to a certain extent) 3 of the management measure.
- Examine the impact on both groundwater and surface water of agricultural chemicals in the culture of cranberries and other specialty crops.

### **Suggested Strategies for Implementation:**

- Although economic threshold data for pesticide management decisions are unavailable at this time, many of the components of the management measure can be or are being implemented under current Oregon statutes, rules, and/or programs.
- Implement the groundwater protection components of the measure through the Pesticide State Management Plans which are under development by the Oregon Department of Agriculture.
- Implement the remaining components of the measure through the Pesticide Control Act or water quality management plans adopted by the Oregon Department of Agriculture pursuant to Senate Bill 1010.

### **Rationale:**

- The Senate Bill 1010 process, coordinated by the Oregon Department of Agriculture, has both the flexibility to take local conditions into consideration and the enforcement authority to require compliance, when necessary, to protect and improve water quality.

## **E. Grazing Management Measure:**

Protect range, pasture and other grazing lands:

1. By implementing one or more of the following to protect sensitive areas (such as streambanks, wetlands, estuaries, ponds, lake shores, and riparian zones):
  - a. Exclude livestock,
  - b. Provide stream crossings or hardened watering access for drinking,
  - c. Provide alternative drinking water locations,
  - d. Locate salt and additional shade, if needed, away from sensitive areas, or
  - e. Use improved grazing management (e.g., herding) to reduce the physical disturbance and reduce direct loading of animal waste and sediment caused by livestock; and
2. By achieving either of the following on all range, pasture and other grazing lands not addressed under (1):
  - a. Implement the range and pasture components of a Conservation Management System (CMS) as defined in the Field Office Technical Guide of the USDA-SCS (see Appendix 2A of the (g) guidance) by applying the progressive planning approach of the USDA-Soil Conservation Service (SCS) to reduce erosion, or
  - b. Maintain range, pasture, and other grazing lands in accordance with activity plans established by either the Bureau of Land Management of the U.S. Department of the Interior or the Forest Service of USDA.

### **Applicability:**

- Apply this measure as stated in the (g) guidance.

### **Recommendations:**

- Expand implementation of planning, educational, technical assistance, and voluntary incentive-driven programs.
- Seek incentives for landowners to protect habitat.
- Continue, and expand if possible, the voluntary implementation of many aspects of this measure through ASCS cost-share programs, EPA-funded programs such as those in the Tillamook and Coquille basins, and state-funded programs including the Watershed Health Program and the Governor's Watershed Enhancement Program.
- Take action to remove the administrative barrier to implementation of this measure caused by state Water Resources Department rules which require a water right permit for off-stream watering of livestock but not for in-stream watering. (Note: ODFW does not support this recommendation without a concomitant requirement that riparian areas be fenced to exclude livestock.)

- Coordinate ODFW's elk management efforts with the implementation of this management measure.
- Further examine the extent to which open range on public land is contributing to streambank erosion.

**Suggested Strategy for Implementation:**

- Implement this measure through water quality management plans adopted by the Oregon Department of Agriculture pursuant to Senate Bill 1010.

**Rationale:**

- The Senate Bill 1010 process, coordinated by the Oregon Department of Agriculture, has both the flexibility to take local conditions into consideration and the enforcement authority to require compliance, when necessary, to protect and improve water quality.

**F. Irrigation Water Management**

To reduce nonpoint source pollution of surface waters caused by irrigation:

1. Operate the irrigation system so that the timing and amount of irrigation water applied match crop water needs. This will require as a minimum: (a) the accurate measurement of soil-water depletion volume and the volume of irrigation water applied, and (b) uniform application of water.
2. When chemigation is used, include backflow preventers for wells, minimize the harmful amounts of chemigated waters that discharge from the edge of the field, and control deep percolation. In cases where chemigation is performed with furrow irrigation systems, a tailwater management system may be needed.

The following limitations and special conditions apply:

1. In some locations, irrigation return flows are subject to other water rights or are required to maintain stream flow. In these special cases, on-site reuse could be precluded and would not be considered part of the management measure for such locations.
2. By increasing the water use efficiency, the discharge volume from the system will usually be reduced. While the total pollutant load may be reduced somewhat, there is the potential for an increase in the concentration of pollutants in the discharge. In these special cases, where living resources or human health may be adversely affected and where other management measures (nutrients and pesticides) do not reduce concentrations in the discharge, increasing water use efficiency would not be considered part of the management measure.
3. In some irrigation districts, the time interval between the order for and the delivery of irrigation water to the farm may limit the irrigator's ability to achieve the maximum on-farm applications efficiencies that are otherwise possible.
4. In some locations, leaching is necessary to control salt in the soil profile. Leaching for salt control should be limited to the leaching requirements for the root zone.

5. Where leakage from delivery systems or return flows supports wetlands or wildlife refuges, it may be preferable to modify the system to achieve a high level of efficiency and then divert the "saved water" to the wetland or wildlife refuge. This will improve the quality of water delivered to wetlands or wildlife refuges by preventing the introduction of pollutants from irrigated lands to such diverted water.
6. In some locations, sprinkler irrigation is used for frost or freeze protection, or for crop cooling. In these special cases, applications should be limited to the amount necessary from crop protection, and applied water should remain on-site.

**Applicability:**

- Apply this measure as stated in the (g) guidance.

**Recommendations:**

- Recognize that there are no irrigation districts in Oregon's coastal zone and virtually no furrow or flood irrigation (other than for cranberry harvesting) exists in the coastal zone. Sprinkler irrigation systems are the most common type of irrigation systems in use in the coastal zone.
- Recognize that the requirement for measuring irrigation water volume can be met with existing equipment, since irrigation in the coastal zone relies on pumping, and the pumping rate is known. Multiplying the rate by the amount of time the pump operates will yield an accurate estimate of the volume of water applied.
- Evaluate and prioritize irrigated crop and pasture land uses for occurrence of irrigation runoff.
- Focus implementation efforts on problematic irrigation return flows.

**Suggested Strategies for Implementation:**

- Section (2) of the measure is already implemented in Oregon.
- Implement section (1) through water quality management plans adopted by the Oregon Department of Agriculture pursuant to Senate Bill 1010 to minimize the harmful amounts of irrigation return flows that discharge from the edge of the field.

**Rationale:**

- The Senate Bill 1010 process, coordinated by the Oregon Department of Agriculture, has both the flexibility to take local conditions into consideration and the enforcement authority to require compliance, when necessary, to protect and improve water quality.

# **Rigid Plastic Container Rules Presentation**

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Q & A



# HISTORY

- ★ 1971 Bottle Bill
- ★ 1983 Opportunity To Recycle Act

## Solid Waste Hierarchy

Reduce  
Reuse  
Recycle  
Compost (1991)  
Recover Energy  
Dispose

- ★ 1990 Recycling Initiative

## *Options Approach For Packaging*

- ★ 1991 Year To Improve Solid Waste & Recycling Law

# 1991 Oregon Recycling Act

(SB 66)

- ★ Local Recovery Rates
- ★ Recycling program standards & choices
- ★ Agency purchase of recycled products
- ★ State Solid Waste Management Plan
- ★ Additional Household Hazardous Waste Collections
- ★ Recycling Markets Development Council
- ★ Addition of "Compost" to State SW Hierarchy
- ★ Recycled Content Requirements
  - Newspaper
  - Phone Directories
  - Glass
- ★ Rigid Plastic Container Requirements  
(2 pages of 76 page bill)

# **Rigid Plastic Container Law**

## **1991**

- ★ Containers Must Comply By January 1, 1995
- ★ Options Approach To Comply
  - Recycled Content
  - Recycling Rate
    - Aggregate
    - Resin Specific
    - Brand or Product Specific
  - Reuse
  - Exempt Container
    - Medical
    - Exported
    - Tamper-resistant Parts
    - Reduced
    - Substantial Recycling Investment
- ★ Record Keeping
  - Container Manufacturers
  - Product Manufacturers
- ★ Report to 1993 Legislature On Containers Regulated By FDA

# 1993/1994

- ★ DEQ Reports to 1993 Legislature
  - Fundamental Change Needed In Law
  - DEQ Recommendation
    - Recycled Content (or)
    - Annual Fee
  
- ★ Law Changed
  - No Auditing/Compliance Determination Until Summer of 1996
  
- ★ Pyrolysis of Plastics
  - 1993 Legislative Issue
  - Attorney General Advice
  
- ★ Pyrolysis of Plastics Is Not Recycling To The Extent The End Product Of That Process Is A Form Of Energy
  
- ★ DEQ Rulemaking Process
  - 3 Task Forces

# **A Rigid Plastic Container definition:**

**▶ 8 ounces - 5 gallons**

*Issue: Buckets*

**▶ Holds A Product  
For Sale**

*Issue: Trays*

**▶ Maintains Shape**

*Issue: Tubes*

# **Manufacturer Definition:**

- ▶ **Container MFG:  
Makes Containers**
- ▶ **Product MFG:  
Fills Containers**

*Issue: Point-of-Sale*

# **SUBSTANTIAL INVESTMENT**

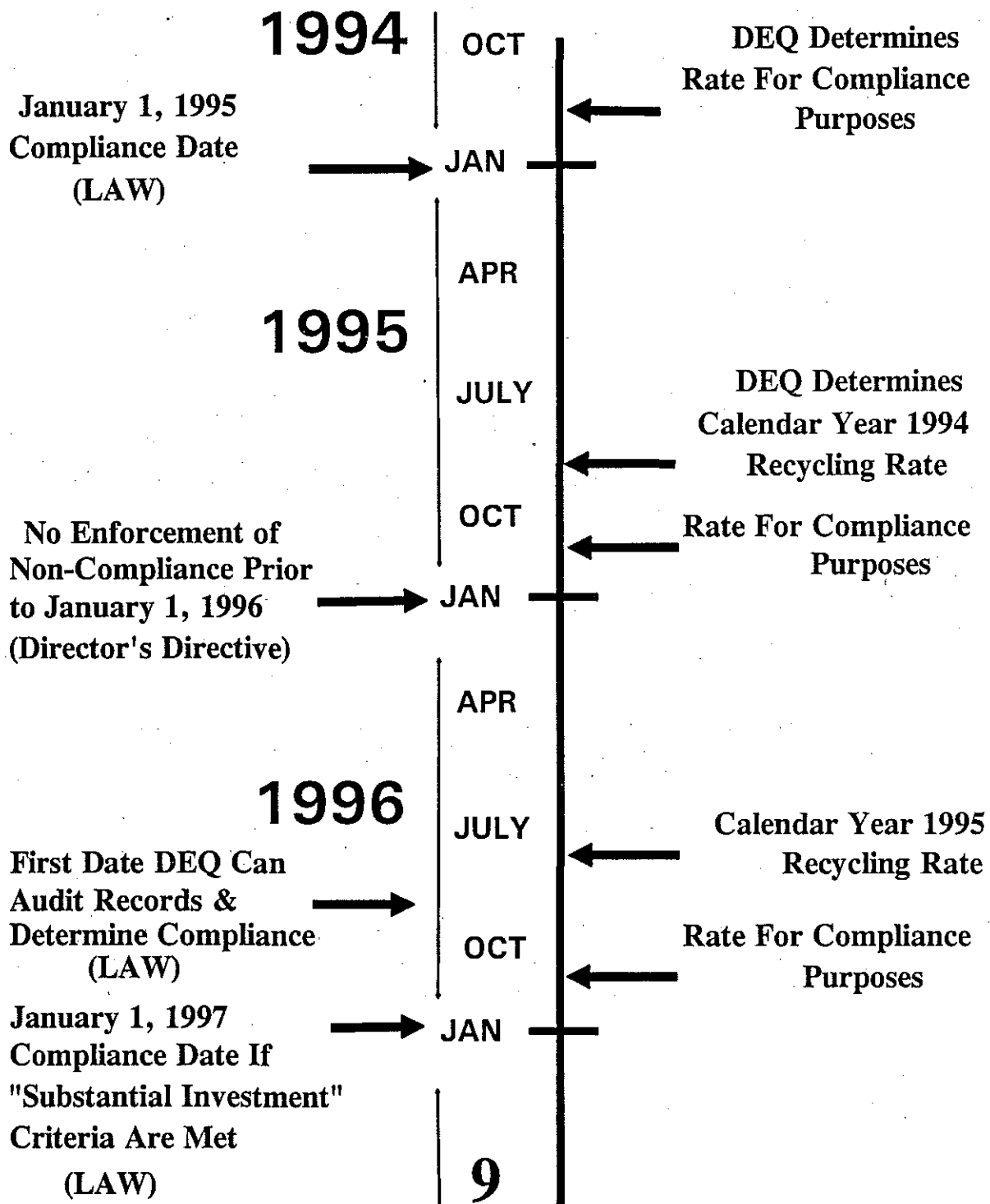
- (i) Demonstrated viable market;
- (ii) Recycling rate is at least 20%;
- (iii) Recycling rates for previous two years increasing;
- (iv) 25% Recycling rate will be met by January 1, 1997.

# **Reduced Container Exemption**

- ▶ **Reduced by 10%**
  - a) **Container weight**
  - b) **Concentrated  
product**
  
- ▶ **Compared to 5  
years earlier**
  - a) **Not in existence 5  
years**
  - b) **New**



# Dates & Rates



# Federal Regulations

- ▶ **FDA**
- ▶ **FIFRA**
- ▶ **DOT**

*Issue: No Exemption*

# COMPARISONS WITH CALIFORNIA RULES

	California	Oregon
FIFRA Products:	Exempt by law	Not exempt by law
US DOT/UN:	Exempt until 1/1/96	Not exempt by law
US FDA (Foods):	Exempt until 1/1/96	Not exempt by law
New Products:	1-year compliance waiver	Must comply at introduction
Corporate averaging:	Manufacturers can average across product lines & compliance options to comply	Law does not provide for averaging

*Issue: Corporate Averaging*

# **PANEL MEMBERS**

**Gail Achterman**

Implementation Task Force Chairperson

**Jerry Powell**

Recycling Rate Task Force Chairperson

**Chris Taylor**

OSPIRG

**Patty Enneking**

American Plastics Council

**Paul Cosgrove**

Representing Soap & Detergent Association  
Proctor & Gamble

HAGEN, DYE, HIRSCHY & DILORENZO, P.C.  
ATTORNEYS AT LAW

Environmental Quality Commission  
October 20, 1994  
REPLACEMENT Page 2

[a] State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

7 U.S.C. § 136v(b) (emphasis supplied).<sup>1</sup> Neither recycled content, recycling rates, nor reusable container packaging requirements appear in that subchapter. Naturally, therefore, the question is how ORS 459A.655, vis a vis pesticide packagers, can survive FIFRA's preemptive mandate. Despite Mr. Edelman's hopeful commentary to the contrary, it cannot.

In his memorandum dated September 28, 1994, Mr. Edelman concedes the "broad preemptive reach" and "absolutist nature" of 7 U.S.C. § 136v(b) as it pertains to packaging. (AG memo at 4.) However, he states that "it is not clear" that FIFRA preempts ORS 459A.655 and that ORS 459A.655 "arguably does not impose 'additional' or 'different' 'packaging requirements'" because, unlike FIFRA, Oregon's packaging requirements are not "design or performance" driven. (*Id.* at 6) (italics supplied). Essentially, Mr. Edelman concludes that FIFRA does not preempt the packaging requirements of ORS 459A.655 because they are not "requirements for \* \* \* packaging" within the meaning of 7 U.S.C. § 136v(b).

FIFRA's preemption language, which must be applied according to its terms, *Papas v. Upjohn Co.*, 985 F.2d 516, 517 (11th Cir. 1993), does not qualify its preemptive impact based upon the underlying impetus for state legislation. As Mr. Edelman recognizes and then dismisses, FIFRA's preemptive impact is absolute. *Shaw v. Dow Brands Inc.*, 994 F.2d 364 (7th Cir. 1993). Accordingly, the Tenth Circuit emphatically concluded that

[s]ection 136v(b) prohibits a state from imposing any requirement for \* \* \* packaging in addition to or different from those required under this subchapter. \* \* \* Section 136v(b) exists in the context of what federal law permits the state to regulate, and it simply deprives the state of power to adopt any regulation. \* \* \* We believe Congress

---

<sup>1</sup>"Congress has expressly stated its intent to preempt any state labeling or packaging requirements different from or additional to those mandated by FIFRA." *Fisher v. Chevron Chemical Co.*, 716 F.Supp. 1283, 1286 (W.D.Mo. 1989).

HAGEN, DYE, HIRSCHY & DILORENZO, P.C.  
ATTORNEYS AT LAW

JOSEPH T. HAGEN  
JEFFREY L. DYE  
JOHN A. HIRSCHY  
JOHN A. DILORENZO, JR.  
DANA R. TAYLOR  
MARK A. GOLDING  
KENNETH A. WILLIAMS

NINETEENTH FLOOR  
BENJ. FRANKLIN PLAZA  
ONE S.W. COLUMBIA STREET  
PORTLAND, OREGON 97258-2087  
(503) 222-1812  
FAX (503) 274-7979

ANNIE T. BUELL  
RANDALL L. DUNCAN  
MICHAEL E. FARNELL  
DARIN D. HONN  
JOHN D. PARSONS  
ADAM S. RITTENBERG  
BLANCHE I. SOMMERS  
TIMOTHY J. WACHTER

IN REPLY PLEASE REFER  
TO FILE NO.: 3770.036

October 20, 1994

VIA HAND DELIVERY

Mr. William Wessinger, Chair  
Dr. Emery Castle, Vice Chair  
Mr. Henry Lorenzen  
Dr. Linda McMahan  
Ms. Carol Whipple  
Environmental Quality Commission  
Department of Environmental Quality  
811 SW. Sixth  
Portland, Oregon 97204

Re: Agenda Item H/Rule Adoption/Implementation  
Of Oregon's Rigid Plastic Container Law

Dear Commissioners:

This office represents Oregonians for Food and Shelter, an organization representing over 10,000 pesticide users and approximately 70 pesticide manufacturers and registrants. I have been asked by my client to respond to the memorandum prepared by Mr. Larry Edelman of the Attorney General's office dated September 28, 1994, relating to FIFRA preemption and included in your rule decision packet as Attachment J.

Federal law can preempt state law in several ways. One way is for Congress, when enacting a federal statute, to express a clear intent to preempt state law. *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977). Congress did so with FIFRA:

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circumscribed the area of \* \* \* packaging and preserved it only for federal law. With the same stroke, Congress banned any form of state regulation, and the interdiction law is clear and irrefutable.

*Arkansas-Platte & Gulf v. Van Waters & Rogers*, 981 F.2d 1177, 1179 (1993) (emphasis court's). The proscription is in fact particularly applicable to DEQ:

In this court's opinion, the preemptive reach of 7 U.S.C. § 136v(a), (b), was expressly designed to preclude states' *rulemaking bodies* from mandating labeling and packaging requirements different from those imposed by the EPA pursuant to FIFRA.

*Coutre v. Dow Chemical U.S.A.*, 804 F.Supp. 1298, 1302 (D.Mont. 1992) (emphasis supplied).

If, therefore, ORS 459A.655 imposes an *additional* or different requirement with respect to *packaging*, irrespective of the public policy driving that additional or different requirement, it is preempted. EPA defines "package or packaging" as

the immediate container or wrapping, including any attached closure(s), in which the pesticide is contained for distribution, sale, consumption, use or storage. \* \* \*.

40 C.F.R. § 157.21(c). There can be no reasonable contention that the pesticide containers affected by ORS 459A.655 do not qualify as packages under this definition. Moreover, the term "requirements" in section 136v(b) is broadly construed. *Papas*, 985 F.2d at 518. As for requirements "in addition to" FIFRA, the federal act does not require use of recycled materials or packages.

The literal import of section 136v(b) is therefore unavoidable. Among that regulated by ORS 459A.655 is pesticide packaging. The mandated use of recycled materials or packages is without question a requirement of ORS 459A.655. And that requirement is in addition to the packaging requirements imposed by



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FIFRA. By its very terms, ORS 459A.655 is preempted as it relates to pesticide packagers.<sup>2</sup>

Mr. Edelman places considerable reliance on *Chemical Specialties Mfrs. Ass'n, Inc. v. Allenby*, 958 F.2d 941 (9th Cir. 1992), to support the proposition that indirect regulations of labeling and packaging are not preempted by FIFRA. The *Allenby* court found that blanket point of sale warnings (which were not affixed to labels) were not labeling requirements within the meaning of FIFRA and therefore were not preempted. To the extent Mr. Edelman seeks to analogize ORS 459A.655 as an indirect regulation of pesticide packaging, the analogy is attenuated.<sup>3</sup> First, the point of sale notices in *Allenby* were arguably indirect regulations because, although they emanated from the same public policy as FIFRA's labeling requirements, the point of sale notices did not physically involve the label itself. ORS 459A.655, conversely, physically implicates the package itself. It will not do, therefore, to argue, as does Mr. Edelman, that ORS 459A.655 does not implicate "packaging" the way that point of sale notices may not implicate "labeling."

Given the express preemptive effect that 7 U.S.C. § 136v(b) has on ORS 459A.655 vis a vis pesticide packagers, the administrative rules implementing ORS 459A.655 must recognize the unenforceability of this law as it relates to pesticide packages.

My client is not requesting an exemption. We do, however, request that your rule expressly recognize the preemptive effect of FIFRA as it relates to pesticide packages and provide for enforcement of the act where otherwise not preempted by federal

---

<sup>2</sup>Congress' purpose in preempting state law packaging requirements is to "promote uniformity and ease distribution practices for chemical product manufacturers." *Chemical Specialties Mfrs. Ass'n, Inc. v. Allenby*, 958 F.2d 941, 944 (9th Cir. 1992). If it accomplishes nothing else, ORS 459A.655 will certainly compromise the uniformity and upset the distribution practices FIFRA currently assures pesticide packagers.

<sup>3</sup>Note that the 11th Circuit in *Papas* reached the opposite result: "[a]ny claims that point-of-sale signs \* \* \* failed adequately to warn the plaintiff necessarily challenge the adequacy of the warning provided on the product's labeling or packaging" and are therefore preempted. 985 F.2d at 519.

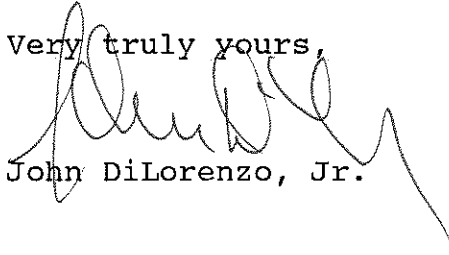
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ATTORNEYS AT LAW

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Page 5

law. We stand ready to work with your staff to develop a satisfactory definition of "pesticide package" for inclusion in your rule.

Thank you for your courtesies and consideration concerning this matter.

Very truly yours,



John DiLorenzo, Jr.

cc - Mr. Terry Witt  
Larry Edelman, Esq.  
Ms. Lydia Taylor, Acting Director

Recycling — ?

**Conceptual Outline for TDG  
Rule Modification for the Columbia River**

**Need for Rule Modification:**

The Department expects to receive a request from federal, state and tribal fisheries agencies in January 1995 to allow exceedance of the current TDG standard to accommodate increased spill at the Columbia River mainstem dams to aid outmigrating salmonid smolts during the Spring and Summer of 1995.

The EQC provided temporary modification of the TDG criteria to support spill requests during 1994. Temporary rule modification may last for a single 180-day period, which was fully utilized during 1994. Temporary rule modification is not available as a means to grant future spill requests.

**Principle Modification:**

The principle modification would be the addition of language allowing the director the authority to modify the existing TDG standard for the Columbia River if certain criteria are met and after consideration of public comment.

**Minimum factors the Director must consider:**

The Director's discretion is dependent on four (4) required findings necessary for the implementation of alternative TDG levels:

- 1) that increased spill would result in less jeopardy to salmonid stock survival via in-river migration than would occur if spill levels remain at normal levels,
- 2) that the modified TDG standard provides a reasonable balance of the risks associated with elevated TDG considering other options for in-river migration of salmonids, survival of migrating adult and juvenile salmonids, and potential impairment to resident biological communities.
- 3) that adequate data will exist to determine compliance with the standards, and
- 4) that biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.

In addition, the following timing and opportunity for public review of proposed changes would be required unless an emergency is encountered that requires immediate short-term action to save significant numbers of fish from acute effects:

- 1) A request for implementing alternative TDG criteria, as

allowed under the proposed rule, must be received by the Department at least 45 days prior to the anticipated modification, and

2) The Department will provide a minimum of 21 days for public review and comment on any proposed criteria modification.

**Alternative Criterion Levels:**

Alternative water quality criteria (i.e. % TDG) are not defined in the proposed rule language. The proposed rule allows the director discretion to respond to new information as it becomes available. In addition, USEPA may be reluctant to approve a long term criteria greater than the national guidance level of 110% TDG.

tdgrule.con

**DBA** Dave Barrows  
*& Associates*

KGF

David S. Barrows  
*President*

1201 S.W. 12th Avenue, Suite 200 (503) 227-559  
Portland, Oregon 97205 (503) 227-1781 Fa

# RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

## OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

### *Issue:*

(5)(a) (A) and (B) Source reduced container comparison for existing packages

### *Proposed DEQ Rule:*

(5)(a)(A) For a container which has been changed to a reduced container after January 1, 1990 and before January 1 1995:

- (i) Comparison shall be made to the container/product ratio of the equivalent container sold five years earlier;
- (ii) The exemption shall start on January 1, 1995; and shall run until January 1, 2000.

(5)(a)(B) For a container which has been changed to a reduced container on or after January 1, 1995:

- (i) Comparison shall be made to the container/product ratio of the equivalent container sold five years earlier
- (ii) The exemption shall start on the date the reduced container was first used by the product manufacturer and shall run for five years

### *Discussion:*

This section of the regulations requires a five year comparison for source reduction purposes. This DEQ recommendation is a reversal of the Implementation Task Force recommendation. The regulations as written preclude any products in rigid plastic packages introduced after January 1, 1990 to be exempted through source reduction. because the source reduction is not being allowed to occur until after the law takes effect. This is of critical importance to food manufacturers, since source reduction is basically the only way food manufacturers will be able to meet the law due to food safety and package integrity concerns with recycled content and reuse compliance options, and because of our inability as a manufacturer to control the recycling rate.

As an example, an existing product in a rigid plastic container introduced in 1993 is not allowed by regulation to be source reduced until 1998. To remain in the marketplace a package must meet the law by January 1, 1995. Yet, the regulations do not allow the package to be source reduced until 1998 -- 3 years after the package must meet the law. So if a manufacturer introduced a package in 1993, and source reduction is not allowed as an option to meet the law until 1998, the package will have to be withdrawn from the marketplace from 1995 until 1998.

There is nothing in the statute that gives DEQ the authority to preclude an option to meet the law from being used. The regulations go beyond statutory scope, are impractical and unworkable for food packages in rigid plastics in the marketplace today.

October 20, 1994  
EQC Workshops

## **RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW**

### **OAR 340-90-340 (5)(a)(A) and (B) EXEMPT RIGID PLASTIC CONTAINERS**

#### ***Recommended Rule Language:***

To enable products introduced from 1/1/90 until 1/1/95 from being entitled to use source reduction to meet the law, the EQC should adopt Alternative B as it was put out for public comment. Although this does not address new products introduced in rigid plastic containers after 1/1/95, Alternative B does address those between 1990 and 1995.

Delete proposed rule (5)(a)(A) and (B) and replace with:

- (5)(a)(A) For a container which has been changed to a reduced container after January 1, 1990 and before January 1, 1995:
- (i) Comparison shall be made to the container/product ratio of the equivalent container :
    - (I) Sold before January 1, 1990; or
    - (II) For containers not sold before January 1, 1990, when the container was initially introduced
  - (ii) The exemption shall start on January 1, 1995 and shall run until January 1, 2000.
- (5)(a)(B) For a container which has been changed to a reduced container on or after January 1, 1995;
- (i) Comparison shall be made to the container/product ratio of the equivalent container:
    - (I) Sold five years prior to the date the reduced container was first used by the product manufacturer; or
    - (II) For containers which have been sold less than five years, the date the original container was first used by the product manufacturer
  - (ii) The exemption shall start on the date the reduced container was first used by the product manufacturer and shall run for five years.

## RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

### OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

#### ***Issue:***

Source reduction exemption for new rigid plastic packages manufactured after 1/1/95.

#### ***Proposed DEQ Rule:***

No proposed rule language allowing for source reduction exemption of new rigid plastic packages manufactured after 1/1/95.

#### ***Discussion:***

The proposed rule does not allow for source reduction of new rigid plastic packages manufactured after 1/1/95. In order for a package to be source reduced, it must have an original package to compare it to. The rules, however, allow no mechanism to establish a base weight container in the marketplace after 1/1/95.

Source reduction is basically the only way food manufacturers will be able to meet the law due to food safety and package integrity concerns with recycled content and reuse compliance options, and because of our inability as a manufacturer to control the recycling rate. Because source reduction is our only compliance option, the proposed rules effectively prohibit new food packages manufactured after 1/1/95 from being introduced into Oregon. This is an unacceptable situation both for the consumers and businesses of Oregon, and is an inappropriate implementation of the statute.

The regulations should allow a procedure by which new products and packages can be introduced, and be given a time period to establish a base package for which to compare a source reduced package.



# RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

## OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

### *Recommended Rule Language:*

Add a subsection (5)(C) to OAR 340-90-340 to read:

- (5)(C) For a rigid plastic container that the manufacturer will seek a reduced exemption after 1/1/95 because no rigid plastic container existed for comparison within the 5 years prior, for the purposes of being a source reduced container:
- (i) The baseline product/package ratio is that ratio at the time of manufacture.
  - (ii) The reduced container exemption will begin five years after the date of manufacture, and extend for five years. During the period of January 1, 1995 but prior to the qualifying date for a reduced exemption, the container does not have to meet other compliance options.
  - (iii) Product manufacturers of containers seeking reduced container exemptions after January 1, 1995 will maintain compliance records verifying intent to meet the reduced container exemption. If audited by the Oregon DEQ prior to the reduced exemption taking place, the manufacturer shall provide to the DEQ a record of intent to obtain a reduced exemption. If the reduced exemption is not achieved by the end of the five year period, the product manufacturer will be in violation of the Act since the enforcement date.

# **RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW**

## **OAR 340-90-330 RIGID PLASTIC CONTAINERS**

### ***Issue:***

(1)(b)(C) Volume measurement

### ***Proposed DEQ Rule:***

(1)(b)(C) For containers which have a labeled product liquid volume of five gallons or less and a measured container liquid volume of more than five gallons the labeled product volume shall be used.

### ***Discussion:***

This subsection differentiates a distinct methodology for determining volume of five gallon containers versus any other rigid plastic container. There is absolutely no basis for establishing different volume criteria of a five gallon container from any other rigid plastic container. This inconsistency in volume determination between rigid plastic containers is totally unfounded.

### ***Recommended Rule Language:***

Delete (1)(b)(C) from the rule.

# RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

## OAR 340-90-330 RIGID PLASTIC CONTAINERS

### **Issue:**

(2)(b) Definition of rigid plastic container - Inclusion of trays that are not a "package"

### **Proposed DEQ Rule:**

(2)(b) Plastic trays that have sidewalls designed to contain a product in the tray

### **Discussion:**

This subsection includes trays with sidewalls in the definition of a rigid plastic container. Inclusion of trays inconsistent with statutory definition of a "package" and a "rigid plastic container" of Oregon SB66.

The Oregon law defines a package as"

"Any container used to protect, store, contain, transport, display or sell products."

The Oregon law defines rigid plastic container as:

"Any package composed predominantly of plastic resin ..."

It is clear from the statutory language that a rigid plastic container is the package and that it is able to contain a product on its own. A tray - even with sidewalls-is not a package. It cannot contain a product on the shelf without additional packaging material. Therefore, to be consistent with the statute, the regulations must not include rigid plastic containers that are not packages, such as trays, which cannot contain a product on the shelf on its own.

### **Recommended Rule Language:**

Amend (2)(b) to read:

"Plastic trays which have sidewalls designed to contain a product in the tray without additional packaging material or lid, closure, etc."

**CHUHAK & TECSON, P.C.**

ATTORNEYS AT LAW

Thomas S. Chuhak  
 John P. Fedden  
 Barry A. Feinberg  
 Dennis A. Ferraro  
 Cary S. Fleischer  
 Albert L. Grosso  
 Rick Hammond  
 Edwin I. Josephson  
 Arnold E. Karolewski  
 John Laurence Klentien  
 Stephen M. Margolin  
 James W. Naichblt  
 Donald J. Rusa, Jr.  
 Andrew P. Tecson  
 Joseph A. Tecson

225 West Washington Street  
 Suite 1300  
 Chicago, Illinois 60606-3418  
 (312) 444-9300  
 Fax: (312) 444-9027

Writer's Direct Line

(312) 855-4352

October 20, 1994

John P. Adams  
 Thomas S. Chuhak  
 Barbara A. Feinberg  
 Barbara A. Ferraro  
 Albert L. Grosso  
 John M. Foley  
 Stephen A. Glickman  
 Karen S. Kogachi  
 Jeffrey A. Kerensky  
 Raymond S. Makowski  
 John F. Mahoney  
 Laurie A. Piegler  
 Shawn P. Ryan  
 Stacy E. Singer  
 Don M. Sowers  
 Michael D. Weinstein  
 Michael D. Weis

Of Counsel

Lawrence E. Glick  
 Joseph O. Rudinelli  
 Mary Jane Rubinfeld

**VIA FEDERAL EXPRESS**

Ms. Deanna Muller-Crispin  
 Department of Environmental Quality  
 Waste Management and Cleanup Division  
 811 S. W. 6th Avenue  
 Portland, Oregon 97204

Dear Deanna:

Per our conversation this morning, please find enclosed a copy of the letter dated September 1, 1994 from Peter Giammanco, Jr., President of Central Can Company. On September 1, 1994, this letter was faxed to the DEQ at 503-585-1921, as evidenced by the fax confirmation sheet attached hereto. Additionally, the letter was delivered by UPS Overnight Mail and signed for by an individual named "Cook".

Because this letter was received by the Department prior to the 5:00 p.m., September 6, 1994 deadline for submission of written comments, the comments of Mr. Giammanco should be presented to the Environmental Quality Commission. Accordingly, please incorporate this letter into the staff report dated October 4, 1994 and distribute such copies as are necessary for review by the EQC on October 21, 1994.

Thank you for your cooperation with this matter. If you require any additional information or materials, please do not hesitate to contact the undersigned.

Very truly yours,



Michael B. McVickar

MBM:ef  
 Enclosures  
 mbm\deanna.let

# CENTRAL CAN COMPANY

3200 S. KILBOURN AVE, CHICAGO, IL 60623 · 312/254-8700



September 1, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

Gentlemen:

Central Can Company is a manufacturer of High Density Polyethylene (HDPE) bottles primarily used to package products that are governed by the EPA under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Shipments of a considerable portion of these products are also regulated by the U.S. Department of Transportation under Code of Federal Regulations 49, Parts 100 through 199, governing the transportation of hazardous materials throughout the United States and the rest of the world.

We respectfully submit the following comments for Oregon's Rigid Plastic Container Law:

1. Packaging of FIFRA regulated products could pose a serious threat to the public safety if containers were manufactured from less than 100 percent virgin polyethylene.
2. Containers we produce are manufactured with 100 percent virgin polyethylene to preclude the transmission of the contents of the container through the wall of the container.
3. There is a major issue of shelf life and stress-cracking resistance. FIFRA regulated products are usually very expensive and might be in storage in agricultural warehouses, farmers' barns, local garden stores and households for many years. In order to minimize the possibility of stress-cracking in storage, handling or shipping problems, virgin polyethylene with good stress-cracking resistance is the only HDPE material that should be used to manufacture these containers. The possibility of stress-cracking of these containers requires that careful construction and longer testing govern the manufacture and use of these containers.
4. Post-consumer regrind polyethylene is available basically in two different varieties:



Department of Environmental Quality

September 1, 1994

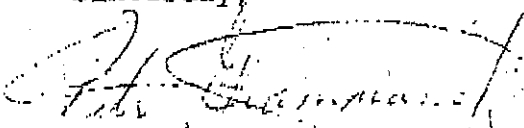
Page two

- A. Homopolymer which are the materials used to manufacture most milk and water containers. This material does not perform well for containers of FIFRA regulated products. Homopolymers tend to stress-crack very quickly and have very short shelf life expectancy. We believe this could cause major unsafe conditions for the public at large.
  - B. Copolymers used in post-consumer regrind would contain multiple additives and colorants. This material would also contain residues of the original products packaged. This residue occurs because the original products migrate into the sidewall of the containers.
5. No resin manufacturer or reprocessor will unconditionally guarantee the integrity and quality of either homopolymer or copolymer post-consumer regrind resin when used for FIFRA regulated HDPE bottles.
  6. It is illegal for manufacturers of products regulated by FIFRA and DOT to ship products across state lines ignoring federal regulations. Also, the commerce provisions of the U.S. Constitution clearly mandates that the federal government will regulate the commerce of the United States.
  7. Present Federal EPA FIFRA Law states that a State: "...shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

We strongly urge that Oregon exempt FIFRA products and hazardous material products governed by the Department of Transportation Regulation CFR49 from Oregon Rigid Plastic Container Law.

We sincerely believe that if our customers packaged FIFRA controlled products in bottles that contain post-consumer regrind, the public health and safety would be jeopardized and the public would be at risk.

Sincerely,

  
Peter Giammano, Jr.  
President

## Listing of Persons Providing Comment

### Commenter Number

John Smits  
Smits & Associates  
14687 S.E. Kingston Ave. (1)  
Milwaukie, Oregon 97267-1943

Nanette Mauck  
Northwest EEE ZZZ Lay Drain Co. (2)  
P.O. Box 654  
Gresham, Oregon 97030

John Oppertshauser  
6095 Bullock Road (3)  
Oakland, Oregon 97462

David L. Peterson  
Rt. 1, Box 15 (4)  
Baker City, Oregon 97814

Jack Knife, Superintendent  
PRE-MIX CONCRETE PIPE CO. (5)  
1969 N.E. Diamond Lake Blvd.  
Roseburg, Oregon 97470

Gary W. Sewell  
Garton & Associates Realtors (6)  
444 S.W. 1st  
Pendleton, Oregon 97801

Bruce H. Morrison  
4205 S. Auburn (7)  
Kennewick, Washington 99337

**George M. Dollowitch**  
**Dollowitch & Margan** (8)  
**P.O. Box 1840**  
**Waldport, Oregon 97394**

**John Brenneman**  
**Government Relations Counsel** (9)  
**707 13th S.E., Suite 299**  
**Salem, Oregon 97301**

**Richard L. Polson, Supervisor**  
**Building Services Section** (10)  
**Department of Transportation & Development**  
**902 Abernethy Road**  
**Oregon City, Oregon 97045**

**Joseph F. Fowler, R.S., Chair** (11)  
**Conference of Local Environmental Health Supervisors**  
**Marion County Department of Public Health**  
**Room 220**  
**3180 Center Street, N.E.**  
**Salem, Oregon 97301**

**Dian Sharma, Director** (12)  
**Department of Health & Human Services**  
**155 North First Avenue**  
**Hillsboro, Oregon 97124**

**Roger W. Everett, Director** (13)  
**Environmental Health Division**  
**Community Health Division**  
**1130 N.W. Harriman**  
**Bend, Oregon 97701**



**John Earls, R.S. (14)**  
**Environmental Program Manager**  
**On-Site Waste Management Program**  
**Community Development Department**  
**Millamook, Oregon 97141**

**Jerry W. Law (15)**  
**P.O. Box 6788**  
**Brookings, Oregon 97415**

**Fred VanNatta (16)**  
**Oregon State Home Builders Association**  
**565 Union St. N.E.**  
**Salem, Oregon 97301-2477**

**Board of County Commissioners (17)**  
**Douglas County**  
**Courthouse**  
**Roseburg, Oregon 97470**

**Brad Mason, President (18)**  
**Klamath Basin Home Builders Association**  
**4509 S. Sixth Street, Suite 110**  
**Klamath Falls, Oregon 97603-4867**

**The Honorable John Meek (19)**  
**Oregon House of Representatives**  
**P.O. Box 1327**  
**Hillsboro, Oregon 97124**

**Elaine Correia (20)**  
**M & E Septic Service**  
**P.O. Box 840**  
**Waldport, Oregon 97394**

**John G. Nokes** (21)  
**General Counsel**  
**TIDEWATER CONTRACTORS INC.**  
**P.O. Box 1956**  
**Brookings, Oregon 97415**

**Ron Nussbaumer** (22)  
**9480 N.W. Helvetia Road**  
**Hillsboro, Oregon 97124**

**Diana Godwin** (23)  
**900 S.W. 5th, Suite 2100**  
**Portland, Oregon 97204**

**Kip Morgan** (24)

**John Atkinson** (25)

**Brad Prior** (26)

**Terry Bounds** (27)  
**ORENCO SYSTEMS INC.**  
**2826 Colonial Road**  
**Roseburg, Oregon 97470**

**Frank Spierling** (28)

**Helen Early and Mike Van Dam** (29)

**Dave Picar** (30)  
**Aloha Sanitary Service**

JOHN BRENNEMAN  
GOVERNMENT RELATIONS COUNSEL

Date: June 23, 1994

To: Sherman Olson, DEQ

From: John Brenneman, representing the Manufactured Housing Communities of Oregon

Re: Proposed "on-site" permit and inspection fee increases

I represent over 600 member Manufactured Home parks in Oregon that develop and rent land spaces to persons who own their own homes. Our members provide a very affordable housing option and the vast majority of our residents are retired and on fixed incomes.

There is a critical need in today's communities for affordable housing. Governments, at all levels, are raising fees on all forms of housing which is driving the cost of housing to unbearable and unreasonable market levels. This trend of rising fees must be curtailed, especially in the low end manufactured home communities.

Hundreds of our members and thousands of our residents, who are, after all, the end payer of these fee increases, urge you to not adopt fee increases at this time and certainly not the radical fee increases being proposed.

Be aware of how disaffected voters are reacting to overly burdensome government regulations and fee increases such as this proposal. A clear example is the "Son of Measure 5", ready to take away any government's ability to adjust such fees.

June 24, 1994

Department of Environmental Quality  
On-Site Sewage Disposal Program  
811 S.W. Sixth Avenue  
Portland, Oregon 97204

Dear Sirs:

As a contractor in Washington County, I feel it is important that the County provides timely service. At the present, we are receiving the inspections and service we need.

I oppose any actions that may reduce the staff or alter the program to make it less accessible. While I don't generally favor increased fees, I do operate a business and understand the concept of rising costs. For this reason, I support the on-site sewage disposal program fee increases proposed by Washington County.

Sincerely,

A handwritten signature in cursive script, appearing to read "Frank Spiering".

Frank Spiering

June 24, 1994

Department of Environmental Quality  
On-Site Sewage Disposal Program  
811 S.W. Sixth Avenue  
Portland, Oregon 97204

Dear Sirs:

As a contractor in Washington County for more than 20 years, we have an obvious interest in the County sewage disposal inspection program.

For the most part we feel they provide us with good service and we would like to see that continue.

Like any private businessman, we do not like to see our expenses increase. If, however, it takes a fee increase to maintain the present level of service, then we support it.

Sincerely yours,



Dave Pickar  
Aloha Sanitary Service  
DP:at

JOHN OPPERTSHAUSER  
6095 BULLOCK RD  
OAKLAND OR 97462

DEQ

21 June 94

Dear Sirs:

I am opposed to any fee increases for septic systems. They are already high enough, and inhibit growth at the same time adding to the inflationary trend in housing.

My close personal friend had an experience where she had to have a backhoe dig 22 septic test holes at the direction of the DEQ field person, who eventually said maybe hole #2 would pass OK.

I just had to have a records check on a previously approved septic system, and after only a couple weeks and \$95.00 it was satisfactorily completed.

If DEQ could be more practical and more efficiently business like, it could do a

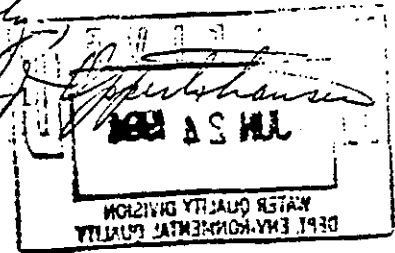
whole lot more with the present structure and budget. When there is an opportunity to either be practical or do it the hard way, DEQ always seems to pick the hard way.

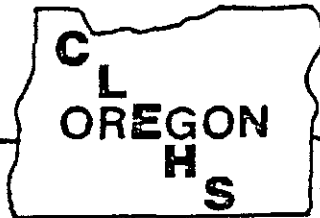
DEQ could also use an image improvement. They are presently viewed as the stumbling block to almost everything. Maybe a good part of it is deserved.

If these comments seem less than complimentary, at least they are what I consider to be my honest perception. Experience can be a tough mistress. No fee increases should be granted until DEQ can be more efficient, cooperative, and business like.

Sincerely,

John J. Appertshausen





CONFERENCE OF  
LOCAL ENVIRONMENTAL HEALTH SUPERVISORS

June 22, 1994

Department of Environmental Quality  
Water Quality Division  
811 SW 6th Ave  
Portland OR 97204

RE: Support for Proposed On-Site Sewage Disposal Fees

The population of Oregon is increasing rapidly, and much of the growth is occurring outside the reach of municipal sewer systems. On-site sewage disposal can be a safe and reasonable alternative to community sewers, but only if there is an effective, statewide on-site sewage disposal (OSSD) program.

In the late 1970's Oregon's OSSD program was nationally recognized for its strong permit standards, variance procedures, technical innovation, and the application of soil science for site selection. Unfortunately, reduced funding and fees which have not kept up with costs have resulted in a deterioration of the program.

The current fees do not cover costs for most counties which contract with the DEQ to administer the program locally. Contract counties must have the ability to recover costs through fees. The proposed fees would appear to allow this. Therefore, the Conference of Local Environmental Health Supervisors (CLEHS) supports the proposed fee increases.

The proposed fees for repair permits, however, are a concern. In cases where a public health hazard exists and a financial hardship can be demonstrated, a reduced fee should be allowed based on the ability to pay.

Adequate surcharges are also necessary in order for the state to provide program administration, oversight and technical assistance. The proposed surcharges would provide a substantial increase in funding for these functions. CLEHS does not have enough information to comment on what the surcharge amount should be; only that it should be used solely for program administration functions.

If, for some reason, the Environmental Quality Commission does not see fit to approve the proposed fees, then consideration should be given to amending the Administrative Rules to allow counties to establish their own fees based on the cost of the service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joseph Fowler R.S.".

Joseph Fowler, R. S., Chair  
Conference of Local Environmental Health Supervisors





# CLACKAMAS COUNTY

Department of Transportation & Development

THOMAS J. VANDERZANDEN  
EXECUTIVE DIRECTOR

June 24, 1994

Depart. Of Environmental Quality  
Water Quality Division  
811 SW 6th Ave.  
Portland, OR 97204

SUBJ: Proposed Adoption of Rule Amendments to the On-Site  
Sewage Disposal Fees

This office has reviewed the proposed fee amendments. The results of this review would indicate that we have some significant reservations about implementation of this fee schedule at this time. The following comments appear relevant.

In light of the current budgetary squeeze on the State's General Fund, it certainly appears appropriate to increase fees to the point where the program is as close to 100% fee funded as possible. This office supports fees that realistically approach actual costs for completing work. It appears that the proposed fees are based upon totally hourly costs, including overhead, to run the program in Eastern Oregon. These costs are obviously the maximum expected costs for any part of the state, since travel distances are so long east of the mountains. In addition, it appears that time estimates have been given in order to calculate the number of hours spent on various activities. In my opinion, most of these times estimates appear to be inflated. For example, in Eastern or Western Oregon, 2.3 hours of time is attributed to doing site evaluation, exclusive of the time necessary to travel to the site. That estimate of time involved appears to be significantly high. The actual amount of time spent completing a site evaluation will, in most cases, not exceed approximately  $\frac{1}{2}$  of that number. A similar scenario could be painted for other significant activities covered by the proposed fee changes. Therefore, it appears that fees proposed for all of Oregon are doubly inflated by numbers derived for the cost of doing business in Eastern Oregon.

DEQ/Water Quality Div.

June 24, 1994

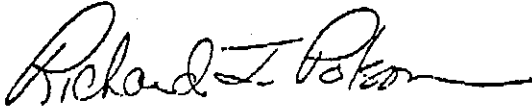
Page 2

Here in Clackamas County, a consultant reviewed our fee schedule in 1991. In order to cover our expenses for soil feasibility studies, they recommended a fee of \$270.00. Allowing for increases in salaries that were bargained for by our Union and other increases in overall operating expenses, is not likely that a current study of cost for this program should exceed \$325.00. For septic tank permits, the difference between the proposals for Clackamas County in 1991 and the proposed DEQ Rule amendments are even more striking. In 1991, the proposed fee for capping fills was \$300.00. It would certainly be appropriate to raise our current fees from that level to \$360.00 or perhaps slightly more. However, the current Rule proposal suggests that the appropriate fee for a capping fill system is \$1,340.00. I cannot personally justify fees that high, based on our experiences here, or based upon extrapolation of extra travel costs in Eastern Oregon. The proposed limits on fees submitted by Washington County appear to be far closer to a realistic accounting of actual costs West of the Cascades than the proposal submitted by the Department itself. We also noticed that an increase is proposed for surcharges on all DEQ activities. This increase is to a flat rate of \$35.00 from the current rate of \$10.00 or \$20.00 for most activities. A raise in surcharge levels of 175 to 350 percent needs to be matched by an equally significant increase in Department of Environmental Quality effort in this program. As a contract county, our installers and citizens have sent thousands of dollars to the DEQ in surcharge revenue. Their investment has not returned much in the way of dividends. An increase in surcharges does not, in my opinion, have much validity unless there is some support for such activities as audits, annual meetings, technical advice, review of existing technology, and exploration of sewage disposal alternative methods on a national scale. Unless the Department is committed to this kind of an effort, Clackamas County does not support an increase in surcharges. Clackamas County has and will continue to support reasonable increases and fees, based upon the actual costs of doing business. While the proposed fee increased may be marginally acceptable in Eastern Oregon, due to large travel distances and complications, they do not appear to fit West of the mountains. The increases proposed in these rules, particularly for permits, will increase animosity directed toward Department of Environmental Quality staff and reduce the level of cooperation between the public and the DEQ.

If anything, a two tiered fee program that recognizes the difference between costs of operating in Eastern and Western Oregon may be appropriate. We would recommend that the Department take a second look at it's data and determine whether or not a revision of the fee schedule to reflect geographic differences might be appropriate. We also recommend that a proposed increase in surcharges be reviewed in light of the Departments commitment to keeping this program fully operational. It is inappropriate to support a surcharge increase without a similar commitment to the review and oversight process vested in the State.

DEQ/Water Quality Div.  
June 24, 1994  
Page 3

I am sorry I am not able to deliver these comments to one of the hearings throughout the State on the 23rd. I hope, however, that these comments will serve as a positive step toward development of a more appropriate and balanced fee schedule.



RICHARD L. POLSON - Building Services Supervisor  
Building Services Section

/ep



WASHINGTON  
COUNTY,  
OREGON

June 24, 1994

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

Dear Mr. Olson:

The Washington County Department of Health and Human Services is in support of the proposed fee increase for the Department of Environmental Quality On-site Sewage Disposal Program.

Because of increased costs the current DEQ/Washington County fee structure requires almost a \$60,000 subsidy to fulfill our contract obligations. Costs have increased due to a dramatic increase in the time needed to evaluate a site. In Washington County, population pressures have used up nearly all the buildable land with well drained soils. As a result, each application takes numerous visits and extended time to properly evaluate the site. It is not uncommon to make five or six trips to the same lot because of problem soils or difficulties in placement of the system.

With the proposed fee increase, Washington County would be able to reduce their subsidy to approximately \$13,000, and at the same time, would still be able to maintain a high level of service.

Very truly yours,

Dian Sharma, Director

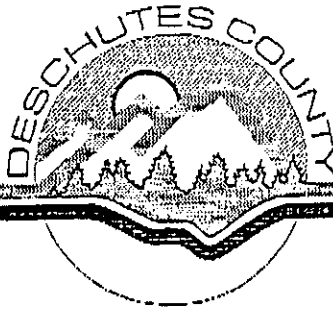
DS:aat

Department of Health & Human Services  
155 North First Avenue  
Hillsboro, Oregon 97124

WIC Nutrition Plan: (503) 640-3555  
Health Services: (503) 648-8881

Administration & Planning: (503) 693-4402  
FAX: Clinic 693-4522 / Administration 693-4490

TDD: (503) 648-8601  
Environmental Health: (503) 648-8722



## Community Development Department

Administration Bldg., 1130 N.W. Harriman, Bend, Oregon 97701

(503) 388-6575

Planning Division

Building Safety Division

Environmental Health Division

June 23, 1994

Department of Environmental Quality  
Water Quality Division  
811 Southwest 6th Ave  
Portland OR 97204

### RE Support for Proposed On-site Sewage Disposal Fees

Deschutes County has attempted to become fee for service oriented. The present fees allow for a limited staffing level that does not provide adequate service to our customers. The proposed fee increases would allow for adequate staffing levels to carry out this program in an expeditious manner.

Deschutes County Environmental Health Division has a philosophical problem with the repair permit fee. The repair permit fee has never come close to paying for the staff time required and up to this time was never intended to.

The proposed repair permit fee should be reduced so that repairs are encouraged and that local Environmental Health staff are involved in the process. Raising this fee will discourage property owners from the permit process. This results in illegal and ill-advised repairs that do more harm to the environment and do not serve the public health needs of the community.

The surcharges should provide for adequate administration, oversight, and technical assistance. This portion of D.E.Q.'s responsibilities to this program has been neglected in the last several years and greatly needs bolstering. This is one area where D.E.Q. could shine by providing support to D.E.Q. field staff and all the Counties conducting this program. This would help provide uniformity of effort throughout the state and elevate our level of expertise.

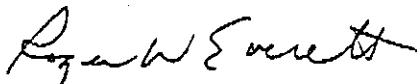
Page Two  
Department of Environmental Quality  
June 23, 1994

This is a very important program that touches many people. The public health implications of a well run program impact all citizens in the state.

Thank you for this opportunity to comment.

Respectfully submitted,

ENVIRONMENTAL HEALTH DIVISION



Roger W. Everett, Director

RWE:bgd

DOLLOWITCH & MORGAN  
P O BOX 1840  
WALDPORT OR. 97394

Oregon Department of Environmental Quality  
Water Quality Division  
811 S.W. 6th Ave.  
Portland, Or. 97204

Date: June 20, 1994

RE: Comment Proposed fee increases for on-site sewage disposal  
activities and sewage disposal service licenses

To: Environmental Quality Commission

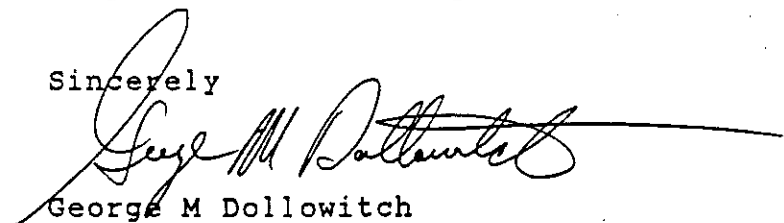
I am OPPOSED to the proposed rule making and fee schedules for on-site  
sewage disposal activities and am opposed to any fee increase, for the  
following reasons.

1) I am a licensed excavator and installer. In dealing with my  
clientele, I work with many who are on a tight budget and have waited a  
long time to have the finances to develop their property. I feel that  
the rate increase would delay or completely stop many of these people  
and their projects.

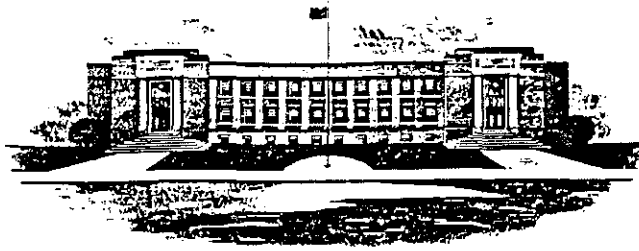
2) As a property owner myself, I feel that on site sewage disposal  
systems are already quite expensive just to build, and that any fee and  
permit increases are not warranted. The property owner bears all the  
expenses of preparing a site for evaluation, then providing the  
engineering for a system that will comply with the current regulations,  
and finally the construction of the system. The current fees more than  
cover the DEQ's involvement in this process.

3) When We the people of Oregon passed "MEASURE 5", we were trying to  
tell governments that we need to draw the line on expenses somewhere.  
The clients I have talked with, and myself included, have not the deep  
pockets to finance all the programs that are in need of more money. I  
recommend that the DEQ continue to use the current schedule of fees as  
adopted effective July, 1, 1991.

Sincerely



George M Dollowitch  
DOLLOWITCH & MORGAN



*Tillamook County  
Land of Cheese, Trees and Ocean Breeze*

**COMMUNITY DEVELOPMENT DEPARTMENT  
ON-SITE WASTE MANAGEMENT PROGRAM  
201 LAUREL AVENUE  
TILLAMOOK, OREGON 97141  
(503)842-3409**

June 22, 1994 \*

Department Of Environmental Quality  
Water Quality Division  
811 S. W. 6th Ave.  
Portland OR., 97204

Dear Sir or Madam:

I would like to comment on the proposed rule change to increase Department OF Environmental Quality fees for the On-Site Sewage Disposal Program.

The proposed increase appears necessary in light of increasing demands for service at a time when increased tax revenues are not available to subsidize the service. Increased permit activity in Tillamook County indicates a future need for additional fee support. A fifty seven percent ( 57%) increase in permit activity last month was noted, over the same time period last year. While this does not indicate a need for an increase in fees at this time, the "cap" the proposed fee increase provides, allows the flexibility to adjust county fees as costs increase.

A concern we have with the proposed increases is that it may be sending a negative message, indeed may foster negative behavior, with regard to the program goals of public health and water quality.

Specifically, the proposed fees for repair permits should be lowered. At the proposed rate, we feel many individuals will chose to ignore repairs or attempt them without department involvement. In would seem appropriate to stress the proper siting of new systems, and charge more than the proposed increases for site evaluations. This would help pay for more thorough site investigations, emphasizes prevention of environmental degradation, and may help offset the loss of revenue from lowering repair permit fees. The fee structure should encourage people to repair their systems.

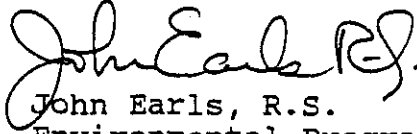


Page 2  
DEQ Rule Change / Fee Increase  
June 22 1994

Those who want government to operate more like private business should support fees that cover the cost of providing the service. At the same time, services administered strictly for the public welfare will continue to require some degree of subsidization.

Thank you for considering these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Earls R.S.", written in dark ink.

John Earls, R.S.  
Environmental Program Manager  
On-Site Waste Management Program

COMMENTS OF THE OREGON STATE HOME BUILDERS ASSOCIATION ON THE  
PROPOSED FEE INCREASES FOR ONSITE SEWAGE DISPOSAL SYSTEMS.

June 22, 1994

Fred VanNatta

Register the Oregon State Home Builders Association in as being strongly opposed to the fee increases proposed in your May 23rd amendments to 340-71-140. The increases are significant and there is simply no reason to believe DEQ costs have increased that much suddenly.

How can it cost \$565 to review a standard onsite septic tank installation. We could hire a lawyer to review it for that price.

We recognize that alternative systems are more complicated but seeing the "capping fill" at over \$1,300 and "the sand filters alternative" in excess of \$1,500 suggests you may be seeking to price them out of the marketplace. It does not seem possible there is any justification for that level of fee.

While it is less directly an issue of new construction, the proposal to increase a major repair permit from \$115 to \$615 is really counter-productive. Existing homeowners, when they discover that fee, will have a significant incentive to "go underground" and have the repair done by unauthorized personnel without a permit.

We also specifically object to the increase in the first lot new site evaluation and in the site evaluation report review fee.

We recognize citizen objections to administrative agency fee increases are rarely effective but if these fees are adopted it is our intent to ask for legislative review and perhaps legislative establishment of these fee levels.

REC'D  
JUN 23 1994

P.O. Box 6788  
Brookings, Oregon 97415

June 20, 1994

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

RE: Increased Permit Fees for on-site sewage systems  
Issue Date: May 23, 1994  
Comments Due: June 24, 1994

The proposal by DEQ to increase fees to oversee on-site sewage systems in Oregon is objectionable for the following reasons:

1. The time allowed for public comment was insufficient for all affected systems and ignores rural systems located in southern and coastal Oregon locations.
2. Not all affected property owners were contacted in order to allow comment.
3. The rationale given for justifying increases does not detail the cost consequence to existing commercial systems.
4. The reasons given for increasing fees seems to favor Benton and Washington Counties; these same increases may penalize other counties such as Curry.
5. The fees proposed range from \$5 to \$4,000 but no details are given for what a \$4,000 fee was to provide in the way of services.
6. The DEQ has failed to provide adequate services in the past for small systems; raising fees will not and has never guaranteed adequate services in the future.
7. Large systems (over 5,000 gallons per day effluent discharge) are not detailed in this proposal but is referenced by Division 52 of OAR 340.

The DEQ should be made to account for the dollar cost to property owners who have the ultimate responsibility for these private sewage systems. It is unfair and presumptuous on the part of the DEQ to simply increase fees without first thoroughly analyzing what these increased cost mean to the citizens of Oregon. On-site sewage systems are probably the best and most efficient way for people to manage simple waste. However, doubling and even tripling fees does not promote good will or a spirit of cooperation to the owners of these systems. There has to be a better solution to the DEQ's financial ails.

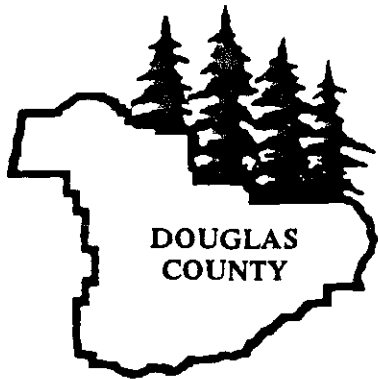
The DEQ should categorize the work the department employees plan to perform in the form of hours and the hourly wage each will charge for these services. How much time will the DEQ dedicate to me for a \$4,000 fee? I would expect a DEQ

representative to work for me at least 30 hours. Does the DEQ have enough employees to dedicate so much concentrated time to one applicant? I think not.

In addition, the DEQ does not provide any provision for rewarding any system owner or operator for seeking ways to improve methodology or system operation. I do not believe the DEQ can provide any benefit to developers or owners of these systems. I do believe that these increased fees will penalize rural counties and low-income system owners.

  
Jerry W. Law

RECEIVED  
MAY 10 1988



# BOARD OF COMMISSIONERS

DOUG ROBERTSON

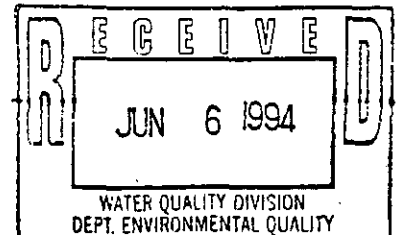
DORIS WADSWORTH

JOYCE MORGAN

Courthouse • Roseburg, Oregon 97470 • (503) 440-4201

May 31, 1994

Department of Environmental Quality  
Water Quality Division  
811 S. W. Sixth Avenue  
Portland, OR 97204



Reference: Proposed Rule Amendments  
On Site Sewage Disposal Fees

Gentlemen:

Thank you for the opportunity to comment on the proposed fee increases referenced above. We do not believe the fee increases warranted, fair, wise or justified by DEQ's appalling level of performance dealing with on site systems. Rather than fee increases to allow continued operations "the same old way", we believe it is timely to re-visit DEQ's role in this program, and the purpose.

The purpose of the program is to protect the public interest, specifically the health, safety and welfare of user's of the ground and surface water affected by on site sewage disposal. DEQ's role has been limited to building an extensive, costly and unresponsive bureaucracy that has been primarily focused on reviewing the facility design and inspecting the facility construction. It is ironic that the personnel assigned by DEQ to these tasks are generally less qualified, both in education and experience, than the design professionals, either engineer or sanitarian, who prepare the design. Too frequently, unwise and unnecessary changes are required by DEQ personnel, largely limiting the liability of the design professional who designed the facility.

The registered professional engineers, and likely the registered sanitarians, are also charged with protection of the public interest, including the health, safety and welfare of users of the ground and surface waters affected by on site sewage disposal. Why can you not, for a change, decrease the size of bureaucracy, and the cost of operating it, and reformulate your administrative rules to allow design and inspection of on site facilities by registered professional engineers and sanitarians instead of DEQ personnel. This approach works, is used in other states, and should be

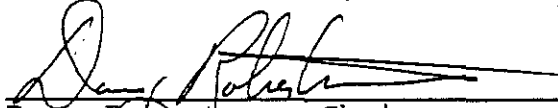
considered in Oregon, unless your intent is to continue building a loosely organized, frequently ineffective agency, just because it can be funded largely outside of the general fund budget.

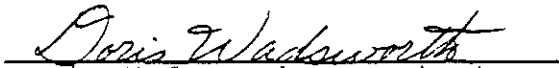
Douglas County would be willing to help initiate the program outlined above. When we expressed our interest to DEQ, however, we were generally rebuffed. We are still interested, believe the status quo is not good enough and would be willing to meet with the Environmental Quality Commission to discuss concepts.


We are, however, strongly opposed to the increased fees you proposed.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY, OREGON

  
\_\_\_\_\_  
Doug Robertson, Chairman

  
\_\_\_\_\_  
Doris Wadsworth, Commissioner

  
\_\_\_\_\_  
Joyce Morgan, Commissioner

BOC/DML/jc

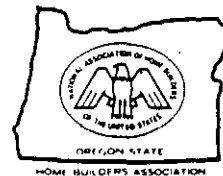
cc: William Wassinger, Chairman, Environmental Quality Commission  
Emery W. Castle, Board Member, Environmental Quality  
Commission  
Henry Lorenzen, Board Member, Environmental Quality Commission  
Carol A. Whipple, Board Member, Environmental Quality  
Commission  
Linda McMahan, Board Member, Environmental Quality Commission  
Dave Leonard, P. E., Director of Public Works

DEQ22.DML



## KLAMATH BASIN HOME BUILDERS ASSOCIATION

4509 S. Sixth Street, Suite 110  
Klamath Falls, OR 97603-4867  
(503) 884-8570



June 10, 1994

Department of Environmental Quality  
811 SW 6th Avenue  
Portland OR 97201

Re: Proposed Increase in fees for Sewage Disposal System Fees

To Whom It May Concern:

We would like to voice our concern over the proposed increases for residential and commercial sewage disposal system installations, inspections and repairs.

The sizes of the proposed increases seem to be out of line as they are doubling and even tripling in some cases.

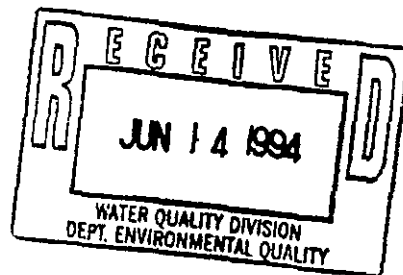
We understand that there are possibly higher costs associated with these fees but feel that this proposed increase is extremely high.

Please review this proposal and consider the impact this will have on both residential and commercial construction in the state of Oregon.

Thank you for your consideration.

Sincerely,

Brad Mason, President



JOHN E. MEEK  
WASHINGTON COUNTY  
DISTRICT 5

REPLY TO ADDRESS INDICATED:

House of Representatives  
Salem, OR 97310  
648-6664

P.O. Box 1327  
Hillsboro, OR 97124



HOUSE OF REPRESENTATIVES  
SALEM, OREGON  
97310

June 9, 1994

June 9, 1994

Department of Environmental Quality  
811 SW 6th Avenue  
Portland OR 97204

To whom it may concern:

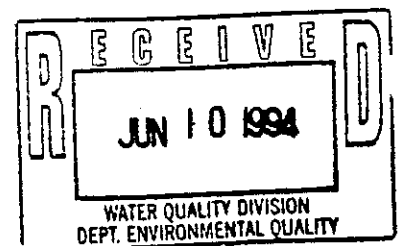
I wanted to let you know that I oppose the proposed fee increases for residential and commercial sewage disposal system installation, inspections and repair. The fee increase is not justified.

If your rules and regulations are set up in such a way as they are creating a need to increase fees in such a large proportion, then perhaps you need to look at changing the rules and regulations.

Please inform me on your decision.

Sincerely,

John Meek





# M & E SEPTIC SERVICE

P.O. Box 840, Waldport, OREGON 97394 (503) 563-3867 fax 563-5454

Department of Environmental Quality  
Water Quality Division  
811 SW 6th Av  
Portland, Oregon 97204

RE: On site sewage disposal rate increase.

Sirs:

We would like to comment on the proposed rate increases for on site sewage disposal activities.

Although we do not install systems, we work on a lot of septic systems and diagnose a lot of problems needing repair. Many of our customers are not 'well heeled' as the saying goes, and can not afford a lot of money to repair their systems.

A large rate increase would place an additional burden on the homeowner, making it more difficult to keep a sanitary situation with the septic system.

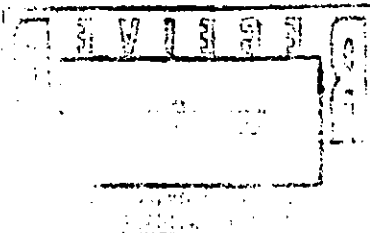
We feel that a rate increase would be acceptable if it is made in small increments of up to \$100. It has been our experience that small fee increases over time is more palatable to the public.

Please consider this idea for your general fees.

Sincerely,



Elaine Correia  
June 7, 1994



June 11, 1994

Sir.

I'm responding to your "Proposed Adoption of Rule Amendment to On-Site Sewage Disposal Fees" dated May 23, 1994.

I'm just an ordinary citizen who works 60 to 70 hours a week for a living. I'm finding that, in the eyes of government officials, my opinion doesn't count for much, but I'm going to voice it anyway.

I'm firmly convinced that unless all governmental regulatory agencies, including the DEB, resolve to operate within their existing

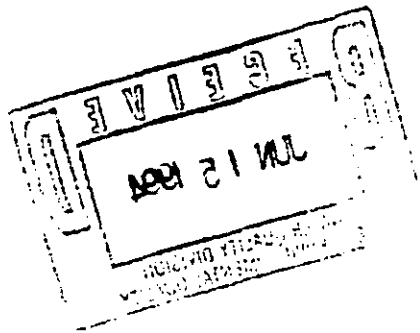
Monetary limits, this country is not going to survive. It is all too easy to raise fees, taxes, rates, etc. rather than to find and implement ways to save money. However, by choosing to increase fees you are in effect telling all of us who have to pay these increases to live with less.

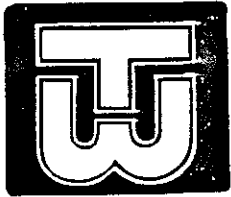
I feel that it is time for you and your department to begin to streamline, sit back where necessary, cut waste, etc. and bring your spending into line with your existing income. This is exactly the challenge with which all of us - average working

people" are faced. I think that  
it is time that our government accept  
and tackles the challenge as well.

Discarding this proposal is a good place  
to start.

Sincerely,  
David L Peterson





# TIDEWATER CONTRACTORS INC.

50  
DAVID BALDWIN  
469-3374

JESS FITZHUGH

STEVE SALISBURY  
469-2097

P.O. BOX 1956 • BROOKINGS, OREGON 97415 • PHONE 503 469-5341

Redi-Mix • Asphalt • Sand & Gravel • Excavation • Road Building

6 June, 1994 (Monday-0944)

Department of Environmental Quality  
Water Quality Division  
811 S.W 6th Avenue  
Portland, OR., 97204

RE: Proposed rule changes in fees.

Your recent proposed rules changing fees were handed me to send you our comments and observations.

Specific:

340-71-140 (1) (a) (B) (ii) The wording of the revision drops the word "daily". While daily is suggested by content of (i), it would be clearer to state "...projected daily sewage flows..."

340-71-149(1) (b) (C) (iii) Same observation.

General:

Size of increase:

There is no justification for why your costs justify such a huge increase in fees. Since last fees set in 1991, the general inflation of the US has been about 6% real and compounded, differing with different components measured.

How can any one, especially a State Agency propose increasing fees by 160%. There is not even a hint of a justification of such a patently ludicrous increase. Any manager of a company or division who allowed his costs to justify an increase of that magnitude in 3 years had either have some excellent and well documented justification, or he/she would face an immediate decline in their own income to zero.

State administrators have got to face the facts; we are in strong need of "more efficiency in government", not merely "more government".

Impact:

Over the last 15 years the largest single factor in the increase in housing costs has been the impact of government, fees and

regulations. The craftsman who build these houses have seen a real decrease in their income.

During this same period housing has been the biggest single factor in inflation; in some recent years the only inflating factor.

During this same period the number of homeless has mushroomed to tragic and shocking levels.

The percentage of income people are required to dedicate to shelter has increased.

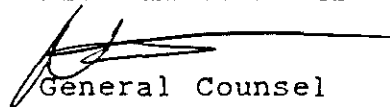
The lesson of all this is that the critical housing shortage in lower cost housing is a direct result of government; fees and regulation. A 160% increase is a terrible exacerbation of the problem.

I am sure that in your own agency minds, just the same as in every other agency, you have justified this increase. But it isn't justified in the world we all really live in. People are literally dying from lack of shelter in this country, and actions such as this are the direct and proximate cause. Also it is clear to me that people who are living in tents and boxes do more to contribute to environmental degradation than those able to afford living in a conventional residence.

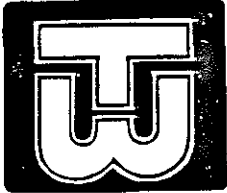
Figure out ways to reduce the need to regulate; ways to do jobs more efficiently; decrease the need for internal paperwork and other government inefficiencies. Do something to return sanity to the cost of dealing with government.

Maybe you should do an Environmental Impact Statement to measure how many people will be forced to use a gutter as a bathroom, as a result of this and other costs imposed on housing.

William G. Nokes



General Counsel



# TIDEWATER CONTRACTORS INC.

DAVID BALDWIN  
469-3374

JESS FITZHUGH

STEVE SALISBURY  
469-2097

P.O. BOX 1956 • BROOKINGS, OREGON 97415 • PHONE 503 469-5341

Redi-Mix • Asphalt • Sand & Gravel • Excavation • Road Building

June 16, 1994

Dept. of Environmental Quality  
Room 3 A  
811 S.W 6th Avenue  
Portland, OR., 97204

RE: Proposed rule changes in fees.

Apparently the DEQ along with a few other politicians have not gotten the message that the people of Oregon want less government. The vote for measure 5 and against a sales tax was motivated by a desire to shrink government. There was no mandate by the people that you merely go out and look for additional sources of revenue. We want less out of government...not more fees nor regulation!

Below is a little more reasoned rationale, which was previously submitted in response to increased sewage fees. The logic applies here as well, even though many of these fee increases do not directly impact housing, many do.

### General:

Size of increase:

There is no justification for why your costs justify such a huge increase in fees. Since last fees set in 1991, the general inflation of the US has been about 6% real and compounded, differing with different components measured.

How can any one, especially a State Agency propose increasing fees by ~~160~~ 54% . There is not even a hint of a justification of such a patently ludicrous increase. Any manager of a company or division who allowed his costs to justify an increase of that magnitude in 3 years had either have some excellent and well documented justification, or he/she would face an immediate decline in their own income to zero.

State administrators have got to face the facts; we are in strong need of "more efficiency in government", not merely "more government".

Impact:

Over the last 15 years the largest single factor in the increase in housing costs has been the impact of government, fees and regulations. The craftsman who build these houses have seen a real decrease in their income.

During this same period housing has been the biggest single factor in inflation; in some recent years the only inflating factor.

During this same period the number of homeless has mushroomed to tragic and shocking levels.

The percentage of income people are required to dedicate to shelter has increased.

The lesson of all this is that the critical housing shortage in lower cost housing is a direct result of government; fees and regulation. A 160 54% increase is a terrible exacerbation of the problem.

I am sure that in your own agency minds, just the same as in every other agency, you have justified this increase. But it isn't justified in the world we all really live in. People are literally dying from lack of shelter in this country, and actions such as this are the direct and proximate cause. Also it is clear to me that people who are living in tents and boxes do more to contribute to environmental degradation than those able to afford living in a conventional residence.

Figure out ways to reduce the need to regulate; ways to do jobs more efficiently; decrease the need for internal paperwork and other government inefficiencies. Do something to return sanity to the cost of dealing with government.

Maybe you should do an Environmental Impact Statement to measure how many people will be forced to use a gutter as a bathroom, as a result of this and other costs imposed on housing.

William G. Nokes



General Counsel





October 7, 1994

Mr. Henry Lorenzen  
Member, Environmental Quality Commission  
Corey, Byler, Rew, Lorenzen & Hojem  
P.O. Box 218  
Pendleton, OR 97801

Dear Mr. Lorenzen:

I have been informed of the upcoming Environmental Quality Commission work session and hearing to address proposed regulations regarding rigid plastic containers under Oregon's Plastics Recycling Law. One of the issues to be addressed is the concept of "corporate averaging" as a means of compliance with the options of the law.

At the request of Department of Environmental Quality staff, I have attached the Northwest Food Processors discussion paper regarding corporate averaging. It details our opposition to including corporate averaging into the Oregon regulations.

While some large national companies favor the corporate averaging strategy, many other interested groups do not. In addition to Oregon food processors, many national companies with limited product lines in rigid plastic are concerned about the competitive issues. While local food companies oppose corporate averaging, it should be noted that there is no unified support even among national food companies.

I appreciate your consideration of our position and hope you will decide favorably on this issue. If I can be of any assistance, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script that reads "Connie Kirby".

Connie Kirby  
Manager, Scientific and Technical Affairs

encl.  
mm

## DISCUSSION PAPER

October 7, 1994

### NORTHWEST FOOD PROCESSORS ASSOCIATION

#### CORPORATE AVERAGING AS A COMPLIANCE STRATEGY FOR OREGON'S RIGID PLASTIC CONTAINER LAW

Corporate averaging is not a viable strategy for Oregon food processors to comply with Oregon's rigid plastic container law. Allowing corporate averaging under Oregon rules would disadvantage small food processors and function contrary to the intent of the Oregon law.

#### Competitive Disadvantage

Under the corporate averaging option, a company would be able to average recycled content, reuse, source reductions or some combination of these across **all product lines**. This offers an attractive means of compliance for companies with numerous product lines using a wide range of resins. Where superfluous packaging is currently used, packaging weight can be reduced. In non-contact applications, recycled content may be possible. Where large profit margins are available in high value-added products, the use of reconstituted PET packaging may be supported.

However, the typical profile of the small Oregon processor includes one to two products packed in rigid plastic packaging. Product lines typically have low profit margins and minimal packaging to meet product safety and wholesomeness standards. Corporate averaging offers no significant flexibility for these companies in complying with the options or exemptions offered under Oregon law. In fact, corporate averaging could easily disadvantage the small processor. The following scenario illustrates this point:

Company X, a small processor with one product line, packs in a rigid plastic package of a least-cost resin type suitable to the application. To comply with Oregon law, Company X must switch to a #1 reconstituted PET package, increasing the packaging cost substantially. Company Y, a large processor with multiple product lines, competes side-by-side on the shelf with Company X. Company Y maintains the same low-cost packaging because corporate averaging allows the package to comply based on compliance characteristics of another, unrelated product packaging. Because of packaging costs, Company Y significantly undercuts Company X's pricing for that product line.

This scenario could easily materialize inadvertently, causing the small processors to lose market share. **More disturbing is a large processor, sensing growing competition in a given product line, could intentionally manipulate packaging across product lines to influence an important market segment.** It is even possible to add extraneous packaging to strategic products to increase the flexibility to manipulate the overall packaging profile of the company.

Corporate averaging disadvantages the competitive position of the small Oregon processor without furthering the purpose of the law: diversion of rigid plastic from the Oregon's landfills. At the extreme, corporate averaging may increase plastic packaging on Oregon shelves.

#### Oregon Food Processors

Food processing is one of the largest manufacturing industries in Oregon employing over 21,000 people and generating \$2 billion in sales annually. However, none of these companies could be considered large manufacturers by national standards. Corporate averaging would disadvantage these companies. In turn, Oregon's economy would be disadvantaged without any trade-off in furthering recycling of plastics in the state.

# KRAFT GENERAL FOODS

THREE LAKES DRIVE  
NORTHFIELD, ILLINOIS 60093

**STRATEGY & DEVELOPMENT**

**FAX # (708) 646-4361**

**DATE:**

10/17/94

**TO:**

Henry Lorenzen

**FAX #:**

503-276-3148

**# OF PAGES**

5 (Including Cover Page):

**FROM:** Debbie Becker

**TELEPHONE #**

**(708) 646-7261**

**MESSAGE:**

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## KRAFT GENERAL FOODS

DEBORAH A. BECKER  
VICE PRESIDENT  
ENVIRONMENTAL POLICY

October 14, 1994

Mr. Henry Lorenzen  
Corey, Byler, Rew, Lorenzen & Hojem  
P.O. Box 218  
Pendleton, OR 97801

Dear Mr. Lorenzen:

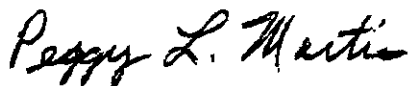
On behalf of Kraft General Foods, I would like to comment on three specific issues regarding the Rules to Implement Oregon's Rigid Plastic Container Law, of October 4, 1994, and urge the EQC to adopt the KGF recommendations attached. KGF has actively been involved in the regulatory process throughout the last year, and our recommendations are consistent with KGF positions presented both orally and in writing during the process.

The recommendations attached pertain to the issues of volume measurement, the definition of a rigid plastic container regarding trays with sidewalls, and the definition of a source reduced container. In all three cases the current DEQ recommendation is either unfounded, impractical, inconsistent with the statutory intent, and/or a reversal of recommendations adopted by the Implementation Task Force. These issues are critically important to KGF, making the difference between our continued ability to market certain products in the state of Oregon.

I will contact you by phone prior to the EQC Workshop and Rule meetings to further discuss KGF concerns. If you wish to contact me, I can be reached at 202-637-1552.

Thank you in advance for your consideration of these issues and the KGF recommendations.

Sincerely,



Peggy L. Martin  
Director KGF State Government Affairs

CC: Deborah Becker  
Dave Barrows  
Gail Achterman  
Pat Vernon



**Kraft General Foods Comments  
Rules to Implement Oregon's Rigid Plastic Container Law**

**OAR 340-90-330 RIGID PLASTIC CONTAINERS**

**(1) (b) (C) Volume measurement** - This subsection specifically differentiates a distinct methodology for determining volume of five gallon containers versus any other rigid plastic container. There is absolutely no basis for establishing different volume criteria of a five gallon container from any other rigid plastic container. This inconsistency in volume determination between rigid plastic containers is totally unfounded.

**KGF Recommendation** - KGF recommends that (1)(b)(C) be deleted from the rule.

**(2)(b) Inclusion of trays that are not a package** - This subsection includes trays with sidewalls in the definition of a rigid plastic container. Inclusion of trays inconsistent with statutory definition of a "package" and a "rigid plastic container" of Oregon SB66.

The Oregon law defines a package as"

"Any container used to protect, store, contain, transport, display or sell products."

The Oregon law defines rigid plastic container as:

"Any package composed predominantly of plastic resin ..."

It is clear from the statutory language that a rigid plastic container is the package and that it is able to contain a product on its own. A tray - even with sidewalls - is not a package. It cannot contain a product on the shelf without additional packaging material. Therefore, to be consistent with the statute, the regulations must not include rigid plastic containers that are not packages, such as trays, which cannot contain a product on the shelf on its own.

**KGF recommendation** - KGF recommends that (2)(b) be amended to read:

"Plastic trays which have sidewalls designed to contain a product in the tray without additional packaging material or lid, closure, etc."

**OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS**

**(5)(a)(A) Source reduced container comparison** - The section of the regulations requires a five year comparison for source reduction purposes. This DEQ recommendation is a reversal of the Implementation Task Force recommendation. The regulations as written preclude any new products in rigid plastic packages introduced after the January 1, 1990 to be exempted through source reduction.

Page 2  
KGF Comments  
October 14, 1994

In other words, these regulations preclude food products that exist today in rigid plastic packages and whose only option to meet the law is source reduction, from remaining in the marketplace after January 1, 1995. There is nothing in the statute that gives DEQ the authority to preclude an option to meet the law from being used. The regulations go beyond statutory scope, are impractical and unworkable for food packages in rigid plastics in the marketplace today.

As an example, a new product in a rigid plastic container introduced in 1993 is not allowed by regulation to be source reduced until 1998. To remain in the marketplace a package must meet the law by January 1, 1995. Yet, the regulations do not allow the package to be source reduced until 1998 -- 3 years after the package must meet the law. So if a manufacturer introduced a package in 1993, and source reduction is not allowed as an option to meet the law until 1998, the package will have to be withdrawn from the marketplace from 1995 until 1998.

**KGF Recommendation** - To enable products introduced from 1/1/90 until 1/1/95 from being entitled to use source reduction to meet the law, KGF recommends that the EQC adopt Alternative B as it was put out for public comment. Although this does not address new products introduced in rigid plastic containers after 1/1/95, Alternative B does address those between 1990 and 1995.

Specifically the language of (5)(a)(A) and (B) should be amended to read:

- (5)(A) For a container which has been changed to a reduced container after January 1, 1990 and before January 1, 1995:
- (i) Comparison shall be made to the container/product ratio of the equivalent container :
    - (I) Sold before January 1, 1990; or
    - (II) For containers not sold before January 1, 1990, when the container was initially introduced
  - (ii) The exemption shall start on January 1, 1995 and shall run until January 1, 2000.
- (5)(B) For a container which has been changed to a reduced container on or after January 1, 1995;
- (i) Comparison shall be made to the container/product ratio of the equivalent container:

**Page 3**  
**KGF Comments**  
**October 14, 1994**

- (I) Sold five years prior to the date the reduced container was first used by the product manufacturer; or
  - (II) For containers which have been sold less than five years, the date the original container was first used by the product manufacturer
- (ii) The exemption shall start on the date the reduced container was first used by the product manufacturer and shall run for five years.

# OSPIRG

The Oregon State Public Interest Research Group

1536 SE 11th

Portland, Oregon 97214

(503) 231-4181, FAX: (503) 231-4007

#1



July 25, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW 6th Ave.  
Portland, OR 97204

RECEIVED  
JUL 25 1994

Re: **Written Comments on Rulemaking Proposal** Waste Management & Cleanup Division  
**Implementing Oregon's Rigid Plastic Container Law** Department of Environmental Quality

Thank you for the opportunity to comment on the above-referenced rules. OSPIRG has been involved with the rigid plastic container law since it was only a concept. In 1991, OSPIRG worked with the American Plastics Council, Procter & Gamble, Associated Oregon Industries, the Department, and the Association of Oregon Recyclers to put together a bill that would increase the recycling of rigid plastic packaging in Oregon. Since passage of Senate Bill 66 in 1991, OSPIRG has worked hard to maintain the integrity of the law. In 1993, we opposed bills to grant broad exemptions from the law and to re-define recycling to include energy recovery. In 1993 and 1994, OSPIRG was a member of the three task forces working on rules to implement the law.

Increased recycling of plastic packaging has been one of OSPIRG's priorities. We are pleased that the draft rules prepared by the Department conform to the spirit and intent of the law, and we are confident that the rules as written will result in increased recycling of plastic packaging. Indeed, the existence of the rigid plastic container law caused the plastics industry to invest in plastics recycling facilities and programs in Oregon. The rules must remain strong to ensure that the recycling incentives provided in the law remain strong.

## General Comments

As noted in the Department's July 22, 1994, Memorandum, there was general agreement among all Task Force members on most areas of the proposed rules. However, consensus was not reached in every area. The following comments set forth our position on areas in which consensus was not reached.

•**Definition of rigid plastic container.** OSPIRG agrees with the majority of the Task Force that a rigid plastic container does not have to "completely contain a product" without use of other packaging material in order to qualify as a rigid plastic container. We therefore support Alternative A of the proposed rules.



Alternative B would exclude from the law such plastic containers as cookie trays that are wrapped in plastic shrink wrap or a paper bag. Excluding from the law plastic containers that are wrapped in another layer of packaging would encourage companies to use excess packaging in order to escape from the law's requirements. The law was not meant to encourage the use of more packaging. Accordingly, we oppose the part of Alternative B that would exclude plastic packaging from coverage just because the packaging is wrapped in another package.

In addition, many cookie trays and other similar plastic packages are coded with a resin number for recycling purposes. Coded plastic cookie trays are accepted for recycling by some stores (Thriftway, Natures), and consumers want the opportunity to recycle more of such packaging. Eliminating them from the law may discourage companies from making cookie trays more recyclable.

Alternative B would also exclude from the law plastic tubes that can be easily twisted and flexed. We believe such tubes should be covered by the law, but would not oppose adding this exclusion to Alternative A.

We understand that Alternative A will cover at least the following containers: bottles, jars, cups, tubs, pails, clamshells, trays that meet other criteria in the rule, cookie trays, boxes, baskets, crates, molded boxes, folding boxes, flower pots, soft and hard tubes, attached lids, unattached lids that meet other criteria in the rule, salad domes, and cake domes (based on 5/18/94 Department handout). We strongly support Alternative A of the proposed rules. We believe its definition of rigid plastic container will result in increased recycling in Oregon, over and above what is being accomplished through the Bottle Bill and curbside collection of milk jugs.

•**"Hierarchy" in definition of rigid plastic container.** We agree with Alternative A. The labeled volume should be used to determine the volume of the container. Note that the manufacturer chooses its labels and could make its "volume" decision on the label. However, in using the labeled volume, if the volume on the label is different than the actual volume, and the actual volume would make the container subject to the law, is there any recourse? Could a company violate the law with no consequences by simply mis-labeling its container?

•**Reduced container.** We agree with Alternative A, which follows the Attorney General's advice and requires comparison with a container in existence five years previously.

We do not support any broadening of this reduced container exemption, and we were opposed to adding it as an exemption in 1991. Companies have built-in incentives to reduce the weight of packaging because they save production and transportation costs. Most containers have already been reduced in weight to take advantage of these cost savings. Therefore, there is no need to put in law a requirement to reduce weight.

The problem with rigid plastic containers is not that they are too heavy. In fact, as the plastics industry constantly reminds us, plastic is lighter weight than most other packaging. As a result of this light weight, plastic production has increased 10% a year for the past 30 years. Plastic

is expected to be half of all municipal solid waste by the year 2000. The problem with rigid plastic containers is that they are not being reused or recycled. The goal of the law was to increase reuse and recycling. Allowing containers to avoid reuse and recycling by reducing their weight simply gives plastic more time to delay recycling.

It is long past time for plastic containers to do their recycling share. A recent report in *Modern Plastics* shows how far behind plastic is. In 1993, only 6.2% of all plastic packaging was recycled. Compare this low rate to almost 35% for glass containers, nearly 40% for paper, over 40% for steel cans, and over 60% for aluminum cans.

Some members of the Task Force argued that the 5-year exemption for reducing weight should become a permanent compliance option, as it now is under California's law. We are adamantly opposed to a permanent one-time weight reduction compliance option. It would mean that a rigid plastic container would never have to be reused or recycled if it was made with less plastic.

Oregon's hierarchy is "reduce, reuse, recycle." But rigid plastic containers, as light weight as they may be, still exist, still are being disposed, and should be recycled and reused like other rigid containers (glass, steel, aluminum).

•**"Substantial investment" exemption.** We support the draft rules' one-time-only exemption from January 1, 1995, to January 1, 1997. This one-time-only exemption was the intent of the law as negotiated in 1991. It was meant as a "good faith" exemption to give a little more time to meet the 25% recycling goal, if it could be shown that there had been substantial investment in meeting the recycling goal, and the goal would be reached by 1997.

Some companies argue that this is a disincentive to new products or new plastic packaging introduced after 1995, since they would have to be in compliance when introduced. We believe that new plastic packaging used after 1995 should be designed to be recycled content, recyclable in local recycling programs, or reusable. Companies should not introduce packaging that does not comply with one of the options, or that makes it more difficult to achieve one of the options.

•**Corporate averaging.** As noted in the Department's Memorandum, Oregon law does not provide for this option. Although it is allowed under California's law, there are concerns that it may put smaller, local companies at a disadvantage, and that it may take allow large national manufacturers to comply with the law without increasing recycling in Oregon. To date, we have not received any information that would allay these concerns. In any event, OSPIRG would oppose corporate averaging for the source reduction exemption, which should remain extremely limited and should not be expanded for the reasons discussed above.

•**"Post-consumer rigid plastic container."** We support calculating the recycling rate by using only post-consumer rigid plastic containers. The law was intended to reach plastic packaging that was not being recycled and which consumers want to recycle. Some Task Force members representing industry wanted to include rigid plastic containers that never made it out of the manufacturing plant or were taken directly from the manufacturing plant to another manufacturer.

Since in-plant plastic scrap and containers have routinely been recycled by manufacturers, and have never reached consumers or stores, these should not be counted. The law must push beyond the plastic recycling that is already occurring in Oregon.

•**Pyrolysis.** We strongly support the draft rules' language, incorporating the Attorney General's opinion, that byproducts of pyrolysis used as fuel or energy recovery cannot count in the recycling rate under the law. Oregon law and policy make a sharp distinction between recycling and energy recovery. The rigid plastic container law was meant to increase recycling of plastic, not use of plastics as fuel or energy.

•**Comparison to California's Law.** When the Oregon and California laws were passed in 1991, they were very similar. 1993 saw industry attacks on both bills. Oregon's law survived mostly intact, while California's law was weakened by industry amendments.

While Task Force members generally supported keeping the rules consistent with California rules, this was not true if such "consistency" would result in weakening Oregon's law. The importance of keeping Oregon's law strong is revealed by one simple fact: The plastics industry is investing in achieving the recycling rate in Oregon, but not in California.

Note: The California rule exempting rigid plastic containers that hold a product for less than seven days should not be followed in Oregon. First, this rule encourages the most short-lived, single-use, throwaway packaging. Second, the rule may well cover things that the state did not envision. For example, many milk and dairy products are on the shelf less than seven days -- are these exempt?

### Specific Comments

The following comments refer to specific rule language, which is referenced by page and line number.

•**Purpose,** page A-1, line 15: Change "amount" to "number." The plastics industry and product manufacturers have already reduced, and continue to reduce, the weight of rigid plastic containers. This reduces the "amount" of plastic disposed, while doing nothing to actually divert plastic packaging from disposal. We need more bottles, jars, tubs, etc., kept out of landfills and incinerators. Note that it is not weight that fills landfills, but volume. It has been estimated that plastic is 18-27%, by volume, of Metro area landfills. This number will increase as more packages switch to plastic (have you tried shopping for mineral water in a glass bottle lately?), unless recycling of plastic packaging increases.

•**"Post-consumer rigid plastic container,"** page A-3, lines 16-17. We support and urge you to maintain the words "other than fuel or energy."

•**"Recycled in Oregon,"** page A-3, line 42. We support and urge you to maintain the words "other than fuel or energy."

• **"Rigid plastic container**, pages A-5 through A-7. We support Alternative A, but would not oppose adding to Alternative A lines 11-16, page A-6, from Alternative B.

• **Tamper-resistant seals**, page A-8, lines 38-40. We support this language and urge you to maintain it.

• **Reduced container**, pages A-9 through A-13. We support Alternative A.

• **Substantial investment**, page A-14, lines 19-21. We support this language.

• **Recycling rate**, pages A-17 through A-21. We support the use of the term "post-consumer" rigid plastic containers throughout this section and wherever else it is appropriate.

We believe the words "post-consumer" need to be added to page A-18, line 29, after the words "weight of."

• **Page A-21, lines 15-21**. We strongly support, and urge you to maintain, this subsection dealing with pyrolysis.

• **Where is the section addressing reused container compliance?** It was in the previous rule draft.

• **Compliance reporting, pages A-22 through A-30**. We support the procedure for requesting proof of compliance and underlying records from the product manufacturers and container manufacturers.

# STATE RECYCLING LAWS UPDATE

*A comprehensive quarterly review of recycling legislation affecting business*



Vol. 3 No. 3

## OREGON: APC to Commit \$5 Million to Reach 25% Recycling Rate

While the American Plastics Council (APC) has not backed off from its legal battle to have pyrolysis declared "recycling" in Oregon, Oregon sources say APC will spend about \$5 million anyway mostly on the collection infrastructure for traditional mechanical recycling.

APC is under pressure from consumer product makers to meet the 25% recycling rate in Oregon so they will not have to contend with the "OR" portion of SB 66, which requires source reduction, reusability or 25% recycled content in rigid containers if the rate is not met in 1995. The current rigid plastic package recycling rate in Oregon is estimated to be between 17% and 19%.

There are three task forces working on implementation of the rigid plastic law, which will not be enforced until the end of 1995. Jerry Powell, publisher of *Resource Recycling Journal* and chair of the National Recycling Coalition says APC has committed not only to a \$1 million plastic sorting facility, but to some sort of price supports, plus subsidies to haulers that put on-board compactors for plastics on their trucks. Powell says there are 104 curbside programs in Oregon with about 400 trucks.

While draft rules will not be issued for several months, sources said it appears that Oregon will probably exempt packaging applied at retail, thus exempting restaurants and retail stores from compliance on food service clamshells and related plastic packaging. It is unclear if regular clamshells, tubs, and other less recyclable items will be regulated or not.

Powell tells SRLU he spends half his time responding to questions about the rigid plastic law. "They want to know how it's working," he says. He predicts that if Oregon can successfully force the plastics industry to meet the 25% recycling rate, other states will start seriously looking at similar mandates in 1995 or 1996.

**ANALYSIS:** One reason the plastics industry has been reluctant to subsidize Oregon recycling is that it would set a precedent, opening the door for other states to demand the same thing.

Interestingly, here is how the numbers break out: Powell estimates that to duplicate the subsidy in all 50 states, the resin producers would have to spend about \$200 million a year, when you multiply Oregon's rate times 200 for the entire population. C. Neale Merriam, professor at Rutgers University, estimates that the cost to reach the 25% recycling rate by 2000 would be \$200 million per year for basic infrastructure. This is only equivalent to a few mills in the paper industry.

Information: Pat Vernon, recycling coordinator, Oregon DEQ; 503/229-6165.



THE COUNCIL  
FOR SOLID WASTE  
SOLUTIONS

1275 K Street, NW  
Suite 400  
Washington, D.C. 20005  
202.371.5319

## Plastics Play a Key Role in Source Reduction Efforts

Breaking away from America's traditional over-reliance on landfilling solid waste is a key to solving the nation's mounting garbage crisis. The U. S. Environmental Protection Agency (EPA) has taken an important step, developing a four-point approach to solid waste management integrating source reduction, recycling, waste-to-energy incineration and landfilling. The programs of The Council for Solid Waste Solutions are designed to make plastics a productive component of integrated solid waste management. The Council believes source reduction merits particular attention because it reduces the amount of refuse entering the waste stream in the first place.

Source reduction conserves environmental resources, prolongs the life of landfills and makes landfilling and incineration safer by removing toxic substances. However, source reduction is only feasible when it can be achieved without compromising product protection, recyclability, consumer safety, or sanitary considerations.

The plastics industry's commitment to source reduction has already produced technological breakthroughs greatly reducing the amount of materials used in manufacturing many products:

*The EPA defines source reduction as "the design and manufacture of products and packaging with minimum toxic content, minimum volume of material, and/or a longer useful life."*

- ➔ • A high-density polyethylene (HDPE) milk jug weighed 95 grams in the early '70's. Today, a jug of the same volume weighs only 60 grams.
- ➔ • A double-lamination process reduces the volume of many polystyrene foodservice items by as much as 40 percent.
- Diapers are being packaged in new plastic wrappers, which create 70 percent less waste by volume than other packages.
- ➔ • Products such as laundry detergent and fabric softeners are being sold in more highly-concentrated form, requiring up to 75 percent less packaging by volume.
- Plastic grocery sacks were 2.3 millimeters thick in 1976, down to 1.75 mm by 1984. In 1989, new technology gave us the same strength and durability in a bag only .7mm thick.
- ➔ • An EPA-sponsored report credits "lightweighting" efforts such as these with decreasing containers and packaging as a percentage of municipal solid waste over the past several years.  
↳ by weight, not volume!

For more information on source reduction and other solid waste management issues, write or call *The Council for Solid Waste Solutions*, a program of The Society of the Plastics Industry, Inc.



# The Two-Percent Defense

// D

isposable diapers are actually less than two percent of the solid waste in America's landfills."  
— Kimberly-Clark Corp.

"While 38 percent of the volume in the nation's solid waste is paper, only about one percent is polystyrene."  
— Quill Corp.

"Aseptic packages account for less than one-tenth of one percent of all packaging waste..."  
— Aseptic Packaging Council

From publishers to makers of plastic-plates, everyone is spouting numbers these days, insisting that *their* product isn't the one responsible for jamming landfills.

As we read these environmental "studies" and claims, rife with defensiveness, we can't help but think of a pack of kids who in their rough-housing knock a jar of mayonnaise onto the kitchen floor. They bolt from the room squawking, "It's her fault! It's his fault! I didn't do it!" Meanwhile, the mayonnaise

oozes over the linoleum. Whatever one's own share, they *all* contributed to the mess, and they'd best get the glop cleaned up before Mom comes home!

The only things we can count on to narrow the waste stream are *reducing* (by avoiding, say, disposable diapers, coffee cups, and excess packaging), *reusing* (by seeking out refillables and reusables), and *recycling*. Despite their wide practice, the *squabbling* and *finger-pointing* methods simply don't work.

**Just two percent of the stuff we annually toss adds up to about 3.6 million tons.**

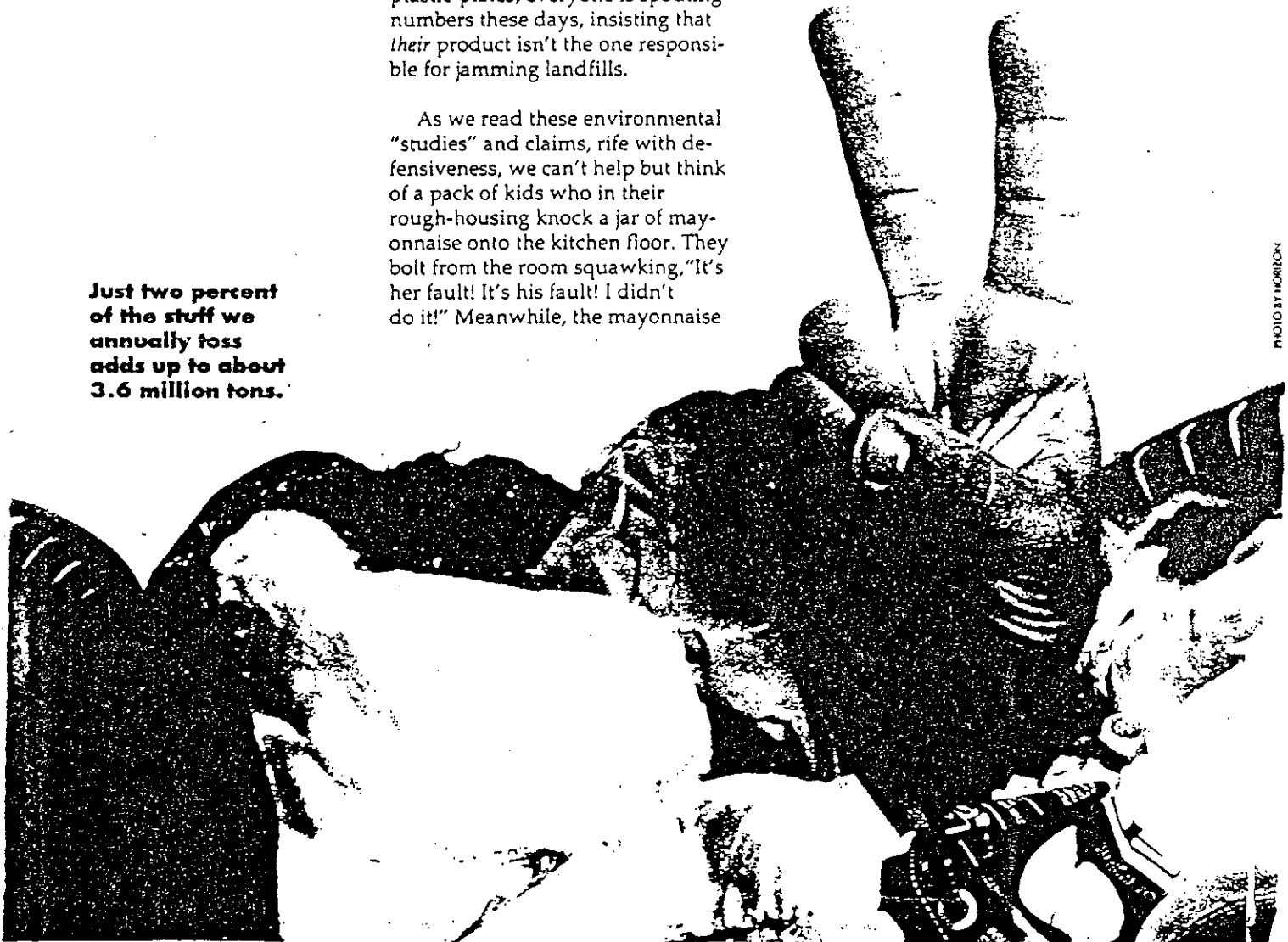


PHOTO BY MORISON

"Courtesy GARBAGE Magazine, Nov/Dec 1991 issue, Gloucester, Mass."

# WHEN LESS IS MORE

Designers work to reduce environmental impact

Remember when the ability to crush an empty beer can with one hand was a sign of brute strength? Now even a child can do it.

Aluminum beverage cans are so thin these days that it is the pressure of the carbonations that keeps them from collapsing in transit. Blowers of glass bottles are engaged in an effort called lightweighting. Makers of plastic film for unitizing pallet loads tell their customers how to stretch it over farther.

Says Stewart Moeborg, a packaging designer and founder of the Packaging Coalition for Solid Waste Management, "Packaging must be studied and evaluated to ensure we are using the least amount of material without sacrificing quality and protection.

This is not a new idea. The reason for seeking optimal packaging efficiency has not been solely, or even primarily, concern for the environment. It's economics, pure and simple.

No matter the priority, such frugality holds promise of helping solve the solid-waste problem by becoming an important part of what environmentalists call source reduction.

## Biggest isn't best

Shelf presence of a package could be defined as the ability to simultaneously attract the consumer and push aside the competition. Doing so by means of superior size alone, though, is simply not practical, and packagers know it. It's expensive. Furthermore, it gobbles up limited shelf space.

Whittling away material is a common practice in the packaging field. Though not always done for environmental reasons, it nevertheless helps reduce waste.

Says Joseph Korrick of the Chicago packaging design firm Korrick-Lindsay, "One of the classic dimensions of packaging is its top evaluation: whether the product is overpackaged. There is still some opportunity for total packaging reductions, but there aren't any where near as many examples of that as there were 20 years ago.

Aluminum foil once widely used as a laminate material in multilayer paper and plastic packages, has been replaced in many applications by metallization, which coats plastic film or paper with gaseous aluminum.

Users of multilayer plastic bottles come to market with more layers than they feel may be needed; then, once the product is well-established, cut back as far as they can without diminishing shelf life.

Designers buy software that helps them create compact containers which fit into downsized shipping cases.

There's a limit, of course, as to how much can be whittled away. Packaging that at first appears overblown later proves necessary—and for reasons other than shelf presence and product protection.

Think about tamper-evident packaging. Most often, shielding the consumer from product adulteration means adding packaging materials. Where bottles once were enough, now what's required are bottles packed in cartons—often overwrapped in plastic film.

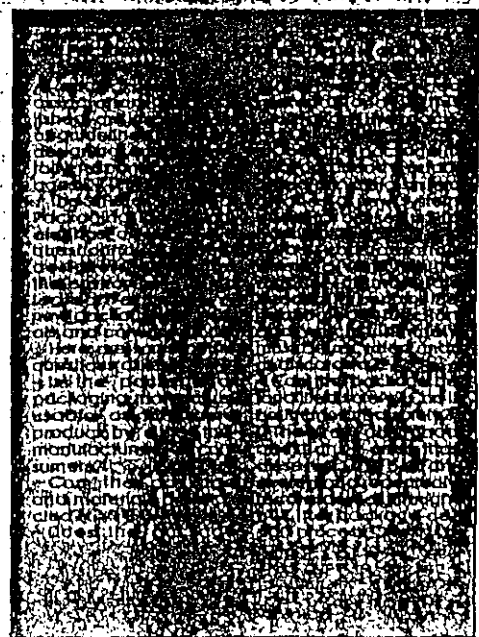
Everything is interconnected.

Erica Guttman, environmental planner with the Rhode Island Waste Manage-

ment Corp., recalls the edges that when they meet packaging and accessories. "What may be excessive packaging product we use," says, "may actually be the packaging that prevents spoilage in distribution. It would not do to waste."

One method of the amount of material is a process of sages containing a fixed amount of product. An example is the 25-pound

powder laundry detergent referred to by DuPont Industries as the "orange" pack. "Everybody concentrates on the environmental impact of new packages," she says. "But what's the impact of the old packages? The old packages were made of glass, and they were heavy. The new packages are made of plastic, and they're lighter. The impact is dramatic. A new purchaser of





TO WHOM IT MAY CONCERN:

#2

I'M WRITING TODAY TO EXPRESS  
CONCERN ABOUT THE PLASTIC INDUSTRY'S  
EFFORTS TO WEAKEN CURRENT LAWS  
ON PLASTIC RECYCLING. APPARENTLY,  
RIGID PLASTICS ARE SUPPOSE  
TO BE 25% RECYCLABLE AND I  
THINK THAT'S MORE THAN REASONABLE.

SUPPORT SENATE BILL 66!!

Heath Jones  
3124 SE Lake Rd #55  
Milwaukie Or 97267

RECEIVED  
AUG 4 2 1988

Waste Management & Cleanup Division  
Department of Environmental Quality

Senate bill 66

To Whom it may concern:

I am writing in response to hearing that the plastic industry is attempting to weaken existing recycling laws. I think it is very important that these laws remain strong in the draft's ~~original~~ original form prepared by your Department. Burning plastic is not recycling and the plastic industry should not be allowed as such.

Sincerely,  
Yuan

Tiffany Dean  
Tiffany Dean

To whom it may concern,

I am writing in regards to plastics recycling. I fully encourage you to enforce, ~~if not~~ increase or tighten, the current regulations on plastic recycling standards as the Senate Bill 66 is now being questioned by the American Plastics Council. Again, I urge you to direct your efforts in the direction of people. If rules/laws on recycling in any area, especially plastics, are lessened Oregon's "environmental quality" will be greatly damaged; not to mention the reputation of the DEQ.

My intent ~~is~~ not to threaten, only to express my extreme concern as an active citizen. Thank you,

*Gerald Bullock Jr.*  
Gerald Bullock Jr.

7-29-94

RECEIVED  
AUG 4 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

To whom it may concern

I am writing to inform you that I strongly support increased plastics recycling and the draft rules prepared by the Department. It is evident that the law has already stimulated the plastics industry to support new collection programs and the construction of a plastics recovery facility in Oregon. However the plastics and Packaging industries are working on weakening these laws and loop-holing the necessity to recycle our plastics. This is ridiculous! The laws already established by the Department need to be strengthened and increased. Burning is not Recycling. Burning is only allowing harmful toxins to be released into our atmosphere thus affecting the very air we breathe. Please do not allow the existing laws for S.P. 66 to be weakened. Please keep them strong and ~~at~~ prevent the harmful release of toxins into our air!

RECEIVED  
AUG 4 1991

Sincerely  
Kathryn M. Mayfield  
Kathryn M. Mayfield

8/6/94 #6

DEAR SIR/MS :

I AM WRITING IN RESPONSE TO THE  
PENDING PLASTIC RECYCLING LAW - I  
STRONGLY SUPPORT ITS IMPLEMENTATION.  
PLEASE SEND ME INFORMATION ABOUT IT  
AND THE HEARING TO BE HELD IN BEND SEPT. 1ST.

← THANKS, Peter Geiser  
97 NW PHASDA AL.  
Bend, OR 97701

#7

# Olin CHEMICALS

120 LONG RIDGE ROAD, P.O. BOX 1355, STAMFORD, CT 06904-1355

August 1, 1994

RECEIVED  
AUG 08 1994

Western Region Solid Waste  
Department of Environmental Quality

Charles W. Donaldson  
State of Oregon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W.6th Avenue  
Portland, Oregon, 97204

Dear Sir:

Olin Corporation, manufactures chlorine sanitizers under the brand names, HTH<sup>®</sup> (Calcium Hypochlorite) and PACE<sup>®</sup> (Trichloroisocyanuric Acid). These products are registered under FIFRA or the Federal Insecticide, Fungicide and Rodenticide Act. Products so classified, are considered hazardous and therefore packaging is regulated under the Federal Register, Code 49 of the Code of Federal Regulations, Parts 106-180. By referencing this code, Section 178:508, Standards for Plastic Drums and Jerricans, we read the following:

B. Construction requirements for plastic drums and jerricans are as follows:

- (1) The packaging must be manufactured from suitable plastic material and be of adequate strength in relation to its capacity and intended use. No used material other than production residues or regrind from the same manufacturing process may be used.

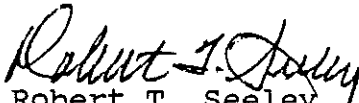
This is in complete contradiction to your May Task Force Joint Meeting Notes, #7, where you indicate that products so registered under FIFRA are NOT exempt from Oregon's rigid plastic container law. (Copy Attached)

Since there is no provision in Oregon law for FIFRA exemption, this puts you in direct opposition to the Federal mandate which does not permit use of PCR in any percentage for resin used to manufacture plastic containers which are used to contain hazardous chemicals.

It is obvious we cannot be in compliance with the Federal Mandate and at the same time comply with Oregon's defined rule. It's enforcement would therefore be subject to litigation as you implement the recycling mandate for FIFRA registered products.

We ask that you strongly consider modifying of this "No FIFRA" exemption for the final rule before implementing Oregon's Rigid Plastic Container Law.

Your advisement of your decision relative to this matter would be most appreciated.

  
Robert T. Seeley

Manager Packaging & Engineering

Attachment

cc: R.J. Tubbs	S. Johnson
D. Cahill	J. McIntosh
S. Kiernan	J. Gill
D. Helmstetter	M. Murray
P. Hickey	J. Chiaramonte, Jr.
W. Gay	
N. Barone	
G. Schifilliti	
R. Traggianese	



#7 in a series of status reports on Oregon's  
**Rigid Plastic Container Law**

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## May Task Force Joint Meeting

*Certification, Auditing and Records Task Force  
Implementation Task Force  
Recycling Rate Task Force*

Meeting time and date: 8:30 am - 3:00 pm, Wednesday, May 18  
Meeting location: Room 3A, DEQ Headquarters, 811 SW 6th Ave., Portland  
Agenda topics: rule adoption schedule update; re-drafted rules; public forum

(Please note: This is a change of meeting date for the Certification, Auditing & Records Task Force and a change of meeting time for the Recycling Rate Task Force.)

### NO FIFRA EXEMPTION

The Federal Insecticide, Fungicide & Rodenticide Act (FIFRA) applies to products that claim to kill any living organism, such as pesticides, herbicides, fungicides, germicides, etc. The Department has received questions as to whether products subject to FIFRA are exempt from Oregon's rigid plastic container law. The answer is *no*, these products are not exempt.

There is no provision in Oregon law for a FIFRA exemption. Thus, FIFRA-regulated products sold in Oregon in rigid plastic containers must also meet the state's rigid plastic container requirements.





## April Task Forces Meetings Summaries

### *Certification, Auditing & Records Task Force*

In the draft rules discussion, it was noted that the rule still states that lids are not covered unless they independently meet the definition of "rigid plastic container". There was discussion on how the source-reduction option would work for new products introduced after the compliance date; would they have five years to source-reduce? There was concern about the effective time period for the aggregate rigid plastic container recycling rate calculated by DEQ. An update of the recycling rate might be possible using tonnage of materials recovered as a recycling rate indicator. It was recommended that the recordkeeping responsibilities of a product manufacturer require a Certificate of Compliance for each type of container used in Oregon, and that 30-day reporting be raised to 60 days. In general, Task Force members recommended consolidating parts of several rule sections into the product and container recordkeeping sections.

### *Implementation Task Force*

Regarding corporate averaging, members of the Task Force were asked to prepare a discussion paper with further discussion as to whether to pursue this issue at the May 18 meeting.

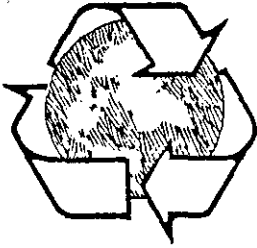
The draft rules discussion: Rigid Plastic Containers -- there was discussion on criteria to require a rigid plastic container to "hold" a product, and how that would affect domed lids, trays, etc. It was agreed that there must be product in the container, and the container must be used in Oregon; Recycling Rate Compliance -- the need for an appeals process was identified; Recycling Rate Calculation -- discussion on the need for an annual update. It was agreed that "amount" means "weight;" Exempt Rigid Plastic Containers -- discussion on disadvantage to manufacturers who reduced their containers before 1990; it was determined that there is no need to base source reduction on the first full year of commerce if technological advances allow reduction to occur before year's end.

### *Recycling Rate Task Force*

Several primary tasks were identified: (1.) Resolve the margin of error issue; (2.) Provide advice on annual reporting to the Implementation TF; (3.) Possibly provide additional advice on aggregate recycling rates; (4.) Provide advice on the recommended role for "guidance documents"; (5.) Gain approval of TF consensus document/final report.

Pat Vernon advised that DEQ has funds for a 1994-95 waste characterization study and will conduct future studies each biennium, funding permitting. The auditing issue was clarified (i.e., a manufacturer audited in 1996 should use 1/1/95 rates). Marc Daudon discussed two handouts concerning margin of error and other "denominator" issues.

*For more information, or to add/delete/change your name on DEQ's mailing list, please call DEQ's Solid Waste Policy & Programs Section, (503) 229-5913, or dial toll-free (within Oregon), 1-800-452-4011; TDD, (503) 229-6993.*



# RECYCLING ADVOCATES

2420 S.W. Boundary Street, Portland, Oregon 97201 (503)244-0026

August 9, 1994

RECEIVED  
AUG 12 1994

DEQ  
Waste Management and Cleanup Division  
811 SW 6th Ave.  
Portland, OR 97204

Re: Comments on Rulemaking Proposal --  
Implementing Oregon's Rigid Plastic Container  
Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Hearings Officer:

Recycling Advocates would like to take this opportunity to respond to the proposed rules. Although we were not chosen to have a representative on the task forces, we were involved in the development of the law. Adequate rules are of vital concern to us.

## 1. Definition of rigid plastic container

**"Contain a product."** We agree with alternative A. There is no reason that the container must completely contain a product. Cookie trays, domed lids (used for cakes, deli desserts, and strawberries), and microwave trays should be included. Sending these bulky packages to the landfill is a waste of resources and a burden for future generations. The fact that they are showing up at recycling sites indicates that the public expects them to be recycled.

**Tubes.** We prefer the definition in B. Tubes that can be easily hand folded and flexed we do not consider "rigid." Also, they usually have very small holes and cannot be rinsed. Consumers have been taught to rinse their containers before recycling.

**"Sidewalls."** We prefer A over B. However, we do not agree that meat trays should be excluded. Meat trays do contain the product. However, for sanitation reasons the meat needs to be covered with plastic wrap as well. Meat trays seem to be in same category as cooky trays. Alternative A(2)(c) should read "Plastic trays which have curved edges or sidewalls designed to contain a product in the tray."

**Lids.** We assume that domed lids meet the criteria (4)(b) if they hold 8 ounces. If not, wording needs to be added to include domed lids.

There's no such place as "away"

**Volume determination.** We favor A because we don't want to complicate waste composition sorts.

**2. Reduced container.** We agree with A. We have never favored this exemption and want it be as limited as possible. Reducing the weight of packages does not help consumers who are stuck with nonrecyclable containers. It simply provides a loophole for manufacturers who want to reduce package weights for economic reasons. If legislators had wanted this to be ongoing, they would have included it as an option for meeting the requirements rather than as an exemption.

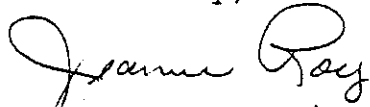
**3. Substantial investment exemption.** We strongly support the draft rule's one-time exemption. All products introduced after January 1995 should be in compliance with the law's requirements.

**4. Corporate averaging.** We oppose corporate averaging. Since many large manufacturers are out of state, requirements of our law could be met without improving recycling in Oregon at all. Also it would put small manufacturers at a disadvantage.

**5. "Post-consumer."** Only post-consumer containers should be counted in the numerator. This is consistent with the present method of determining recycling rates for other materials.

**6. "Pyrolysis."** We agree with the attorney general's opinion. Fuel recovered from plastics should be considered energy recovery just as it is for tires and wood.

Yours truly,



Jeanne Roy, Chair  
Recycling Advocates



**KIWI BRANDS INC.**

Division of Sara Lee Corporation

447 OLD SWEDE ROAD, DOUGLASSVILLE, PA 19518-1239 • PHONE: (610) 385-3041 • FAX: (610) 385-6177

August 9, 1994

RECEIVED  
AUG 1 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. the Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Sir:

**RE: Rigid Plastic Container Law**

I received a copy of your "A chance to comment..." packet on implementing Oregon's Rigid Plastic Container law and would like to provide some comments about the current proposed regulations.

I would like to be kept advised of the proceedings; please place my name on the "rulemaking mailing list" for this proposal.

The "Alternative B" container description seems to be more appropriate for a container and consistent with the Law than "Alternative A" which is very broad. Although there does not seem to be a definition of "container" in the Law, there are implications that it refers to objects that would be a type appropriate for holding liquids; this would not include trays or plastic components of packages that are not primarily plastic. Fluid capacity is used to determine which containers are regulated; this implies containers that are designed for filling up to a liquid overflow capacity. Tray-type packages are used more for supporting objects and will be frequently filled above the sidewalls; they do not "contain" all of the product that they support. The definitions also seem to exclude caps of all types from being part of the container.

Using the label declaration to determine volume allows the manufacturer more flexibility in compliance and would make it less burdensome to determine which product packages are regulated.

I believe that an exemption, similar to the California regulations, would be appropriate for products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These products require extensive testing in specific packages to confirm that the required activity

level is maintained. The available options for container material are very limited if available at all. The plastic container walls must be sufficiently thick to prevent loss of product and to prevent product contamination from exterior sources. Contaminants, themselves, in recycled plastics could also contribute to product degradation. Significantly more research and time delays would be required to satisfy the requirements of the Law for these products; compliance may not be technologically feasible for some of these products.

Your consideration of these comments will be appreciated.

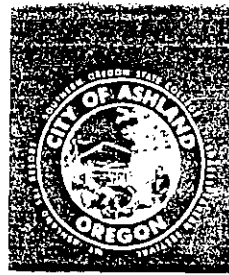
Sincerely

A handwritten signature in dark ink, appearing to read "D. E. Ritter", with a stylized flourish at the end.

David E. Ritter  
Regulatory Affairs Manager

cc: P. A. Burke

CITY OF ASHLAND



CITY HALL

ASHLAND, OREGON 97520  
telephone (code 503) 482-3211

August 1, 1994

RECEIVED  
AUG 1 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW 6th Ave.  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

To Whom It May Concern:

Thank you for the opportunity to comment on the plastics recycling rules. As you may know, the opportunity to recycle plastics in southern Oregon has been limited to several drop-off locations for HDPE natural. Residents delivered 25 tons of this material to the Ashland Recycling Center in 1993! Clearly, the public is ahead of government and industry in their desire to recycle their post-consumer plastics.

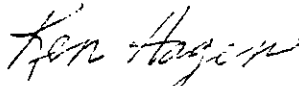
In response, we have expanded our curbside recycling program to include HDPE natural and we will begin the collection of PET at the Ashland Recycling Center as of October 1, 1994. Most important among our efforts however, is the development of a waste prevention education program slated to begin in the spring of 1995. This program will educate the public to, among other things, buy locally recyclable plastic packaging and avoid buying nonrecyclable resin types. Local grocers and deli managers have shown great interest in working with us in an effort to provide more products in locally recyclable plastic packaging.

In short, this community is doing its part to address the plastic packaging issue. We do not wish to see the plastics industry further exempted from the rules and requirements of SB66 which was in itself a compromise. We support increased plastics recycling and support the draft rules prepared by the Department.

Specifically, we support the broader definition of what types of containers are covered by the law, especially since local deli and bakery managers have shown a willingness to switch to locally recyclable plastic packaging. We also support the most limited "reduced container" and substantial investment exemptions. Pyrolysis is not recycling and should not count toward the recycling goal. Corporate averaging and the inclusion of pre-consumer plastics to meet recycling goals does nothing to improve plastics recycling in Oregon and, in fact, would be a slap in the face to communities that are working so hard to improve their plastics recycling programs.

Thank you again for this chance to comment.

Sincerely,



Ken Hagen, Chairperson  
Ashland Recycling Task Force



Dick Wanderscheid  
Conservation Manager

Anne Crews  
Manager, Corporate Affairs

Fred #11  
Mary Wahl, WMC

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
RECEIVED  
AUG 17 1994

OFFICE OF THE DIRECTOR

August 10, 1994

Fred Hansen, Director  
Oregon Dept. of Environmental Quality  
Environmental Quality Commission  
811 S.W. 6th Ave.  
Portland, Oregon 97204-1390

Dear Mr. Hansen:

On behalf of Mary Kay Cosmetics and its independent contractor sales force in the State of Oregon, let me comment on Oregon's rigid plastic container law and the preparation of rules.

Mary Kay Cosmetics manufactures skin care and color cosmetic products in Dallas for distribution throughout the country. The company has taken a leadership role in launching corporate and personal recycling programs and the use of recycled and recyclable paper and product packaging.

In 1989, Mary Kay moved to use of HDPE bottles, where feasible, in an effort to utilize material that is more readily recyclable.

In 1990, recycled paperboard cartons for all skin care products debuted. Cartons were removed from most men's products, hand cream, nail polish remover and hair spray in 1991 and 1992. In 1993, cartons were removed from body care and hair care products.

Our in-house packaging experts and bottle suppliers are working as fast as they can toward use of recycled content (through co-mingled and/or multi-layer plastic bottles).

As you well know, our chief concern is consumer safety. In insuring the safe packaging requirements of the FDA are met, monumental testing and method development have been necessary on behalf of Mary Kay.

Mary Kay Cosmetics, Inc.  
3737 Stemmons Freeway  
Dallas, Texas 75247-3737  
214-343-1737



Thorough investigation involves development of a comprehensive list of potential contaminants to recycled material. Methods for determining concentration of these materials in the package must be developed. Potential migration of contaminants from package to product must be investigated by introducing product, submitting the product/package combination to environmental variations and testing the product for the contaminant.

Thus, to ensure safety and non-migration, Mary Kay Cosmetics is increasing duration of stability testing for both commingled and multilayer technologies.

Mary Kay Cosmetics, a responsible company, will comply with the final Oregon regulations. We sympathize with the basic goal of Oregon's law -- to reduce solid waste and promote recycling and use of recycled/recyclable materials. We support the increased opportunity to recycle plastics, further investment in plastics recycling infrastructure, and creation of markets of recycled material.

Testing continues and technology advances regarding use of recycled content. However, Mary Kay and other businesses must have options in order to comply with the law by January, 1995.

Several options, which should be included in Oregon regulations, include corporate averaging across product lines. Lack of this option could hinder the offering of some products in the state, forcing consumers to cross the border to purchase some company products.

The regulation should allow for treatment of source reduction for new products marketed after January 1, 1995.

The option of a cosmetic exemption or an extension of time to comply for regulated products should be considered and included in proposed exemptions in the rule.

Mary Kay was specifically concerned with early proposed definitions of Rigid Plastic Container. We studied alternative definitions included in the July 22, 1994 DEQ Rulemaking Proposal and urge adoption of "Alternative B" definition.

State by state consistency of plastic container requirements is crucial for interstate commerce. Current law and regulations in California are similar to Oregon's law -- but there are significant differences on several key issues, which should be altered in Oregon regulations.

Mainly, California allows compliance achievement for its containers based on an average.

Page 3

Oregon's requirements should be consistent with California's wherever possible to facilitate compliance for manufacturers selling in both states that are a part of a national distribution system.

Mary Kay is an active member of CTFA. Thank you for seriously considering these suggestions. We want as conducive a market place as possible for the success of our salesforce in Oregon as well as for the state's overall business climate.

Sincerely,



Anne Crews, Manager  
Corporate Affairs  
Mary Kay Cosmetics, Inc.

cc: William W. Wessinger, Chairman  
Oregon Environmental Quality Commission  
121 S.W. Salmon, Suite 1100  
Portland, Oregon 97204

P

PREMIER PLASTICS

Division of Premier Industries, Inc.  
635 East 15th Street, Tacoma, Washington 98421 (206) 627-2151

RECEIVED  
AUG 22 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

August 18, 1994

Department of Environmental Quality  
Waste Management and Clean Up Div.  
811 S.W. 6th Avenue  
Portland, Oregon 97204

RECEIVED  
AUG 22 1994

Gentlemen:

Waste Management & Cleanup Division  
Department of Environmental Quality

I am writing to make comments on the implementation of Oregon's Rigid Plastic Container Law.

We are blow molders of rigid plastic containers many of which ship into the State of Oregon. The applications for these containers includes packaging for food and non-food products. We utilize resin materials #1-7.

It is our intent to comply with Oregon's Rigid Plastic Container legislation. The options for our compliance include weight reduction by 10% or the use of 25% recycled content in our containers.

Most of the containers that we manufacture are produced at a gram weight that provides equal balance between overall cost and container performance. While lightweighting can provide better economic costs, the sacrifice, in most instances, is to reduce container performance. This is unacceptable to our customers.

The use of 25% recycled content material in our containers also presents a number of problems.

The amount of collection currently in place to supply industry demand is insufficient. This also includes facilities to provide for sorting and segregation. The latter is of concern relative to reprocessing material for food packaging applications. In addition to increased costs, not all states have provided for collection of all resin materials #1-7.

At this time, we cannot provide compliance without having access to those materials required containing 25% recycled content.

It is our suggestion that a recommendation be made to Oregon's Environmental Quality Commission that an ex-



PREMIER PLASTICS

Division of Premier Industries, Inc.  
635 East 15th Street, Tacoma, Washington 98421 (206) 627-2151

Department of Environmental Quality  
Waste Management and Clean Up Division

tension be granted on implementation of the Rigid Plastic  
Container Law until at which time all resources are in  
place for manufactures to comply.

Sincerely yours,  
PREMIER PLASTICS



C. H. Thompson  
Regional Sales Manager

cc. Neale & Associates  
Government & Public Affairs

# ISSA

The Experts  
on Cleaning and Maintenance

International Sanitary Supply Association, Inc.  
7373 North Lincoln Avenue, Lincolnwood, IL 60466-1799 USA  
708/982-0800 • 800/225-ISSA • Fax: 708/982-1012

#6  
RECEIVED  
AUG 22 1994

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13300 E. Nelson Ave.  
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City of Industry, CA 91744  
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Seattle, WA 98108  
206/782-7000 Fax: 206/783-8200

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Armstrong Mfg. Company  
2485 Haines Road  
Mississauga, ON, Canada L4Y 1Y7  
905/275-7270 Fax: 905/275-7466

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Wm. D. Fetzer/Associates  
Box 1021  
Johns Island, SC 29457  
803/788-6400 Fax: 803/788-7452

**Executive Director**  
JOHN P. GARFINKEL

August 17, 1994

Oregon Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

Re: Rulemaking Proposal - Implementing Oregon's Rigid Plastic Container Law, OAR 340-90-310 through 340-90-430 and OAR 340-12-065.

To Whom It May Concern:

International Sanitary Supply Association (ISSA) appreciates the opportunity to comment on the proposed Oregon Rigid Plastic Container regulations.

The proposed regulations would require that any rigid plastic container sold in Oregon comply with a recycling, recycled content or reuse option as defined by the state by January 1, 1995. In addition, the regulations would allow for exemptions for some containers regulated by other agencies and for containers which have been source reduced. The proposed rules also set methodologies for calculating recycling rates, record keeping requirements, reporting responsibilities and enforcement provisions.

ISSA is a non-profit trade association comprised of over 4000 member companies internationally. Approximately 40 of our members are located in Oregon and hundreds others do business within the state. These members are manufacturers and distributors of institutional and industrial cleaning and maintenance chemicals.

ISSA members provide vital cleaning products including disinfectants, sanitizers, water treatments, floor care products, pesticides and insecticides to a wide variety of customers such as hospitals, nursing homes, schools, restaurants, food and beverage processing plants, hotels, park districts, water treatment plants, street departments, office buildings and other industrial and institutional purchasers.

By far the most efficient way of bringing these products to market is the rigid plastic container (RPC). Not only do these containers meet regulatory requirements established by the U.S. Environmental Protection Agency (EPA) and Department of Transportation (DOT) but they are lightweight, durable and compatible with their lading. Our membership is very concerned with the impact that the proposed Oregon rigid plastic container regulations may have on the ability of RPC's to meet other regulatory requirements. ISSA is, therefore,



submitting comments on those aspects of the proposed regulations that we believe will conflict with existing federal laws and regulations including exemptions, the definition of source reduction and time limitations for substantial investment exemptions.

Additional Exemptions Required:

By January 1, 1995, all RPC's must comply with the recycled content, recyclability or reuse options noted in the Oregon regulations. The regulations do allow for exemptions for some products. These exemptions include products which have been source reduced, products in which a substantial investment has been made to comply with the law, and products which are regulated by the Food and Drug Administration (FDA).

ISSA urges the Oregon Department of Environmental Quality to amend the regulations to take into consideration regulatory requirements imposed by EPA and DOT. The proposed regulations recognize the packaging limitations imposed under the FDA regulations but do not take into consideration the strict limitations imposed upon containers by DOT or EPA on Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regulated products. A substantial portion of products offered by ISSA members are regulated by EPA and DOT. These regulations seriously impede the ability of companies to comply with the proposed Oregon regulations. We therefore request an exemption for products so regulated.

A very significant portion of the products supplied by ISSA members are considered hazardous materials by DOT. Under DOT Hazardous Materials regulations (49 CFR §178.509), Standards For Plastic Drums and Jerricans), "[n]o used material other than production residues or regrind from the same manufacturing process may be used." This federal regulation essentially prohibits recycled materials in plastic containers which are used to transport hazardous materials, including FIFRA regulated products. This regulation completely eliminates the recycled content method of compliance under the Oregon regulations for many of the products supplied by ISSA members. For many companies, this is the only cost effective method of compliance under the Oregon regulations yet the DOT regulations restrict their ability to comply.

Additionally, the 1988 amendments to FIFRA §19 empower EPA to establish a comprehensive regulatory program for the storage, transportation and disposal of pesticides and their containers. The intent of the EPA regulations, to promote safe and healthy disposal of products and containers, is much the same as the Oregon regulations. The 1988 amendments to FIFRA and the proposed regulations which would implement these amendments are intended to facilitate recycling and minimize and reduce the amount of waste going to landfills. This system of regulations makes it unnecessary for Oregon to regulate these products.

Moreover, the conflicts between the two regulations would impose an unreasonable burden upon industry. FIFRA imposes a residue removal standard which requires the container to be in as clean a condition as possible in an effort to enhance recyclability. However, the residue removal standard virtually precludes the use of recycled materials from being used in the manufacturing

of such containers because containers made with recycled materials will not meet the residue removal standard currently proposed by EPA. This conflict would pose a significant burden on industry by precluding the most viable method of compliance with the Oregon regulations, recycled content.

This conflict in EPA and Oregon regulations would force companies to pursue the "reuse" option under the Oregon proposed regulations. However, for most companies this option is not an economic possibility. Many of the companies in our industry are small businesses. In fact, the majority of ISSA members are small businesses, over 60% of which have annual sales of less than \$2 million and less than 10 employees. Many in our industry face a market which is fragmented, characterized by a large number of small purchasers. This sales structure makes the reuse option of compliance too costly and hard to administer for a vast number of companies using rigid plastic containers. Because both recycled content and reusability are essentially eliminated as options for compliance for many of the products subject to DOT and EPA regulation, ISSA requests that an exemption for these products be added to the Oregon regulations.

Implementation of a state control of RPCs containing FIFRA regulated products is unnecessary because an effective program is already in place at the federal level. To some extent the proposed Oregon regulations are contradictory to federal regulations and therefore overburdensome to suppliers of these products. ISSA requests that a provision be added, similar to the exemption allowed in neighboring California, which exempts from the regulations products governed by EPA's FIFRA regulations and DOT Transportation of Hazardous Materials regulations.

Source Reduction Definition:

Because the compliance options are currently limited for many of the products offered by ISSA members as stated above, ISSA supports the Alternative B definition of "source reduction" contained in OAR 340-90-340(5). Under this option, product and container manufacturers who have not offered a product in Oregon for five years or more will still be able to comply with the regulations. Source reduction is the only option for many maintenance chemicals to comply with Oregon regulations. If this definition of source reduction is not adopted and products offered within the state for less than 5 years cannot qualify under the regulations, Oregon may face a drop in the number of products available for cleaning and maintenance. In addition to the safety and health consequences of limited supplies of sanitizers, cleaners and disinfectants, there will likely be an artificial increase in maintenance product prices.

By allowing source reduction compliance for products offered within the state for less than five years, Oregon will provide incentive to new manufacturers and distributors to continue sales in the state and to discover new packaging methods. Therefore, ISSA supports the source reduction Alternative B definition.

Substantial Investment Exemption:

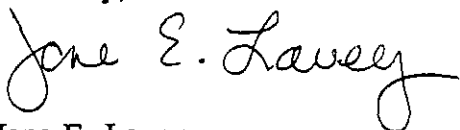
ISSA opposes the limited time frame allowed for the substantial investment toward improved containers exemption in OAR 340-90-340(6)(b). By setting a time limit for this exemption, the state removes any incentive for manufacturers to research and invest in new, better containers. The limited time exemption is short-sighted and only helps those manufacturers who are currently in the development stages of new package types. Therefore, ISSA supports a permanent substantial investment exemption.

Conclusion:

In conclusion, because of the significant burden imposed by the conflicts between current federal regulations and the proposed Oregon RPC regulations, ISSA requests that exemptions be added for products which are regulated under EPA's FIFRA and products regulated under DOT's Transportation of Hazardous Materials rules. Furthermore, ISSA supports the Alternative B definition of source reduction as it provides an alternative method of compliance for products that cannot comply under the other Oregon RPC options due to limitations imposed by other regulating agencies. In addition, ISSA opposes the limited time frame for exemption under the substantial investment provision. ISSA believes that a permanent exemption will promote increased research and investment in improved packaging methods.

ISSA respectfully submits these comments for your consideration.

Sincerely,



Jane E. Lavey  
Manager of State Legislative Affairs





**HIGHLAND PLASTICS, INC.**

INJECTION MOLDED PLASTIC CONTAINERS FOR CONSUMER PACKAGING  
965 NORTH FAIR OAKS AVENUE PASADENA, CALIFORNIA 91103 213-681-0491

Bill

#14

August 19, 1994

Ms. Patricia Vernon  
Oregon Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Re: Oregon's Rigid Plastic Container Law  
Definition of "Rigid Plastic Container"

Dear Ms. Vernon:

I am the Secretary/Treasurer of a small rigid plastic container manufacturing company in California. We have a significant amount of customers in Oregon who will be affected by Oregon's Rigid Plastic Container Law.

Definition Alternate "B" provides a clearer definition of a rigid plastic container and eliminates some of the gray areas of Alternate "A". Alternate "B" will facilitate record keeping, and require fewer judgment calls to be made regarding whether or not a product is a rigid plastic container.

I urge you to adopt Alternate "B" definition of rigid plastic containers --- it will lessen the work load for everyone.

Very truly yours,

Gordon J. Naff  
Secretary/Treasurer

RECEIVED  
AUG 22 1994

Waste Management & Cleanup Division  
Department of Environmental Quality



**HIGHLAND PLASTICS, INC.**

INJECTION MOLDED PLASTIC CONTAINERS FOR CONSUMER PACKAGING  
965 NORTH FAIR OAKS AVENUE PASADENA, CALIFORNIA 91103 213-681-0491

August 19, 1994

Ms. Patricia Vernon  
Oregon Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Re: Alternate "B"  
Definition of "Rigid Plastic Container"  
Oregon's Rigid Plastic Container Law

RECEIVED  
AUG 23 1994

Dear Ms. Vernon:

Waste Management & Cleanup Division  
Department of Environmental Quality

I am the Controller of a small rigid plastic container manufacturing company in California. We have a significant amount of customers in Oregon who will be affected by Oregon's Rigid Plastic Container Law.

Alternate "B" is a clearer definition of a rigid plastic container. With a clearer definition, implementation will be easier and less confusing. Alternate "B" will eliminate some of the gray areas where judgment calls would need to be made.

Alternate "A" will require more judgment calls, be confusing to those who need to comply with the regulations and those who must interpret the law, and probably cost Oregon DEQ more to implement and staff all because of an unclear definition.

Alternate "B" makes more sense from a practical standpoint.

Very truly yours,

William B. Warren  
Controller

PLASTIC  
INGENUITY  
INC.

Bill  
Pat

RECEIVED  
AUG 22 1994

August 18, 1994

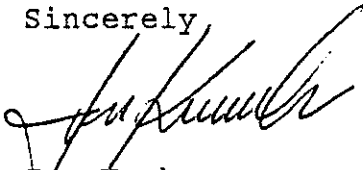
Patricia Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 South West 6th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

RE: Oregon Recycling Legislation

The above Legislation will be very damaging to our business and will result in several of our customers products being removed from the Oregon market. I cannot determine from the first version of this regulation which of our customers products will be banned. Alternative B is less confusing and makes a little more sense. I would urge you to adopt Alternative B in future discussions of this regulation.

Sincerely,



Joe Kuehn  
President

JK:dab



# Superfos Packaging, Inc.

#17

Bill Pat

## North American Container

August 17, 1994

Allegany County Industrial Park  
11301 Superfos Drive, S.E.  
Cumberland, MD 21502  
USA

Telephone + 301 759 3145  
Telefax + 301 759 4905

RECEIVED  
AUG 27 1994

Ms. Patricia Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Div.  
811 S.W. 16th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Sirs:

As a concerned and informed member of the Society of Plastics Industries as well as a supplier of injection molded plastic rigid open top containers to numerous industries including Foods, Household Chemicals, Industrial Chemicals, Toiletries and Pharmaceuticals who market their products in the State of Oregon, I am writing to offer my comments and recommendations concerning the Oregon Department of Environmental Quality's proposed final regulations on implementation of the Oregon Rigid Plastic Container Law. Specifically, it appears that Alternative A is not workable in that a plastic container does not have to be a "complete package" to be subject to the law whereas Alternative B specifies that a rigid plastic container must be "designed to completely contain a product" which is certainly less ambiguous and, I would think, would facilitate implementation. With Alternative B, everyone involved in the implementation process would have a clear understanding on the meaning of "container." It should be our objective to limit the number of judgement calls made in the field, and I believe that Alternative A would create a great deal of confusion. Additionally, Alternative A would tend to create a considerable amount of confusion as to jurisdiction and applicability. Alternative B provides for a more clear understanding of who and what is subject to the law.

I thank you for taking the time to review my comments with regard to adoption of the Oregon Rigid Plastic Container Law.

Sincerely,

James N. Mason  
President

JNM:sml

cc: Ms. Laurie Hansen  
Director Government Affairs  
American Plastic Council  
770 L Street  
Sacramento, CA 95814

**SEALRIGHT®**  
CO., INC.

7101 COLLEGE BOULEVARD  
OVERLAND PARK, KS 66210

913-344-9000  
FAX: 913-344-9005

August 16, 1994

Ms. Patricia Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Bill  
Pat #18

RECEIVED  
AUG 22 1994

Re: Comments on Rulemaking Proposal -  
Oregon's Rigid Plastic Container Law

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Ms. Vernon:

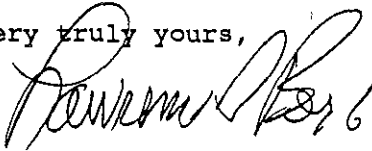
While industry statistics are not available, Sealright Co., Inc. believes it is the largest manufacturer of containers for the frozen dessert market in the United States. In addition, Sealright manufactures both rigid and flexible packaging for other food and beverage products, as well as for household goods, personal care items and medical supplies. One of the products Sealright manufactures is the Plastyle® container. Plastyle® containers are rigid plastic packages of various sizes. A portion of these rigid plastic containers manufactured by Sealright are used for packaged products that are sold or offered for sale in the State of Oregon. Consequently, Sealright has a vested interest in Oregon's Rigid Plastic Container Law; and I would like to take the opportunity to comment on the rules currently proposed for implementing that Law. In particular, I would like to address the relative merits of Alternative A and Alternative B, as they are presented in the proposed rules, as follows:

1. Alternative B provides a much clearer and narrower definition of the term "container," than does Alternative A. Alternative B removes a lot of the uncertainty and subjective decision making that would otherwise be required to determine what items are considered "containers" under Alternative A. The ambiguity in Alternative A would cause companies to be confused about whether or not their products are encompassed by the law. As a result, more queries would be posed to the regulatory agencies, thereby creating the need for additional staff to respond, as well as increasing the likelihood for development of an adversarial environment between the regulators and the regulated.
2. In addition to the above, by clarifying the meaning of "container," Alternative B, when compared to Alternative A, would reduce confusion and problems associated with trying to determine what should be, and what should not be, included when performing waste composition studies as required by the law.
3. The concept of reasonableness is well established in U.S. law. Regulations, where practicable, should be reasonable to the prudent individual. Alternative B is the more reasonable of the two alternatives. A case in point is how Alternative B handles soft tubes. Certainly soft tubes are capable of maintaining their shape, per the definition of "rigid." However, Alternative B excludes soft tubes on the basis that they are flexible and not rigid -- certainly the reasonable conclusion.

Comments on Rulemaking Proposal -  
Oregon's Rigid Plastic Container Law  
Page 2

Given the above arguments, it is my considered opinion that Alternative B is more beneficial than Alternative A to all parties involved. Therefore, I respectfully and vigorously urge the Oregon Department of Environmental Quality to adopt Alternative B and discard Alternative A with respect to its rules for implementing Oregon's Rigid Plastic Container Law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lawrence D. Boyle", written in a cursive style.

Lawrence D. Boyle  
Senior Vice President  
Sealright Co., Inc.

DEQ  
WASTE MGMT DIVISION  
811 SW 6TH AVENUE  
PORTLAND, OR, 97204

RECEIVED  
AUG 20 1991

NANCI KENLY -  
1454 SE 57TH  
PORTLAND, OR,  
97215

Waste Management & Cleanup Division  
Department of Environmental Quality

DEAR DEQ,

I WANT TO FIRST THANK YOU FOR THE CHANCE TO COMMENT ON THE PROPOSED RULES GUIDING OREGON'S PLASTICS RECYCLING LAW, AND SHARE SOME CONCERNS OF MINE REGARDING MAINTAINING THE STRENGTH AND INTENT OF THIS LAW: INCREASING PLASTICS RECYCLING IN OREGON!

THE ATTORNEY GENERAL'S RULING THAT PYROLYSIS DOES NOT COUNT AS RECYCLING IS COMMENDABLE AND SHOULD REMAIN FIRM DESPITE THE PLASTICS INDUSTRY'S ATTEMPTS TO OVERTURN THIS RULING. ALSO POST-CONSUMER PLASTIC IS THE ONLY TYPE THAT SHOULD COUNT TOWARDS RECYCLING RATE CALCULATION.

PLEASE BROADLY DEFINE "RIGID PLASTIC CONTAINERS" TO INCLUDE AS MANY TYPES OF PLASTICS POSSIBLE.

"CORPORATE AVERAGING" ALLOWS LARGE-OUT OF STATE CORPORATIONS TO BE EXEMPTED WITHOUT DOING ANYTHING TO INCREASE THEIR RECYCLING EFFORTS IN OREGON - SO PLEASE DO NOT ALLOW IT.

THE BOTTOM LINE IS THAT PLASTICS LAST FOREVER. THEY ARE ENVIRONMENTALLY HAZARDOUS TO PRODUCE, AND WHEN THEY ARE USED BY CONSUMERS THEY FILL OUR LANDFILLS UP AT STAGGARING RATES, SO EVERY ATTEMPT SHOULD BE MADE TO RESPONSIBLY INCREASE PLASTICS RECYCLING - REAL RECYCLING (NOT WEASLING OUT OF COMMITMENTS OR FINDING LOOPHOLES V THE LAWS) IS ESSENTIAL TO KEEPING OREGON GREEN.

IT IS MY HOPE THAT YOU WILL SUPPORT ALL OF THESE POINTS WHEN IRONING OUT THE DETAILS OF THIS LAW AND KEEP

OREGON AT THE FOREFRONT OF PLASTICS RECYCLING, THIS  
SETTING A PRECEDENT FOR THE REST OF THE COUNTRY.

YOUR ATTENTION TO THIS  
LETTER IS GREATLY APPRECIATED!

SINCERELY

Wendy C Kenly  
PORTLAND, OR



DEQ

Waste Management Division  
811 SW 6th Ave  
Portland, OR 97204

RECEIVED

Jennifer M. Davis  
826 SE Franklin  
Portland, OR 97032

AUG 20 1991

Waste Management & Cleanup Division  
Department of Environmental Quality

8, 22, 91

"Paper does it; Aluminum does it;  
glass does it; plastic can damn  
well do it too."



we are in great  
"anticipation" of real significant  
plastics recycling in Oregon!

To Whom It May Concern,

Thank you! DEQ! For really examining the  
plastics recycling issue in Oregon and working hard to  
draft fair, viable rules to uphold the plastic's recycling  
law, known in 1991 as "Senate Bill 66"

Please don't back down under industry pressure, as  
California did. Don't allow plastics burning to replace  
real energy retrieval recycling. Don't allow plastics  
industries to merely reduce containers by 10% and forget  
about recycling. Don't allow "corporate averaging" to dilute  
plastics recycling in Oregon. Post consumer plastic is  
the fundamental target of our recycling needs in Oregon!  
please don't allow secondary waste to be substituted. And  
we need to see a broad, inclusive definition of  
"rigid plastic container." Let's face it - almost any  
consumer plastic container is rigid enough to be  
deemed recyclable.

We have a wonderful opportunity to really reduce  
plastic wastes in Oregon and set a great example for other  
States. That's less toxic leaching in our landfills, less oil  
and energy consumption, less garbage to deal with and most  
of all, fewer "artifacts" of plastic that our great, great,  
great, great, great grandchildren will have to wade through?

August 23, 1994

Department of Environmental Quality  
Waste Management Division  
1 SW 6th Ave.  
Portland, OR 97204

RECEIVED  
AUG 23 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

to whom it may concern-

I am writing as a concerned citizen of Oregon regarding the issue of flexible recycling rules. I was very pleased with the draft rules that you have proposed, because these rules reflect Oregon's serious attempt to increase plastics recycling in Oregon. I hope that these rules will be adopted so that Oregon can remain a leader in progressive recycling policy.

However, I am especially concerned with a few issues. The definition of a "rigid plastic container" should remain as broad and inclusive as possible in order to maximize the types of containers covered by the new laws. Also, reduced container exemption should be as limited as possible and should by no means be permanent. Another issue of concern is corporate averaging - it is thoroughly unacceptable, because it allows large, out-of-state corporations to be exempt from laws without doing anything to increase or even meet Oregon's high standards. I'm also asking that you make sure that post-consumer plastic is the only type that should count towards calculation of recycling rates. Finally, most importantly, I am strongly in support of the State Attorney General's ruling that pyrolysis is not a form of recycling in Oregon.

Thanks for asking for public comments on this important issue, I know that my neighbors are just as concerned as I am.

Sincerely,

To whom it may concern,

I am writing to express my appreciation of the draft rules proposed for the purpose of increasing plastics recycling in the state of Oregon. These rules will allow Oregon to maintain its position as a national leader on recycling.

There are a few particular concerns I have about this issue. I would like to see a broad definition of 'rigid plastic container', so that the most types of different containers will be covered by these rules. Please do not allow corporate averaging, this basically opens loopholes for out of state corporations to exempt themselves. Also one more thing is that I strongly feel that post-consumer plastic is the only type that should count towards the calculation of the recycling rate.

I do strongly support the state Attorney General's ruling that pyrolysis is not recycling. Thank you very much for allowing me to comment on these proposed rules.

Sincerely,



Kevin Callura

RECEIVED  
AUG 20 1991

Waste Management & Cleanup Division  
Department of Environmental Quality

D.E.Q.  
WASTE MGMT. DIVISION  
511 S.W. 6th  
PORTLAND, OR 97204

AUGUST 23, 1994

RECEIVED  
AUG 23 1994

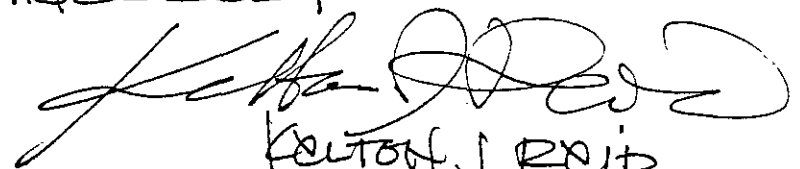
Waste Management & Cleanup Division  
Department of Environmental Quality

DEAR D.E.Q.,

WE ARE VERY PLEASED WITH THE DRAFT RULES THAT YOU HAVE PROPOSED, BECAUSE THESE RULES REFLECT THE LAW'S PURPOSE OF INCREASING PLASTICS RECYCLING IN OREGON. I HOPE THAT THESE RULES WILL BE ADOPTED, SO THAT OREGON CAN MAINTAIN ITS POSITION AS A NATIONAL LEADER ON RECYCLING POLICY. ONE THING THAT I AM PARTICULARLY CONCERNED WITH IS THE ISSUE OF REDUCED CONTAINER EXEMPTION. THIS WORRIES ME BECAUSE EXEMPTION SHOULD BE AS LIMITED AS POSSIBLE, AND SHOULD NOT, UNDER ANY CIRCUMSTANCES, BE PERMANENT.

THANK YOU FOR ALLOWING US THE CHANCE TO COMMENT ON THE PROPOSED RULES. WE ALSO STRONGLY SUPPORT THE STATE ATTORNEY GENERAL'S RULING THAT PYROLYSIS CAN NOT COUNT AS RECYCLING UNDER OREGON LAW. PLEASE RESPOND TO OUR CONCERNS REGARDING REDUCED CONTAINER EXEMPTION.

Sincerely

  
KELTON J REID

2103 SE 32ND AVE,  
PORTLAND, OR 97214

#2  
Aug. 23, 1994

Dear D.E.G.,

I am pleased with the draft rules as they have been proposed. The rules reflect the desire to increase plastics recycling in Oregon. I hope that these rules will be adopted, and that Oregon will maintain its position as a national leader on recycling policy.

The following are specific issues I am concerned about: a broad, inclusive definition of "rigid plastic container"; reduced container exemptions limited; post-consumer plastic should be the only type to count towards the calculation of recycling rates.

Thank you for time and concern.

RECEIVED  
AUG 23 1994

Sincerely,  
Mark Williamson

Waste Management & Cleanup Division  
Department of Environmental Quality

August 23, 1994

RECEIVED  
AUG 23 1994

DEQ  
Waste Management Division  
811 SW 6TH  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

This letter regards the upcoming decisions on SB 66  
the Oregon Recycling initiative.

As Oregonians, preservation of our environment is  
an historic interest. Recycling has come a long way  
in our state because of this. We need more  
plastics recycling however. SB 66 is a solution  
to the pitiful 7% recycling rate of plastic packaging.

The American Plastics efforts to gain exemption  
to this law must be stopped. Absolutely all rigid  
plastic packaging needs to meet these 70% recyclability  
Standard.

Let's do it.

Sincerely,  
David A. Rucke  
3550 SW Beaverton-Hillsdale  
Portland, OR 97221

SENCORP SYSTEMS, INC.

P.O. Box 6001  
400 Kidds Hill Road  
Hyannis, Massachusetts 02601  
FAX 508-775-9044

508-771-9400

**SENCORP**  
S Y S T E M S

August 15, 1994

Ms. Patricia Vernon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, OR 97204

RE: Oregon's Rigid Plastic Container Law

Dear Ms. Vernon:

As a machinery supplier to the industry being effected, our company is writing to urge support of Definition Alternative B.

We feel that Alternative B is less confusing in that it provides a narrower scope that will, in essence, make it easier for those affected to comply and for those "policing" the policy to enforce that compliance.

A policy that appeals to a person's common sense is one that no one from either side can argue with and therefore, should be successful.

Sincerely,

SENCORP SYSTEMS, INC.

  
Anthony Giovannone  
President

MVM

giovannone/spi

bcc: J. C. Malloy - SPI

RECEIVED  
AUG 20 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

DEAR DEQ,

I AM WRITING CONCERNING PLASTICS RECYCLING.  
 I AM PLEASED THAT YOUR DRAFT ~~LAW~~ RULES ARE  
 FOCUSED ON INCREASING PLASTICS RECYCLING.  
 I AM PARTICULARLY CONCERNED ABOUT THE FOLLOWING  
 ISSUES, ① I'D LIKE TO SEE A BROAD INCLUSIVE DEFINITION  
 OF RIGID PLASTIC CONTAINER. THE MAXIMUM NUMBER OF  
 RECYCLABLE TYPES OF CONTAINERS IS PREFERRED. ②  
 REDUCED CONTAINER EXEMPTION SHOULD BE STOPPED  
 ③ CORPORATE AVERAGING IS UNACCEPTABLE. ④ NO EXPANSION  
 OF THE SUBSTANTIAL INVESTMENT EXEMPTION ⑤ POST  
 CONSUMER PLASTIC IS THE ONLY TYPE THAT SHOULD  
 COUNT TOWARDS THE CALCULATION OF THE RECYCLING RATE.  
 ⑥ PYROLYSIS CAN NOT COUNT AS RECYCLING.

THANK YOU FOR ALLOWING US THE OPPORTUNITY  
 TO COMMENT ON THE PROPOSED RULES.

SINCERELY,



ERIC NAVICKAS  
 711 FAITH ST.  
 ASHLAND OR. 97520

RECEIVED  
 AUG 29 1974

Waste Management & Cleanup Division  
 Department of Environmental Quality



August 25, 1994

929 SE 16<sup>th</sup> Ave Apt. 1

Portland, OR 97214

RECEIVED  
AUG 29 1994

DEQ.

Waste Management Division

811 SW 6<sup>th</sup> Ave.

Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

To Whom It May Concern:

I write to congratulate you on your proposed plastic recycling rules; if implemented they would increase plastic recycling in Oregon, as the law intended.

I do, however, want to express my concern over several specific issues. Foremost, post-consumer plastic is the only type that should be counted in the calculation of recycling rates. Furthermore the rules should reflect the Attorney General's ruling that pyrolysis does not count as recycling. Also there needs to be a broad and inclusive definition of "rigid plastic container" so as to include the maximum number of container types. Along that note, reduced container exemption should not be permanent; and in the meantime, it should be as limited as possible.

I also would urge you not to allow expansion of the substantial investment exemption. Lastly, corporate averaging is not acceptable since it allows large, out-of-state corporations to be exempted without doing anything to increase recycling efforts in Oregon.

Thank you for the opportunity to comment on the proposed rules.

Jennifer Wright  
4722 N. Vandavilt  
T. Hland, OR 97203

8/24/94

DEA Waste Management Division  
Re: Plastics Recycling Rules

RECEIVED  
AUG 29 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

To Whom It May Concern:

I am writing concerning DEQ's proposed rules concerning plastics recycling.

In general, I am pleased with DEQ's proposed rules because they reflect the law's purpose to increase plastics recycling in Oregon. In particular I want to see a broad inclusive definition of "rigid plastics container." Limit the amount of reduced container exemptions and make the exemptions (if any are necessary) short-lived. By no means allow them to be permanent.

Prohibit corporate averaging. This law is about Oregon's recycling effort! Only post-consumer plastic should count towards calculation of the recycling rate. Prohibit the expansion of the substantial investment exception.

In closing, I'd like to express my strong support for the Attorney General's ruling that pyrolysis does not constitute recycling under Oregon law.

Thank you for considering my comments.

Sincerely,  
Jennifer Wright

August 22nd

RECEIVED  
AUG 2 5 11

To Whom it may concern,

Waste Management & Cleanup Division  
Department of Environmental Quality

I am pleased with the draft rules you have ~~adapted~~ proposed - I hope they will be adopted.

As a consumer I would like to see a broad definition of "rigid plastic containers" a maximum number of types of container to be covered by the rules.

Reduced container exemptions should not be permitted. Corporate averaging is not acceptable.

Post-Consumer plastic is the only type that should count towards the calculation of the recycling rate. I also strongly support the state Attorney General's ruling that pyrolysis can not be considered as recycling.

Thank you for this ~~an~~ chance to comment, I appreciate any reply.

Jeanne Ulrich  
1534 SE 11th Ave

24 AUG 1994

SENATE RECEIVED  
~~RECEIVED~~  
AUG 29 1994

#31

DEPT. OF ENVIRONMENTAL QUALITY

Waste Management & Cleanup Division  
Department of Environmental Quality

THE INFORMED AND CONCERNED CITIZENS OF MY IMMEDIATE COMMUNITY AND MYSELF ARE PLEASED WITH THE DRAFT RULES THE DEQ HAS PROPOSED, AS THE PURPOSE OF INCREASING ENVIRONMENTALLY SOUND METHODS OF PLASTICS RECYCLING IN OREGON IS BECOMING A STEP CLOSER TO REALITY AND MEETING THE LAW'S INTENT. WE HOPE THESE RULES WILL BE ADOPTED IN ORDER TO MAINTAIN OREGON'S POSITION AS A NATIONAL LEADER ON RECYCLING POLICY.

HOWEVER WE ARE PARTICULARLY CONCERNED ABOUT THE FOLLOWING ISSUES:

1. WE WANT A BROAD, INCLUSIVE DEFINITION OF "RIGID PLASTIC CONTAINER". WE WANT TO SEE THE MAXIMUM # OF TYPES OF CONTAINERS FALL UNDER THIS DEFINITION.
2. REDUCED CONTAINER EXEMPTION SHOULD BE AS LIMITED AS POSSIBLE AND SHOULD NOT FOR ANY REASON BE PERMANENT.
3. CORPORATE AVERAGING IS NOT ACCEPTABLE WE ARE ESTABLISHING POLICY FOR BUSINESS AND CONSUMERS IN OREGON (OR DOING BUSINESS IN OREGON) NOT TEXAS, CALIFORNIA, ETC.
4. EXPANSION OF THE SUBSTANTIAL INVESTMENT EXEMPTION IS UNACCEPTABLE.
5. THE CALCULATION OF THE RECYCLING RATE SHOULD BE BASED SOLELY ON POST-CONSUMER PLASTIC.
6. WE STRONGLY SUPPORT THE STATE A.G.'S RULING ON PYROLYSIS' EXEMPTION FROM OREGON RECYCLING POLICY.
7. MAKING SURE THAT YOURSELF AND THE STAFF AT DEQ KNOW THAT YOUR EFFORTS ARE APPRECIATED, OUR COMMUNITY THANKS YOU, I THANK YOU, HANG IN THERE AND "DON'T GIVE IN."

RESPECTFULLY,  
ADAM MILLER  
AM

RECEIVED

AUG 29 1994

Waste Management & Cleanup Division  
Department of Environmental QualityMaren Souders  
1415 SW Custer Dr #7  
Portland, OR 97219  
8/23/94Department of Environmental Quality  
Waste Management Division  
811 SW 6th Ave.  
Portland, OR 97204

Dear Sir or Madam:

I would like to express my support for the draft rules you have proposed for plastics recycling. These rules reflect the law's purpose of increasing Oregon's plastics recycling rate. I hope that these rules will be adopted, so that Oregon will remain a national leader on recycling policy.

I am concerned about several issues surrounding the law. First, there must be a broad and inclusive definition of "rigid plastic container." We need to cover as many types of containers as possible to reach a high recycling rate.

National "corporate averaging" of recycling rates is not acceptable. It would allow large, out-of-state corporations to be exempted without taking any steps to increase recycling in Oregon.

Finally, post-consumer plastic is the only type that should count toward calculation of

the recycling rate. Pre-consumer plastic has been recycled for a long time, and does nothing new to reduce plastic solid waste.

I also strongly support the State Attorney General's ruling that pyrolysis cannot count as recycling under Oregon law.

Thank you for your consideration.

Sincerely,

Marvin Sanders

RECEIVED August 25, 1994  
AUG 29 1994

Dear DEQ Management,

Waste Management & Cleanup Division  
Department of Environmental Quality

I want to let you know that I am very pleased with the proposed rules covering Oregon's plastics recycling. I am pleased that they can maintain Oregon's role as a national recycling leader.

I am, however, now concerned about a few of the particular issues. I encourage you to ensure the following issues to keep the strength in our laws.

- Demand a broad & inclusive definition of "rigid plastic container"
- Ensure that "reduced container exemption" is concise and limited as possible and does not include end permanence.
- Safeguard against the detrimental notion of "corporate averaging" it hurts recycling & Oregon based business.
- Include post-consumer plastic as the only type that counts towards the calculation of recycling rates.
- Please also continue to support the Attorney General's ruling that pyrolysis is not recycling.

I thank you again for the positive role you have played in making Oregon a recycling leader & hope you continue to do so.

Sincerely,  
Elizabeth Spief

Rebecca Sweet  
3947 SE Main St.  
Portland, OR 97214

Aug. 23, 1994

DEQ  
Waste Management Division  
811 SW 6th  
Portland, OR 97204

RECEIVED  
AUG 2 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

I am writing to you as a concerned consumer and citizen. My concern regards your plastics recycling rules.

I am pleased with your proposed draft of rules. They fit well with long-term goals for Oregon, as far as increasing the recycling of plastics.

I feel that for the best progress and results in plastics recycling the definition of the "rigid plastic container" should be as inclusive as possible.

I also believe that Corporate averaging is not acceptable. It will allow some corporations to get by without bettering their recycling efforts.

One last thing here, that I feel very adamant about - and that is that pre-consumer plastics cannot count in the calculation of the recycling rate.

I must add that I am in complete support of the state Attorney General's ruling that pyrolysis can't count as recycling in Oregon.

Thanks so much for listening and for your work.

Rebecca Sweet



DEQ  
Waste Management Division  
811 SW 6th  
Portland, OR  
97204

Mrs. Mary  
1657 Wilson Court  
Eugene OR  
97402

#35

I am writing to show my support for the draft rules proposed concerning plastics recycling. Because Oregon has been a national leader on recycling issues, I hope that you will make sure these rules are fully implemented. ~~But~~ I am particularly concerned with certain issues. First, I hope that the definition of "rigid plastic container" is broad and inclusive of the maximum number of types of containers. I also would assume that the reduced container exemption be as limited as possible, and never be permanent to ensure high levels of ~~recycling~~ the use of recycled materials. The practice of corporate accounting should not be tolerated, since it allows national corporations to neglect ~~their~~ Oregon recycling efforts. Also post-consumer plastic is the only type of recycling that should count. Finally, I support the state Attorney General's ruling that pyrolysis does not count as recycling in Oregon. I thank you for encouraging citizens to comment on the proposed rules.

Sincerely yours,

Mary Mackay

RECEIVED  
AUG 29 1991

Waste Management & Cleanup Division  
Department of Environmental Quality

RECEIVED  
AUG 29 1991

Waste Management & Cleanup Division  
Department of Environmental Quality

JEANA FRAZZINI  
1618 NE COUCH  
PORTLAND, OR

97232

RECEIVED  
AUG 2 0 11

DEQ  
WASTE MANAGEMENT DIVISION  
811 SW 6th  
PORTLAND, OR  
97204

Waste Management & Cleanup Division  
Department of Environmental Quality

DEQ:

I am writing to comment on the plastic recycling rules that are being considered. I am please with the draft rules, as they reflect the intent of the law-- increasing plastics recycling in Oregon. I hope these rules will be adopted, so that Oregon can remain a national leader on recycling policy.

I am particularly concerned about a number of issues. First, it is necessary to include a broad definition of "rigid plastic container" so the maximum number of types of containers can be covered by the rules. Second, reduced container exemption should be as limited as possible, and should not be permanent.

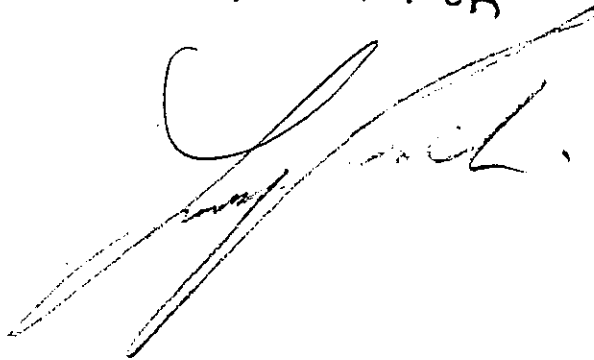
Third, corporate averaging is not acceptable, we want recycling here in Oregon to be as strong as possible! The "substantial investment" exemption is also bogus - investment in recycling is what's needed in Oregon. Post consumer plastic only could count toward calculation of the rate and I strongly support the state Attorney General's ruling that pyrolysis not count as recycling under Oregon law. Thank you for the chance to

Mr. [unclear]

Wanted to write to tell you how pleased I am with  
 the rules you have proposed. I hope these rules reflect the  
 intent of increasing plastics recycling in Oregon. I hope that these rules  
 will be adopted so that Oregon can maintain its position as  
 one of the leaders in recycling policy. Something I am concerned  
 with is that the reduced container exemption should be as  
 limited as possible, and should not, under any circumstances, be permanent.  
 Thank you for allowing us the chance to comment on the  
 proposed rules. Your active participation in this campaign  
 to keep Oregon at the forefront of national recycling policy  
 is greatly appreciated.

For more information, contact at OSPHQ.

Lorin Finch



RECEIVED  
 AUG 29 1994

Waste Management & Cleanup Division  
 Department of Environmental Quality

Aug. 23, 1994

To whom it may concern,

I am very thankful and pleased for the draft rules on plastics recycling that the DEQ has proposed. I hope that these rules will be adopted, so that Oregon can maintain its position as a national leader on recycling policy.

I am, however especially concerned about the following issues:

I would like to see a broad, inclusive definition of "rigid plastic container".

The reduced container exemption should also be limited as possible, and should not, under any circumstances, be permanent.

I strongly support the state Attorney General's ruling that pyrolysis can not count as recycling under Oregon law.

Thank you for the chance to comment and express my concerns.

Sincerely,  
Nicole Swanson

RECEIVED  
AUG 25



Manufacturers of Finest Quality Pickles, Relishes and Sauerkraut

Steinfeld's Products Company  
10001 N. Rivergate Blvd.  
Portland, Oregon 97203-6596  
(503) 286-9000 Fax (503) 289-6854

August 22, 1994

Mr. Fred Hansen  
Director  
Oregon Department of Environmental Quality  
811 S.W. 6th Ave.  
Portland, Or 97204

Re: Oregon's Rigid Plastic Container Law /Comments due September 6, 1994

Dear Fred:

Thank you for taking the time last week to bring me up to date on the implementation of Oregon's Rigid Plastic Container Law. Subsequent to our phone conversations, I have received the rulemaking proposal. This document does go into extensive detail on the ramifications of the Oregon Recycling Act. After having read through the document, I now share the concern of Northwest Food Processors and other organizations about where the Department of Environmental Quality could go after January 1, 1995 with enforcement. Therefore, this letter serves as written comment to your proposed rule making.

1. First of all, reading through the alternate A's and alternate B's, created by the various task forces involved in trying to determine what rules apply, is exasperating and confusing. The amount of detail that has been debated on many aspects of this rulemaking exceeds most businessman's perusal of the documents patience. It appears that the Department of Environmental Quality will spend as much time and money determining what applies or doesn't apply as plastics recycling, or rigid plastics, as trying to achieve plastics recycling itself.
2. I disagree with the effort by environmentalists to paint pyrolysis as non-recycling, as well as their fighting to exclude efforts to remove plastics from the solid waste stream as non-recycling. In reading through much of this material, it seems DEQ purpose is to find ways to de-rail resource recovery rather than cheer it on. It's clear that the legislature made a big mistake when they called this a Recycling Act rather than the Resource Recovery Act! I thought the point of resource recovery was to avoid landfilling waste as well as re-utilizing resources whenever possible.



OFFICE OF THE DIRECTOR

August 22, 1994  
Fred Hansen  
page two

3. The most controversial issue facing the food industry today surrounds your interpretation of amendments by the 1993 Oregon Legislature to Senate Bill 66. The concern centers around your taking action after January 1, 1995 to potentially fine and cite food manufactures who do not meet the criterion of the Rigid Plastic Container Law. Until recently, it was my understanding that this law could not be implemented at least until January 1, 1996, and until DEQ had calculated the rigid plastic container recycling rates for calendar year 1995. Subsequently I have learned that you can fine anyone not meeting the law, if you so choose. Fred, the food industry has basically only two ways to meet the requirements of this act:

1. For the Plastics Industry to reach 25% recycling rate in the state, or
2. For you to invoke the "Substantial Investment" clause delaying implementation until January 1, 1997.

While it is possible for some food manufacturers to reduce the plastics content in their packaging, there are problems associated with doing that. In the instance of Steinfeld's, reducing our 5 gallon container from 90 ml to 70 ml reduces our capability of stacking this product in our warehouses, and causes significant additional investment of racks in order to store products. The Department of Environmental Quality is well aware that it is not possible for us to reuse or recycle any plastic container in the food industry. The FDA precludes us from this option. I do recognize, however, that there are some extremely limited applications for recycling plastic food containers, but they basically have no relevance to the vast majority of the food industry.

Many of us in the food industry were lulled to sleep by the action of the 1993 legislature delaying implementation of Senate Bill 66 until mid 1996. Because of the limitations placed upon food companies, it is critical that we get relief from the implications of your testimony and its enforcement actions. Huge investments are made by food manufacturers in filling equipment for packaging. Any machine that would need to change from rigid plastic to flexible packaging costs hundreds of thousands of dollars for each size of product planning to be filled. If DEQ implements compliance January 1, 1995 for the food industry, millions of dollars in sales to other Oregon businesses will be placed in jeopardy. While some major food companies may be able to respond, a vast majority of small businesses do not have the resources to change their packaging. In light of the fact that you have not yet established rules for the implementation of this law, something must be done immediately to avert the confusion that this law currently represents.

August 22, 1994

Fred Hansen

page three

I urge you to at least implement this "Substantial Investment" exemption immediately. Anything less could throw many food businesses supplying foodservice packaging to restaurants and institutions into chaos. Finally, we all must work to exempt food packaging from this legislation in the 1995 legislature. That exemption should be for all rigid plastic food packages, while also encouraging recycling of food plastic packaging into non-food plastic products.

Respectfully,



Ray Steinfeld, Jr.  
Chief Executive Officer  
STEINFELD'S PRODUCTS COMPANY

c: Pat Arnold, DEQ  
Bill Bree, DEQ



# Fabri-Kal Corporation

Plastics Place  
Kalamazoo, Michigan 49001  
616 ■ 385 ■ 5050 FAX 616 ■ 385 ■ 0197

August 26, 1994

Ms. Patricia Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, OR 97204

Dear Ms. Vernon:

I am writing in regards to Proposed Rules OAR 340-90-310 through OAR 340-90-430, Oregon's Rigid Plastic Container Law.

Fabri-Kal is a producer of thermoformed plastic containers, many of which are sold to customers who use them in the state of Oregon for food and personal care packaging. We are a national company, headquartered in Michigan with plants in Pennsylvania and South Carolina. We employ over 500 people.

Specifically, I urge you to adopt Alternative B as the working definition of a rigid plastic container. Alternative B will reduce the confusion and subjectivity related to what is and is not a rigid plastic container. This will not only make it clearer for us and our customers to know whether a particular plastic item is covered under the law or not, but it will make it easier for the DEQ to implement the law and minimize enforcement and compliance confusion.

The Oregon law is complex even to those of us who are familiar with the issues, both real and perceived, surrounding plastic packaging. The intent of this letter is not to judge the merits of the Oregon law, but to ask that it's perplexity be kept to a minimum. This is best done by going with Alternative B.

Thank you for your consideration.

Very truly yours,

*Anthony C. Mack*  
Anthony C. Mack  
Vice President, Development & Quality

RECEIVED  
AUG 29 1994

Waste Management & Cleanup Division  
Department of Environmental Quality



# KRAFT GENERAL FOODS

DEBORAH A. BECKER  
VICE PRESIDENT  
ENVIRONMENTAL POLICY

August 29, 1994

Ms. Deanna Mueller-Crispin  
Dept. of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Ave.  
Portland, OR 97204

RECEIVED  
SEP 6 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Deanna:

Attached are the comments of Kraft General Foods (KGF) on the proposed rules issued July 22, 1994 for the Oregon rigid plastic container law. (OAR 340-90-310 through 340-90-430 and OAR 340-12-065). KGF has actively participated in the rulemaking process, being members on both the Implementation Task Force and the Certification, Audits, and Records Task Force, and is pleased to have the opportunity to comment at this time. We are submitting these comments prior to the public hearings of September 1, and reserve the right to submit additional comments after the hearings, prior to the close of the written comment period.

KGF has been concerned about the food safety and package integrity implications of Oregon's rigid plastic container law since the original consideration in the legislature. Because of this concern, KGF's overriding goal during the regulatory process was to shape the regulations to assure that food safety and package integrity would not be compromised, and that Oregon consumers would be able to continue to enjoy all of the quality products KGF markets nation wide in rigid plastic packages. Unfortunately, the proposed regulations fall short of this goal. Specifically, the exclusion of a mechanism to allow new packages after 1/1/95 to be exempted through source reduction, the inflexibility of the regulations to allow corporate averaging, and the fact that source reduction is a one-time exemption instead of an ongoing compliance option, all will preclude our ability to market some KGF products in rigid plastic packages to Oregonians.

We thank you for the opportunity to participate throughout the rulemaking process and to comment on these proposed regulations. We hope you will carefully consider our comments as the DEQ recommendations are prepared for the Environmental Quality Commission. If there are any questions, please feel to call myself or Peggy Martin, Director of KGF State Government Affairs at 202-637-1552.

Sincerely,



Deborah A. Becker

cc:

- Bob Danko - Oregon DEQ
- William Bree - Oregon DEQ
- Pat Vernon - Oregon DEQ
- Gail Achterman - Chair, Implementation Task Force
- Mary Kay Price - Chair, Certification, Audits, and Records Task Force
- Jerry Powell - Chair, Recycling Rate Task Force
- William W. Wessinger - Chair, EQC
- Emery N. Castle - Vice Chair, EQC
- Henry Lorenzen - EQC
- Carol A. Whipple - EQC
- Linda R. McMahan - EQC



## Kraft General Foods (KGF) Comments

### Oregon Proposed Rules OAR 340-90-310 through 340-90-430 and OAR 340-12-065

#### OAR 340-90-330 RIGID PLASTIC CONTAINERS

##### Page A-9

KGF supports ALTERNATIVE B definition.

Specifically we support ALTERNATIVE B because section (1)(b)(A) and (B) allows manufacturers the flexibility to chose the best method of determining volume. The hierarchy of measurement in ALTERNATIVE A establishes the labeled fluid measurement as the first test of volume, which is not necessarily the most accurate, as it can be variable for different products in the same rigid plastic package depending on product density and method of manufacture. Therefore, in most cases, regardless of the labeled fluid volume, the liquid volume measure is the most accurate measure. Liquid volume measure represents the true volume of the rigid plastic container and is independent of product fill, product density, headspace, etc. Therefore, ALTERNATIVE B which allows the measurement of liquid volume, even if labeled in fluid volume, is the best test of the volume of the container.

We also support ALTERNATIVE B definition because it accurately defines a rigid plastic package by the inclusion of (1)(e), stating that a rigid plastic container is:

"...designed to completely contain a product, under normal usage, without other packaging material except a lid or closure."

This definition is consistent with the statute, SB66, which defines a package in Section 34a(3) as:

"...any container used to protect, store, contain, transport, display or sell products."

It is clear from this statutory language that a rigid plastic container is the package and that it is able to contain products on its own. The language says nothing about the rigid plastic container being a part of another package, or requiring additional packaging material to contain a product. Therefore, only ALTERNATIVE B which contains the language of 1(e) in which a rigid plastic container would have to be able to contain products on its own accurately reflects the intent of the statute. ALTERNATIVE A changes the meaning of a rigid plastic container from what was clearly the intent of SB66.

The definition of a rigid plastic container was discussed widely during the Implementation Task Force meetings. Written comments on the definition which were submitted during the development of the regulations on behalf of the American Plastics Council explain the issue thoroughly, and are attached for your convenience. (Attachment 1).

## **OAR 340-90-340 (5) EXEMPT RIGID PLASTIC CONTAINERS**

### **Page A-9**

KGF does not support either ALTERNATIVE A or B, because neither allows for new product packages after 1/1/95 to be exempted through source reduction. Please note that page 17 of the "Memo to Interested and Affected Parties", July 22, which accompanied the proposed regulations, *incorrectly* states that ALTERNATIVE B does allow for exemption of new packages through source reduction. (See Attachment 2). ALTERNATIVE B offers more flexibility for exemption of new packages between 1/1/90 and 1/1/95, but does not allow for exemption of new packages after 1/1/95. KGF has previously submitted suggested alternative language which is attached for your reference. (Attachment 3). KGF recommends this language be added to ALTERNATIVE B as OAR 340-90-340 (5)(a)(C).

Source reduction is basically the only way food manufacturers will be able to meet the law due to food safety and package integrity concerns with recycled content and reuse compliance options, and because of our inability as a manufacturer to control the recycling rate. Because source reduction is our only compliance option, the regulations as written effectively prohibit new food

packages manufactured after 1/1/95 from being introduced into Oregon. This is an unacceptable situation both for the consumers and businesses of Oregon, and is an inappropriate implementation of the statute. The Attorney General's opinion of May 31, 1994, states there is no basis for a source reduction exemption for new products in the statute. This interpretation is unfounded, impractical and speculative as to legislative intent regarding new product introduction in Oregon. While the statute may not have specifically addressed source reduction of new products, there is certainly nothing in the statute that prohibits new products and packages manufactured after 1/1/95 to utilize the source reduction exemption. The regulations should allow for a procedure by which new products and packages can be introduced, and be given a time period to establish a base package for which to compare a source reduced package. The reduction of solid waste is at the very foundation of the SB66, and to arbitrarily prevent new innovative source-reduced packaging methods to meet the law is clearly contrary to the legislative intent.

It is important to note that the regulations to the California rigid plastic packaging law (California Public Resources Code Section #42300 et seq.) recognized this issue for new packages and allows a one year waiver for new package introduction (California regulations to Rigid Plastic Package Container Program Section 17944.2 (a)(5); see Attachment 4). By granting a waiver, a base weight can be established for source reduction, thereby providing a mechanism for new packages to be introduced after the effective date of the law. The consumers of California will be able to enjoy new food products in rigid plastic packages that their neighbors to the north in Oregon will not find on their grocery shelves unless the Oregon regulations are changed.

## **ADDITIONAL COMMENTS**

### **SOURCE REDUCTION AS AN EXEMPTION TO THE RIGID PLASTIC CONTAINER LAW**

Source reduction should not be limited to a one-time five year exemption option, but instead should be an ongoing compliance option, just as recycled content, reuse, and recycling rate are. Source reduction is given the highest priority by the Environmental Protection Agency, and the Oregon statute as presently written works in opposition to this national priority. Further, a one-time exemption stifles innovative technologies for reducing the amount of plastic packaging in Oregon. KGF urges the DEQ to recommend to the EQC that Legislature amend the law to allow source reduction as an ongoing compliance option enabling manufacturers to utilize source reduction as a waste management tool in packaging, consistent with food safety and package integrity.

California recognized the significance of source reduction as a waste management tool and amended its rigid plastic packaging law to allow for source reduction as a one-time compliance option.

### **CORPORATE AVERAGING**

KGF supports corporate averaging of containers across all product lines and recommends that corporate averaging be included in the Oregon regulations as a vehicle for compliance with recycled content, reuse, or source reduction exemption.

Corporate averaging allows maximum flexibility for companies to comply with Oregon's rigid plastic packaging law while still achieving the goal of reducing packaging material to the Oregon solid waste stream. This flexibility has the advantage of offering companies some choice to selectively make only those package changes that will maintain product safety and package integrity. Further, package choice flexibility enables companies more opportunities to keep compliance costs down, and therefore consumer costs down. (See explanatory information in Attachment 5).

Without corporate averaging, some products in rigid plastic packages, particularly food products, which cannot individually comply, will not be able to be sold in Oregon. These products could probably remain in the marketplace if corporate averaging were allowed. The importance of corporate averaging was recognized in California, and included in the regulations. It is likely that the consumers of Oregon will not be able to enjoy some products in rigid plastic packages that will continue to be sold to consumers of California.



Patricia A. Enneking  
 Director  
 Regulatory Issues

March 29, 1994

American  
 Plastics  
 Council

Ms. Patricia Vernon  
 Manager, Solid Waste Policy & Programs  
 Department of Environmental Quality  
 811 SW Sixth Avenue  
 Portland, OR 97204

Ms. Gail Achterman  
 Chair, Implementation Task Force  
 Stoel, Rives, Boley, Jones & Grey  
 900 SW Fifth Avenue, Suite 2300  
 Portland, OR 97204

Re: Implementation Task Force's Current Rigid Plastic Container  
 Definition

Dear Pat and Gail:

We are writing to comment on the Implementation Task Force's provisional decision last Thursday to modify the DEQ "alternative 2" definition of a rigid plastic container (See Attachment 1, March 7, 1994 Draft Rigid Plastic Container Definition). In particular, we are concerned with the decision to strike section 1(e) of the definition which says, "Be designed to contain a product, under normal usage, without other packaging material except a lid or closure." This change results in a definition that does not, in our opinion, conform to the specific statutory language set forth in SB66 nor to the original legislative intent as we understood it.

Our specific concern is this. SB66 very clearly targets *rigid plastic containers* as distinct from other types of plastic packaging, including film and non-container rigid packaging. The staff proposed language in section 1(e) clarified the definition of a rigid plastic container as distinct from other plastic packaging. Without that section included in the definition, no clear understanding of container is provided. Instead, under the revised task force definition, a very broad spectrum of plastic and multi-material packaging is now subject to SB66 enforcement. The result: SB66 has been transformed from a rigid plastic *container* law to a plastic *packaging* law. As such, both the intent and the language of SB66 have been subverted.

Section 1(e) clarifies a container as "designed to contain...without other packaging...except <for> a lid or closure...." This wording meets the common sense test of a container as a package that basically *encloses* the product needing

A Joint Initiative with The Society of the Plastics Industry, Inc.

ATTACHMENT 1

only a top or lid for closure. Included are items the average Oregonian would consider a container – bottles, jars, cups, tubs, drums, pails, boxes and baskets. These are items we can all agree on. They also comprise the bulk of the items under consideration.

Section 1(e) as proposed properly excludes items not normally considered containers in and of themselves – cookie trays, packaging inserts and meat trays are prime examples. These items do not and cannot *contain* a product on their own. They hold, brace, provide a platform for, support, etc. a product but the product is in fact contained (e.g., enclosed) by other, additional and essential packaging – in most cases plastic film, polycoated paper, or boxboard. This type of plastic is properly defined as "other plastic packaging" rather than as a "rigid plastic container".

Let's look more closely at the statutory language in SB66 for guidance. Section 34a(3) defines a package as:

"... any container used to protect, store, contain, transport, display or sell products."

This language implies that the container is the package and that on its own it can contain products. This language says nothing about the container being part of another package, or requiring additional packaging material to contain a product. This language also specifies different capabilities that the container as a package must possess. To demonstrate our point let's test a cookie tray and a yogurt cup against these required capabilities:

can the plastic packaging on its own serve the following purposes in reference to a product:	yogurt cup (requires a lid for closure)	cookie tray insert (requires a box, bag, or flexible wrap to completely enclose or contain the product)
protect	yes	no
store	yes	no
contain	yes	no
transport	yes	no
display	yes	no
sell	yes	no

As you can see, the cookie tray fails to meet any of the six tests used in the law to describe a container that is, for the purposes of SB66, considered a package. On its own, the cookie tray cannot be considered a package.



The other relevant definition in SB66 is found in section 34a(8):

"Rigid plastic container" means any package composed predominantly of plastic resin which has a relatively inflexible finite shape or form with a minimum capacity of eight ounces and a maximum capacity of five gallons, and that is capable of maintaining its shape while holding other products."

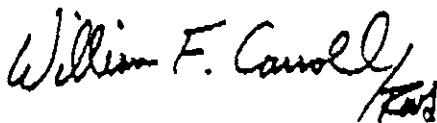
Note that all the language in this section refers to the word "package" as defined above in association with the term "rigid plastic container". Thus for the purposes of SB66, a rigid plastic container is a package which is rigid and 8 ounces to 5 gallons, is predominantly made of plastic and *on its own* can contain a product.

Thus we can only conclude that the statutory language clearly excludes the cookie tray, meat tray, packaging inserts and other similar plastic packaging. These items do not meet the definition of package or container as described in SB66.

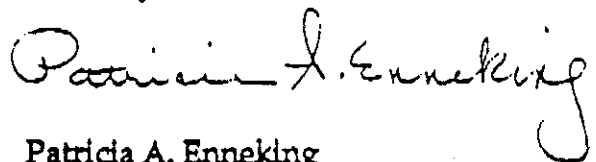
We expect that the DEQ will review the current definition as proposed by the Implementation task force against the statutory language in SB66 at the April meeting. We do not expect to find consensus on this issue, given the discussion at the last meeting; however, we feel it is important for the DEQ to discuss the inconsistencies with the task force. In its efforts to obtain the best possible advice from its citizens/industry group, the DEQ is best served if that advice largely conforms to, rather than contradicts, the law.

We thank you for your attention to this important matter and appreciate your consideration of our concerns:

Sincerely,



William F. Carroll  
Director, Commercial Development  
Occidental Chemical Corporation



Patricia A. Enneking  
Director, Regulatory Issues  
American Plastics Council

WFC/PAE

cc: William Bree, Project Manager  
Solid Waste Policy & Programs, DEQ

Memo To: Interested and Affected Public  
 July 22, 1994  
 Page 17

weight by 10%. Another option would be for a product manufacturer to establish a recycling program to achieve a 25% recycling rate for the "product-specific" rigid plastic containers they use. Yet another option would be to create a reusable container program. These options may involve considerable expense. If no compliance option can be found, the product manufacturer may have to remove the product from the Oregon market.

Many product manufacturers are constrained in their choice of container material by other state or federal laws (FDA, US Department of Transportation, etc.). These laws may restrict or prohibit use of recycled content in plastic containers, or prohibit reuse of containers. Some manufacturers may wish to petition the FDA for a "no-objection" determination to enable them to use containers with recycled content. This is a lengthy process. These restrictions may result in some switching of type of packaging material (from plastic to paper, for example).

NOTE:  
 ALTERNATIVE B  
 DOES NOT ALLOW  
 FOR SOURCE  
 REDUCTION  
 EXEMPTION OF  
 NEW PRODUCTS  
 AFTER 1/1/95

Product manufacturers (especially food processors) who comply by using the "reduced container" exemption may be constrained in their ability to introduce new products; the "reduced container" exemption requires that there be a rigid plastic container in existence five years earlier from which to gage the "reduction" of the container (unless Alternative B of the rule is adopted, allowing exemption for new products). \*

Point-of-sale packagers such as delicatessens which use regulated rigid plastic containers will also have to keep records of compliance. They may want to rely on the supplier from whom they purchase rigid plastic containers to give them a manufacturer's Certificate of Compliance for the container.

Product manufacturers will have to set up a recordkeeping system which maintains the documents needed to demonstrate compliance with the Law. Records must be kept for three years.

2. Container manufacturers, who produce or generate a rigid plastic container used for a packaged product that is sold or offered for sale in Oregon. Container manufacturers must:
  - a. Provide a Certificate of Compliance to product manufacturers who use the rigid plastic containers manufactured by the container manufacturer. The Certificate of Compliance must state that the

KRAFT GENERAL FOODS

DEBORAH A. BECKER  
VICE PRESIDENT  
ENVIRONMENTAL POLICY

May 10, 1994

Mr. William Bree  
Oregon Department of Environmental Quality  
811 S.W. 6th Ave.  
Portland, OR 97204

RE: Source Reduction Language to Cover New Rigid Plastic Containers

Dear Bill:

I have reviewed the revised draft regulations pertaining to the exempt rigid plastic containers (OAR 340-90-420). The revised regulations still do not clearly address the issue of source reduction when pertaining to new introduced containers into the marketplace that had no previous rigid plastic container. In my memo of April 19 to you, I suggested an approach to the drafting of these regulations that used the date the container was sold rather than the date the container was changed to a reduced container as the basis for the determining the reduced exemption. Since it seems that the preferred approach of the Department is to use date the container was changed to a reduced container as the basis for the regulations, I have modified my original suggestion to cover new rigid plastic package introductions as follows to be consistent with the Department's approach:

- (C) For a rigid plastic container that the manufacturer will seek a reduced exemption after January 1, 1995 because no rigid plastic container existed for comparison within the 5 years prior, for the purpose of being a reduced container:
  - (i) The baseline product/package ratio is that ratio at the time of commercial sale
  - (ii) The reduced container exemption will begin five years after the date of commercial introduction, and extend for five years. During the period of January 1, 1995 but prior to the qualifying date for a reduced exemption, the container does not have to meet other compliance options.



ATTACHMENT 3

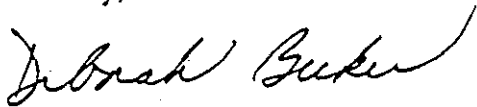
Mr. William Bree  
Source Reduction Language  
May 10, 1994  
Page Two

- (iii) Product manufacturers of containers seeking reduced container exemptions after January 1, 1995, will maintain compliance records verifying intent to meet the reduced container exemption. If audited by the Oregon DEQ prior to the reduced exemption taking place, the manufacturer shall provide to the DEQ a record of intent to obtain a reduced exemption. If the reduced exemption is not achieved by the end of the five year period, the product manufacturer will be in violation of the Act since the enforcement date.

I can't emphasize enough the importance of addressing this issue in the regulations. Without treatment of this issue, new introductions of rigid plastic food containers will not be feasible in Oregon. This will put businesses and consumers of Oregon at a disadvantage to the rest of the country. This is something we certainly do not want, and I'm certain the Department does not either. I believe that the above suggestion is in line with the intent of the law, and will address this issue for manufacturers who are in good faith trying to comply with SB66.

Thank you for your consideration of my suggestion.

Sincerely,



Deborah A. Becker

DAB/pmv

CC: Pat Vernon  
Gail Achterman  
Dave Barrows  
Peggy Martin  
Jaye Nagle  
Ted Banks

**Section 17944.2 HOW WILL WAIVERS BE GRANTED?**

**(a) Which rigid plastic packaging containers are eligible for waivers from this program?**

Waivers are allowed under the following conditions:

(1) The postconsumer content compliance option is waived for rigid plastic packaging containers if they cannot meet the postconsumer material requirement of §17944 of this Article and remain in compliance with applicable state and federal regulations, including those adopted by the United States Food and Drug Administration. Containers waived under this condition must comply under another compliance option.

(2) The postconsumer content compliance option of §17944 of this Article is waived for rigid plastic packaging containers if it is technologically infeasible to use 25 percent postconsumer content. Containers waived under this condition must comply under another compliance option.

(3) All requirements of §17944 of this Article are waived for all product manufacturers if less than 60 percent of the single family homes in California on and after January 1, 1994, have curbside collection programs, as defined in §17943, that include beverage container recycling. This waiver is not valid if 60 percent or more of California's single family households have access to curbside collection programs that include beverage container recycling. "Beverage container recycling" is defined in the Beverage and Container Recycling and Litter Reduction Act, Public Resources Code §§14504 and 14505, and refers only to containers for beer, wine coolers, carbonated water and soft drinks.

(4) All requirements of §17944 of this Article are waived for a product manufacturer if by January 1, 1995, 50 percent, by number, of the product manufacturer's rigid plastic packaging containers sold or offered for sale in California, contain at least 25 percent postconsumer material, and all the manufacturer's containers will be in compliance using any option listed in Section 17944 on or before January 1, 1996.

(5) All requirements of §17944 of this Article are waived for an introduced product, as defined in §17943, for 12 months immediately after the date on which it is first sold or offered for sale in California.

(6) All requirements of §17944 of this Article are waived, until January 1, 1997, for containers that hold food or cosmetics, as defined in §17943 of this Article.

**(b) I am a product manufacturer. How do I receive a waiver?**

(1) To receive a waiver for your rigid plastic packaging containers pursuant to Section 17944.2 (a), you may only petition the Board as part of the compliance verification and auditing process described in Sections 17944.2 and 17947 of this Article. You must submit to the Board by certified mail a written request containing the information below, in order for the Board to consider granting a waiver:

## Corporate Averaging for Compliance with Oregon's Rigid Plastic Packaging Law

Corporate averaging allows maximum flexibility for companies to comply with Oregon's rigid plastic packaging law while still achieving the goal of reducing packaging material to the Oregon solid waste stream. This flexibility has the advantage of offering companies some choice to selectively make only those package changes that will maintain product safety and package integrity. Further, package choice flexibility enables companies more opportunities to keep compliance costs down, and therefore consumer costs down.

### Maintaining Product Safety and Package Integrity

Many packages, and in particular FDA regulated packages, have limited ability to comply with the source reduction, recycled content or refill requirements of the law because of product safety and package integrity concerns. It is precisely because of this limited ability to comply that corporate averaging is advantageous for complying companies, consumers, and the regulators of the state of Oregon. In packages where technical limitations impede a companies ability to safely achieve 10% source reduction, 25% recycled content, or refill requirements, corporate averaging would offer the opportunity for these packages to remain unchanged or to be changed only slightly while taking advantage of averaging with packages that may technically be able to achieve compliance levels above those required by the law.

Allowing Package Choice to Keep Consumer Costs Down

In the area of source reduction, corporate averaging offers the potential to minimize the number of source reductions that do not have a favorable financial impact and maximize those that do, while still achieving compliance.

Source reductions in general represent one time expense for package molds, change parts for packaging lines, resources for performing package qualification testing, and packaging equipment. Annual cost savings generally result from decreased material cost. The total amount of cost and savings incurred in each package change is dependent on many factors including number of mold changes required, size of the business, equipment needs, etc. Because of these factors, individual source reductions will result in varying degrees of cost justification, amongst which companies can choose under the flexibility of corporate averaging to minimize cost.

Likewise in the case of recycled content, there can be a significant premium charged for recycled content. Corporate averaging allows the opportunity to minimize the number of recycled content package changes that need to be made, thereby realizing a least cost compliance solution.



# American Pet Products Manufacturers Association, Inc.

511 Harwood Building • Scarsdale, NY 10583 • (914) 472-1103 • FAX (914) 472-2289

August 29, 1994

Deanna Mueller-Crispin  
Department of Environmental Quality  
Waste Management & Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

RE: Proposed Implementing Rigid Plastic Container Regulation

Dear Ms. Mueller-Crispin:

The American Pet Products Manufacturers Association (APPMA) is a trade association representing more than 380 pet product manufacturers (close to 40% of our members are small manufacturers, i.e., with gross annual sales of less than \$500,000 nationally.) Our industry employs more than 250,000 individuals in the manufacturing, distribution and marketing of specialty pet products, many of which (such as flea and tick repellents) are necessary for the continued health and comfort of the pet. Additionally, a recent national survey showed that over half of all U.S. households own a companion animal (approximately 256 million pets).

APPMA has reviewed the proposed regulation and appreciates the opportunity to present our concerns. In short, we propose that if the regulation is to be implemented that the Task Force recommend, and the Legislature adopt, legislation providing an exemption for those products registered under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), that under the definition section of the implementing regulation that "Alternative B" be used to define what constitutes a "package", and finally that the implementation of the regulation be delayed for one year after the Department has determined the rate of recycling as required.

## FIFRA Exemption

As proposed, the implementing regulation does not provide an exemption for those products registered under FIFRA. A careful

42

President  
**Mark Stern**  
Eight In One Pet Products

First Vice President  
**Kenneth Humpert**  
Finny World Class Pet Products, Inc.

Second Vice President  
**Dennis Curley**  
Lazy Pet Products

Third Vice President  
**James W. Wingate**  
MIDWEST Homes for Pets

Secretary/Treasurer  
**Clark R. Allen**  
Combe Incorporated

Executive Vice President  
**Jules Schwimmer**

Directors  
**L. Bryant Barry CSE**  
Zodiac Pet Products  
Sandoz Animal Health

**Robert A. Cuthbert**  
Lambert Kay

**Gary S. Hirschberg**  
Vo-Toys, Inc.

**Art Hopkins**  
All-Glass Aquarium Co. Inc.

**David C. Horton, Jr.**  
Horton Company Inc.

**Allan L. Levey**  
The Wardley Corporation

**Bart E. Schilliacci**  
The Bramton Company

**Bud Snyder**  
Marineland Aquarium Products

**Royal D. Soward, Jr.**  
Zema Corporation

**Jon Willinger**  
Tetra/Second Nature

General Counsel &  
Director Legislative Affairs  
**David Martin, Esq.**

Director Member Services &  
Public Relations  
**Clare DeNicola**



reading of the statute indicates that the Department may not adopt by regulation any other exemption or waiver except those specifically listed. Therefore, if an exemption for FIFRA registered products is to be granted, it must be done vis-a-via statutory amendment. We respectfully request that the Task Force recommend that an exemption be added to the statute for FIFRA registered products.

As currently written, the statute requires that any rigid plastic container must either be either of a certain percentage of recycled content, must be recycled at a certain percentage rate, or be reusable. This standard is impossible to meet and directly conflicts with federal requirements under FIFRA. Under FIFRA a product cannot be recycled. Indeed, the label must contain specific directions as to the disposal of the container, e.g., wrapped in newspaper and discarded. Hence, the container cannot be reused or recycled, and this eliminates two of the three options noted under the statute. The third option, that the container be made of recycled content is not feasible when the product in the container is one registered under FIFRA. First, in many instances a manufacturer of a product is not aware of the recycled content of the container itself. Since the container is from a variety of sources, including those outside the state of Oregon, the effect of this legislation is to require every container to be certified as to its content. This is simply impracticable and economically unfeasible. Second, even assuming that the recycled content of the container is known, it is often required when dealing with products registered under FIFRA that the container be of virgin material. Because of the variety of different recycled materials used in a recycled content containers, and the variety of formulations that are used in FIFRA registered products, a manufacturer may have no alternative but to use virgin container material. Otherwise, the manufacturer runs the risk that the product and container will react unpredictably with one another. Further, given the current proposed regulation from the U.S. Environmental Protection Agency, e.g., pesticide container rinsing, it is suggested that meeting any standard developed under that regulation will be impossible if recycled content containers are used. It is simply not possible for a manufacturer of a product registered under FIFRA to determine in advance what the recycled material of the container is, and assure that all containers are of identical recycled content, and then determine with accuracy how the recycled content package will affect the formulation or visa-versa. Hence, manufacturers must use virgin container materials when dealing with FIFRA registered products.

Next, we would like to address the issue of a what constitutes a "package" as defined by the regulation and statute. According to the report, the Task Force could not agree as to the definition as to what constitutes a "rigid plastic container" and so developed two alternatives: Alternative "A" and Alternative "B". There are significant differences

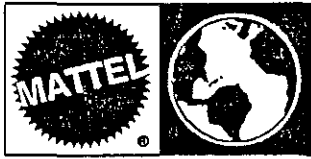
between the two alternatives. It is our contention that the Legislature contemplated Alternative "B" when it developed the statute. We feel that the Legislature intended that a rigid plastic container must be designed to completely contain a product, under normal usage, without other packaging material except a lid or closure. Additionally, we believe that the Legislature did not intend to include plastic tubes which can be easily hand folded, flexed, and twisted without damage to the container (such as shampoo tubes) within the purview of the statute.

Finally, we would like to address the issue of the inherent "Catch-22" situation that implementation of the regulation as of January 1, 1995 will place manufacturers. Under the regulation, the regulation will go into effect on January 1, 1995 regardless of whether or not the Department has determined the rate of recycling for the various types of plastic containers in use. At the same time, the regulation requires the manufacturer to act as if that rate had been determined. This is a "Catch-22" situation. In essence, it requires a manufacturer to make an assumption and to commit valuable resources to that assumption when the assumption is based on something totally unknown to both the manufacturer and to the state, and which will most likely be in error. To place a manufacturer, an employer, in such a situation is foolish. We respectfully request that implementation of the regulation be stayed until such time as the department is prepared to give the required rates of recycling, and to further stay the date for compliance until one year after such figures are made known.

Thank you for this opportunity to present our views. APPMA stands ready to assist the Task Force members on implementation of the proposed regulation.

Sincerely,

David Martin, Esq.  
Director of Legislative Services  
General Counsel



# MATTEL, INC.

OFFICE OF CORPORATE ENVIRONMENTAL AFFAIRS

333 Continental Blvd., M/S M1-1520, El Segundo, CA 90245 \* (310) 524-3681 / FAX: (310) 524-2286

August 30, 1994

RECEIVED  
SEP 1 1994

Mr. William Bree  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

LETTER OF TESTIMONY  
RE: OREGON'S RIGID PLASTIC CONTAINER LAW

Dear Mr. Bree,

In regards to the above draft rules, there is no explicit reference regarding reusable containers that function to store nonconsumables. Examples of such containers include those used to store a power drill and drill bits, modeling clay, straight pins, etc.

Three distinct points can be made:

1. Definition of product: In the above instance, the product itself does not necessarily have a short lifecycle, is not readily consumed or "used up." Therefore, continued reuse of the container is an essential function of the product, which is not to be readily disposed of.
2. Definition of container: Again, in the above examples, it is evident that the container serves not only for product conveyance but is actually an integral part of the product as a storage receptacle.
3. Fact of "negligible benefit": These types of "storage containers," by virtue of their longevity as part of the product they contain, constitute only a minuscule portion of the waste stream. This negligible environmental benefit would be realized only at great expense and imposition placed on industry.

Mr. William Bree  
August 22, 1994  
Page 2


I want to thank you for the opportunity to comment on Oregon's Rigid Plastic Container Law and to request that you carefully consider the above three important points. If I can be of further assistance please call me at (310) 524-3687.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer A. Snyder", with a long horizontal flourish extending to the right.

Jennifer A. Snyder  
Environmental Specialist

cc: Maki Papavasiliou, VP Corporate Environmental Affairs

Mission  
Packaging Inc. 

August 26, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Dear D.E.Q.,

Thank you for your hard work regarding definitions of rigid plastic containers. I know this process has been difficult and time consuming. However, proper definition is extremely important to all.

This letter is written in support of alternate "B". This definition makes it easier for regulating entities to implement the law. Alternate "B" will reduce confusion relative to composition studies. Judgement calls will still be required using alternate "B", but on a much narrower basis and with added guidance provided by a better definition of the term "container".

Please consider this point carefully.

Sincerely,

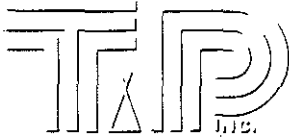


Bob Stoddart  
Mission Packaging  
Recycling Markets Development Council

cc: Geoff Roe  
Peter Ruben  
Connie Bills  
file

RECEIVED  
SEP 1 1994

Waste Management & Cleanup Division  
Department of Environmental Quality



**TRI-PLAS, INC.**

1755 East Acacia Street, Ontario, California 91761

909/947-4681  
FAX 909/947-2497

Sept. 1, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
State of Oregon  
811 S.W. 6th Avenue  
Portland, Oregon 97204

RE: Comments; OAR 340-90-310/430 Rigid Plastic Container  
Re-cycling Law.

Gentlemen:

In response to your request for public comments on two alternative versions of revisions proposed to the Oregon Rigid Plastic Container Recycling Law referenced above, Tri-Plas, Inc. a multi-plant manufacturer of rigid plastic containers, appreciates this opportunity to commend the rational approaches incorporated in Alternative "B".

Alternative "B" is narrower in scope, provides a clearer definition of a "container", and specifically excludes certain other plastic packaging products that the Rigid Container Law is not intended to include.

Alternative "B", therefore, should be easier to implement, it should reduce confusion in the compilation of waste reduction studies, and will, therefore, better advance the objectives of the Oregon Waste Management and Cleanup Division.

Respectfully submitted,

A handwritten signature in cursive script that reads "Frank".

Frank DeVore  
CEO

RECEIVED  
SEP 6 1994

Waste Management & Cleanup Division  
Department of Environmental Quality



INJECTION MOLDED PLASTICS • CONTAINERS/LIDS/DRINKWARE





August 29, 1994 RECEIVED  
SEP 1 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

Subject: Eastman Kodak Company's Comments on Oregon's Rigid Plastic Container  
Proposed Rule

Dear Sir/Madam:

Kodak is a manufacturer of photographic films, papers, chemicals, and other imaging products. Kodak operates manufacturing, processing, and distribution facilities in several states and anticipates that this proposal will impact Kodak operations.

We appreciate this opportunity to comment on Oregon's Rigid Plastic Container proposed rules (OAR 340-90-310 through 430) and modifications to OAR 340 Division 90 dated July 18, 1994.

Kodak has supported the voluntary approach to reduce packaging through the Coalition of Northeastern Governor's initiatives and by implementing several Kodak sponsored recycling and reuse programs. These programs were established to address a variety of packaging materials associated with our products. We have committed extensive resources to insure that we are applying the four "R"s when making packaging decisions or changes. As such, we request your consideration of these comments and recommendations and hope that the Department finds them helpful and constructive in preparing a sensible and effective final rule.

Sincerely,

Dianne M. Boss  
Resource Recycling Specialist  
Kodak Environmental Services

DMB/dmb  
/Attachment

c. G. Allen



1. OAR 340-90-330 Rigid Plastic Containers:

Kodak recommends that the Department incorporate definition B for rigid plastic containers into the final rule. Definition B will facilitate product manufacturers ability to determine which of their plastic containers are regulated. In addition, the Department will also benefit, as the use of a specific definition of rigid plastic containers will significantly reduce product manufacturer inquiries regarding container compliance.

2. OAR 340-90-340(5) Reduced Container:

Kodak recommends that the Department incorporate definition B for reduced containers. Definition B will provide the necessary compliance flexibility (source reduction) as new products are introduced into the marketplace after 1995. Innovative material and plastic container technologies are continuing to evolve, thus source reduction opportunities for plastic containers introduced after 1995 are conceivable. Therefore, source reduction must always remain an available option for product manufacturers to pursue at any time in the future.

Kodak recommends that the proposed language be modified to allow the use of source reduction as a compliance tool for plastic containers introduced into commerce after 1995. We suggest that the language allow product manufacturers a two year exclusion period (from the date of introduction of a plastic container) before the container must comply with the rule. This will provide the product manufacturer a reasonable timeframe to evaluate new technologies and materials necessary to further source reduce their plastic containers.

3. OAR 340-90-340(6)(a)(C) "Substantial Investment" Exemption:

To meet the exemption criteria, this provision requires a recycling rate of at least 20% be achieved by 1995 for a particular plastic material. This requirement does not encourage future materials innovations to be developed after 1995, as there is no way that a material that did not exist in 1995 could have a 20% recycling rate (and thus also achieving a 25% rate by 1997 (E)). We suggest that DEQ encourage innovation by allowing a new material an exclusion period of 5 years to achieve the 25% recycling rate goal.

4. OAR 340-90-350 (2) Compliance Standards:

Kodak recommends that the language in (2) be modified to "grandfather" the use of containers that are made before 1995, but filled during or after the year 1995. For a limited number of specialized, small sales volume products contained in plastic containers, Kodak purchases multi-year quantities to minimize procurement costs. This special purchase satisfies production demands for several years. While these containers have been included in our compliance plans, Kodak believes that we should be permitted to deplete existing plastic container inventories. We feel that this recommendation is consistent with the spirit of the Oregon law.



5. OAR 340-90-380 (2) Aggregate Recycling Rate:

Kodak is concerned that the methodology for calculating the aggregate recycling rate does not utilize the same container criteria for calculating the numerator and denominator. We believe the calculation will yield an artificially low recycling rate for plastics recycling in Oregon. Based on the language in the proposed rule, the numerator of the equation is restricted to rigid plastic containers 8oz-5 gallons in size, where as the denominator includes the total weight of all rigid plastic containers disposed of in Oregon (plus the sum of the plastic recycling rate for 8oz-5 gallon containers).

Kodak believes that companies who are recycling rigid plastic containers of any size should be allowed to report that figure in the numerator, thus maintaining the same criteria for calculating the numerator and denominator of the equation. As an example, Kodak has a recycling program that has been set up to recycle photographic components which include 35mm film canisters (black plastic). We believe that this effort should be recognized as solid waste is being reduced and thus reflected in the calculation of the plastics recycling rate, even though the film canisters are under 8 ounces in size. Based on the present formula, the recycled plastic film canisters plastic would be excluded from the calculation of Oregon's plastic recycling rate.

We are also concerned about DEQ's reliance on the recycling community's voluntary submission of recycled material data in order to calculate the plastics recycling rate in Oregon. Since recycling is a low profit business, recyclers often start up and go out of business quickly. As a result, it will be very difficult for DEQ to keep track of operating plastic recycling facilities reclaiming Oregon plastics and thus to collect accurate data for the recycling rate calculation. In addition, the recyclers may not have the staff or time available to adequately tabulate the data that DEQ is requesting and this will also deflate the calculated plastic recycling rate.

6. OAR 340-90-410(4) Responsibilities of a Container Manufacturer:

Kodak suggests the use of a 2 year records retention requirement instead of the proposed 3 year requirement. Most businesses operate under a 2 year system, hence it would be very cumbersome to keep the data for more than 2 years. For instance, some of the data required for reporting under these regulations may be held in computer systems that cannot hold data for more than 2 years. A two year record retention requirement would also be consistent with plastic packaging requirements in other states such as California.

7. Corporate Averaging:

Kodak requests that corporate averaging be incorporated in the DEQ regulations. Corporate averaging allows product manufacturers to comply with the regulations in the most beneficial and cost effective manner for both product manufacturers and their customers. For example, Kodak has specific plastic container types that can only comply with the proposed rules using the recycled content option. Some of these containers could tolerate more than 25% recycled content in them and still meet the performance criteria necessary to protect the product inside. However, the remaining containers are not well

suited to contain any recycled content due to the nature of the products inside them and stringent transportation requirements set forth in DOT regulation and UN guidelines. If corporate averaging were allowed in this case, Kodak could utilize all of the recycled materials (more than 25%) in the containers that are most tolerant to insure compliance for the containers that are not well suited to contain recycled content. This would reduce the risk of recycled content container failure, and would minimize the expenses associated with compliance to the rules. If the goal of the law is to keep specific plastic material out of landfills, product manufacturers should be allowed to use recycled content, or any other compliance method, wherever they can achieve the greatest gains at minimal risk and cost.

Kodak also uses a limited number of styles of rigid plastic containers to package a wide variety of products in. From a reporting and reviewing standpoint, allowing the averaging of these specific container styles is less burdensome for both Kodak and DEQ.

8. OAR 340-90-400 (4(c)(A)(B)(C), 5(a)(C)) Responsibilities of a Product Manufacturer:

In order for companies like Kodak to respond efficiently to DEQ requests for plastic container data, it would be extremely helpful if there was a standard amount of time given to product manufacturers for any request from DEQ for information. Presently, there are some discrepancies between the time frame requirements between Oregon and California that could create confusion or mix-ups from the company staff reporting the information. There are even differences in the time allowed to send information to DEQ within the proposed rules, depending on the level of the request from DEQ (60 days for compliance report, 30 days for additional compliance information, 45 days for support documentation for compliance reports). Since it can take a significant amount of time to collect all of the information from each internal Kodak Business Unit, we recommend that the rules be changed to give product manufacturers a standard 60 day response time for any type of inquiry that is made by the state. In addition, we request that you maintain an option for a 30 day extension in case of extenuating circumstances.

9. OAR 340-90-420 Confidential Information Procedure:

Kodak urges DEQ to delete section (2) (a) and (b) of this section, thereby eliminating the potential of releasing confidential information to our competitors. Kodak has many competitors in the marketplace in the USA and worldwide. In order to protect our business, we need to make sure that this information is not being provided to our competitors. In addition, we would ask that the regulations state how the information sent into the state should be marked such that it is clearly identified by DEQ to be confidential information. We would propose that a section be added to section 420 clearly stating that any confidential information be marked with the wording: Confidential- Trade Secret- Do Not Release.



OREGON RIGID PLASTIC CONTAINER REGULATIONS  
OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY PUBLIC HEARING  
Thursday, September 1, 1994

TESTIMONY BY  
ROBIN M. GENTZ, SENIOR GOVERNMENT RELATIONS REPRESENTATIVE  
THE CLOROX COMPANY

My name is Robin Gentz, Senior Government Relations Representative, for The Clorox Company. Clorox, headquartered in Oakland, California, manufactures and markets a wide variety of household cleaning, barbecue and insecticide products. The company owns and operates The Kingsford Products Manufacturing Company in Springfield, Oregon. The facility employs 90 people with a total annual payroll of approximately \$800,000. I am here today to offer comment regarding DEQ's proposed rules implementing Oregon's Rigid Plastic Container Law.

Our company is vitally concerned with the environmental impact of our products, our manufacturing processes, and our packaging. We recognize clearly that our business must exist in a sustainable system.

**The Clorox Company urges the inclusion of "corporate averaging" in the proposed rules before you today.** Corporate averaging will allow packagers to average across product lines and will result in more recycled material being used in a shorter amount of time. The intent of the law is to remove materials from the solid waste stream. **Company-wide averaging will accomplish at least as much diversion and, more likely, significantly more in a shorter period of time.** Averaging will offer all packagers more flexibility and cost-effectiveness in meeting a content requirement by allowing packagers to focus on their largest volume items. This will stimulate market demand and increase the overall recycling rate.

**Regulatory barriers to using recycled plastic for regulated products are decreasing.** Recycled plastic is already being used in some food packages. For personal care products, recycled material is also already being used and is likely to proliferate. Improvements in the control of collection systems and in the reprocessing of plastics will continue to increase the kinds of plastics and kinds of products which will be allowed to use recycled material in plastic packages. **Accordingly, it seems illogical for a regulatory agency to take a position which will delay accomplishing the intent of the law when there is admittedly no language in the law which prevents the agency from taking a more progressive stance.**

## Oregon Rigid Plastic Container Regulations

September 1, 1994

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**Secondly, The Clorox Company supports "Alternative B" for the definition of "rigid plastic container."** Alternative B specifies that a rigid plastic container must be "designed to completely contain a product...without other packaging material except a lid or closure" which focuses on the major items in the waste stream where our limited resources should be concentrated. Alternative A includes "small" quantity items that are extremely difficult to get recycled content into and are a very small part of the waste stream.

**Third, we suggest that when seeking the "reduced container" exemption that manufacturers be allowed to compare their packaging to "packaging used in commerce that same year for similar products whose containers have not been considered source reduced."** As currently written, packagers would have to introduce a heavy container and then take the weight out later rather than saving that material and, therefore, less waste, right from the beginning. California's definition of "source reduced container" includes this provision which we believe provides additional incentives for manufacturers to develop creative packaging solutions.

**Finally, manufacturers should be allowed to use national data to fulfill recordkeeping requirements which could then be prorated based on Oregon's population.** Our company sells a substantial amount of product to national chains. Because products are bought at a central distribution point, generally outside the State of Oregon, we have no mechanism to track what actually gets shipped into Oregon. We believe that prorating national data on a population basis is the most accurate information we can develop.

Clorox actively supports overall material stewardship and stands ready to comply with the spirit of this law. We appreciate the opportunity to appear before you today on this important public policy issue and respectfully request your consideration of these comments.



1901 North Moore Street  
Suite 1111  
Arlington, VA 22209  
703-527-7505  
703-527-7512 FAX

**FOODSERVICE & PACKAGING INSTITUTE COMMENTS**

**BEFORE**

**THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
ON THE RIGID PLASTIC CONTAINER REGULATIONS**

September 1, 1994

My name is Tim Mowry and I am the regional sales manager for Dolco Packaging Corporation in Wenatchee, Washington. Dolco is a national manufacturer of point-of-sale <sup>polystyrene</sup> foodservice containers and is a member of the Foodservice & Packaging Institute. I am commenting today on behalf of FPI and its members.

FPI is the national, material-neutral trade association representing the manufacturers of single-service paper, plastic and aluminum foodservice containers and packaging. FPI also represents the companies who supply and distribute foodservice containers and packaging.

There are approximately 10,000 point-of-sale foodservice establishments in Oregon that fill foodservice containers for sale to the consumer. Sales of plastic point-of-sale foodservice containers in Oregon are estimated at \$12 million a year and plastic foodservice containers are estimated to be 0.26% of the Oregon solid wastestream.



FPI will be submitting detailed written comments for the record -- in my comments today, I'd like to briefly describe some of the problems the point-of-sale foodservice industry, and others who use generic food containers, such as the small food processors, will face if the July 22, 1994 Rigid Plastic Container Regulations are implemented.

First, I'd like to point out that there are inherent differences between these and other containers regulated by this law. Second, these differences create problems that will make it impossible for container manufacturers, as well as the product manufacturers who use these containers, to comply.

At the very heart of the Rigid Plastic Container law and the implementing regulations is the assumption that there is at least one "option" a company or an industry can choose to comply with the regulations.

Theoretically, retail foodservice establishments, food processors and container manufacturers might be able to meet one of the compliance "options." Realistically, however, the incompatibility of the regulations to the foodservice industry leaves no compliance options for foodservice container manufacturers and their customers.

I'd like to explain why point-of-sale foodservice containers and generic food containers are different from other regulated containers. There are two very important differences: 1) the containers move through commerce differently and 2) they are not associated with a particular food product or type of product.

Retail stores and small food processors often purchase generic containers "off-the-shelf" from a third party such as a broker, distributor and/or warehouse club, and not directly from a container manufacturer. Because the containers are purchased through a third party, manufacturers often don't know who purchases the generic containers, and they also don't know where those stock containers are sold. In these cases, the point-of-sale foodservice establishments and small food processors do not have direct relationships with container manufacturers.

The absence of direct relationships precludes compliance. It would be difficult, if not impossible, for retailers, food processors and container manufacturers to communicate and obtain the necessary compliance data. Therefore, it would be impossible to correlate the data to a specific "option."

As I mentioned, these containers are often generic and are not associated with a particular product. However, it appears that there is the underlying assumption that regulated containers are associated with a particular product or type of product.

For example, the formula to meet the source reduction option is based on "container to product ratios." These cannot be determined for point-of-sale or generic containers. A generic, stock cup isn't associated with a product and couldn't be compared to the same container, used *for the same product*, used five years earlier by the same product manufacturer. A generic foam cup could contain soup, a hot or cold beverage, ice cream or yogurt, depending on the specific needs of the retailer or processor who purchased the generic container - and a retailers' or processors' needs could change overnight if items are added or deleted from the menu or if portion sizes change.

My second major point is that these differences, as well as the nature of generic and single-use food containers, create problems when attempting to apply the RPC regulations to the point-of-sale foodservice industry. When considering compliance "options," point-of-sale and generic food containers are severely disadvantaged when compared to the options available to other regulated containers. There are no realworld "options" for point-of-sale and generic food containers.



I'd like to briefly run through the "options" and explain what I mean.

First, reusing or refilling single-use foodservice containers is not an "option." Single-use containers are sanitary and reuse is prohibited by the federal Food Code.

Second, incorporating 25 percent recycled content into each production run for each container is not an "option" for point-of-sale and generic food containers. Although Dolco has, and is, voluntarily incorporating postconsumer recycled content into certain food containers, specifically egg cartons and school lunch trays, recycled content is not an "option" that would be available across-the-board.

The application of the process is very limited and can only be used on a case-by-case basis. For example, for Dolco to incorporate recycled content into school lunch trays, we must have complete control of the source of the postconsumer material and it can only be used for these specific lunch trays. The customer, Los Angeles Unified School District, had to make a specific commitment to the process and subsidize the additional costs which are significant.

This type of customer/supplier relationship does not exist between most point-of-sale foodservice customers or processors who purchase generic containers and the container manufacturer. This relationship is critical to control the quality and supply of the postconsumer material.

Food contact materials are regulated under the federal Food, Drug and Cosmetics Act and Food Additives Amendment. Under these provisions a food additive, including materials used to manufacture food packaging, may not be marketed without prior FDA approval.

FDA may issue a letter of "no-objection" for use of recycled content in food-contact packaging on a case-by-case basis. To receive a letter of "no-objection" manufacturers have to submit scientific and technical data to the FDA through a formal petition process. The data includes the proposed conditions of use of the postconsumer material, the intended technical effect on the food package, the quantity of the additives required to produce such effect, the method of analysis of the additive, migration-testing data under expected conditions of use and toxicity data.

Since many of the containers I have described are manufactured for multiple-uses (meaning a cup could hold acidic tomato juice or a carbonated beverage or water and a tray could hold meat or fruit or cookies), a manufacturer must ensure that the recycled content won't adulterate any food or beverage held by the container.

To incorporate postconsumer content in a deli container, for example, testing would have to be done for a variety of food, at a variety of different temperatures for a variety of different uses. Extensive testing would have to be conducted because the manufacturer doesn't know what food product the container will ultimately hold. Manufacturers of food containers must consider the potential health and safety issues that could result from incorporating recycled content into generic food containers.

Dolco's experience with FDA is that the process took over 18 months, with significant costs, to receive the letter of "no-objection" for the egg carton. In this case, the egg shell was considered a natural barrier. FPI's written comments will include further discussion of the FDA process.

Third, meeting an industry-wide 25 percent aggregate recycling rate might be possible. FPI members are attempting to work with the plastics industry towards that goal. However, individual companies cannot be sure the aggregate rate will be met; therefore, we have to focus on the other "options."

Fourth, the source reduction exemption is, as I said earlier, not an "option" for our industry because it is measured by a container-to-product ratio and this ratio is not relevant to generic and point-of-sale foodservice containers. The container manufacturer doesn't know what products are placed in generic, multi-use containers. The product would differ from customer to customer and from day to day.

To conclude, FPI would like to acknowledge the recent directive issued by Fred Hansen, director of the Oregon Department of Environmental Quality, regarding the effective and enforcement dates of these rules. The clarification of the enforcement date enables our industry and our customers to continue to work with the entire plastics industry and the people of Oregon toward meeting the 25 percent aggregate recycling rate. However, because of the problems which I have just described we believe that food containers should be excluded from this law and the implementing regulations.



The Soap and Detergent Association

COMMENTS

SUBMITTED BY

THE SOAP AND DETERGENT ASSOCIATION

TO THE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE MANAGEMENT AND CLEANUP DIVISION

ON

THE PROPOSED RULEMAKING TO IMPLEMENT

THE RIGID PLASTIC CONTAINER LAW

SEPTEMBER 1, 1994

PORTLAND, OREGON

The following comments are submitted on behalf of the Soap and Detergent Association (SDA). SDA is a 138 member national trade association representing the formulators of soaps, detergents and general household cleaning products as well as those companies which supply ingredients for these products. In addition to consumer products used in the home, SDA members also formulate products for use in the so-called industrial and institutional (I&I) market. I&I products are those used in public buildings, hospitals, hotels, motels, nursing homes, schools and industrial facilities. While less well known than widely advertised consumer products, I&I products are essential to the maintenance of public health and safety.

#### I. Preamble

The proposed rulemaking is the product of substantial discussion over several months. The document published for comment has been much refined and polished by the development process through which it has passed. That there were to be irresolvable issues was evident from the beginning. That, in the end, they are as few as they are, is a credit to the work of the Task Forces.

The SDA presents its critique of the proposed rulemaking with the goal of highlighting several areas which it believes must yet be resolved in order to assure the efficient and practicable implementation of the statute. Of the issues raised by SDA, there are those for which the only remedy may be statutory amendment. In other cases, a regulatory remedy may be available. For others, a combination of the two may be needed.

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## II. Introduction

The soap, detergent and cleaning products industry has been a leader in the development and widespread use of environmentally responsible packaging. The commitment of SDA's members to such packaging is on public display everyday in retail stores of all sizes in every neighborhood across the United States. The incorporation of recycled content is widespread with many packages wholly or partly made of post consumer resin (PCR). The cleaning products industry also pioneered the use of refillable/reusable systems as well as source reduced packaging.

The introduction of concentrated and most recently ultra-concentrated powder and liquid products, particularly over the last five years, has further increased the packaging reduction capacity of the cleaning products industry. In addition, multifunctional products, e.g., detergent with bleach, have resulted in packaging efficiencies. Product concentration has allowed more product uses in smaller packages. Compounding the industry's accomplishments, source reduced packages incorporating recycled content are also on the shelves.

Further, because of its innovative leadership, the cleaning products industry is a significant purchaser of post consumer resin (PCR) and recycled paper products, thereby providing critical support for these markets. A major source of PCR for the industry are recycled milk, water soft drink and other beverage containers. Many of the industry's paperboard packages are made of 100% recycled fiber. The industry's commitment is clear, public and thoroughgoing.

It is against this background that the SDA presents its critique of the proposed rulemaking. The following items raise concerns.

## III. Definition of "Product Manufacturer"

OAR 340-90-320 (13) requires clarification and expansion. Currently, the section defines "product manufacturer" in essentially the same terms as the California statute. However, in its regulations, the California Integrated Waste Management Board (CIWMB) develops the statutory definition in a significantly more detailed manner. The additional regulatory detail better accommodates and reflects longstanding industry practices and the regulatory environment in which they have evolved. This is particularly true with respect to store brand and generic items. California also uses these longstanding

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industry practices to facilitate the enforcement of its statute. We strongly urge adoption of identical provisions as explained below.

In addition, the California regulations incorporate additional detail with respect to defining manufacturer responsibility pertaining to corporate subsidiaries and affiliates. This provision was viewed by the CIWMB as significantly reducing paperwork for both industry and the State while at the same time assuring compliance with the law.

Under federal statute, the name which appears on a package can be either that of the product manufacturer, or the distributor, e.g., "Fred Meyers." The essential issue being that the consumer is able to identify a responsible party for the purchased product. It is common practice for supermarket chains, cooperatives, voluntaries and wholesalers to place their name or their brand name on the packages of goods which are packed by a second party under contract.

It strikes us that with respect to the Rigid Plastic Container Law (RPCL), the Department of Environmental Quality (DEQ) has a concern similar to that of consumers, i.e., the ability to determine the "product manufacturer," in an efficient and practical manner. To attain that goal, the current definition must be refined.

In SDA's view, this clarity issue can be addressed in either of two ways. First, define the term "generator." Or, second, expand the definition of "product manufacturer" with additional detail and eliminate the undefined term "generator." In either instance, we strongly suggest that the hierarchy defined in the California regulations at Section 17943(b)(12)(A) be adopted. That hierarchy consists of the following elements:

- "1. When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity shall be considered the product manufacturer.
- "2. When the container label does not state the entity that manufactured the product held by the container, but the container label does state the distributor of the container, then the distributor shall be considered the product manufacturer.
- "3. When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer shall be considered the product manufacturer."

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In Section 17943(b)(12)(C) of the California regulations, the definition is further elaborated to include all "subsidiaries and affiliates." This provision states:

"(C) Any entity whose name may not appear on a label but which has a corporate relationship (*i.e.*, parent/subsidiary or affiliate relationship) with an identified product manufacturer shall be allowed to assume the responsibilities of the product manufacturer as they relate to the requirements of Section 17944. The product manufacturer may be located inside or outside California, and/or inside or outside the United States."

Section 17943(b)(12)(C) has significant advantages for the State as well as manufacturers by consolidating paperwork and reporting. As the hierarchical definition clarifies responsibility in the marketplace, this latter provision clarifies responsibility at the company/corporate level.

#### IV. OAR 340-90-330 Rigid Plastic Containers

The SDA supports Alternative B as a substantial beginning. However, we believe that some further refinement is indicated with respect to two points.

First, we believe that the capability of "multiple reclosure" should be made part of the definition. In our view, the quality of multiple reclosure is an important distinguishing attribute of rigid plastic containers. Further, its inclusion in the definition will provide concrete, practical guidance for determining the status of a container for purposes of the waste studies which must be conducted by the DEQ.

Second, the concept of "storage" ought to be included. SDA's concern in this respect is prompted by the inclusion of this concept in the California regulations at Section 17943(b)(12)(B), in the definition of product manufacturer. That section defines storage as a seven day period. That is, in order to be considered a rigid plastic packaging container, the container must normally hold a product for more than seven days. The issue of consonance between California and Oregon rigid plastic packaging regulations must be given serious consideration as a practical matter of commerce as well as regulation.



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V. OAR 340-90-340(5) Reduced Container

SDA recognizes the efforts undertaken in the attempt to arrive at consensus on the definition of reduced container. In particular, the SDA applauds the recognition of the contribution of concentrated products to reducing packaging as indicated by the incorporation of the container/product ratio provision. In the end, however, the SDA finds that it can support neither alternative. Both are inadequate.

Foremost among our concerns is the fact that the current time-limited definition violates the solid waste hierarchy and will, in fact, tend to result in the generation and disposal of more packaging than is necessary, rather than reducing it. In our view, the current statutory definition of source reduction may, in practice, be counterproductive.

Unfortunately, while there was significant debate during the Task Force process over whether or not the statute was a recycled content law or a multiple qualifier statute, little discussion centered on the practical effects of the statute as it is currently drawn. It is the question of the practical effect of the law on solid waste management which prompts SDA's concerns.

The RPCL seeks to address solid waste management issues through several mechanisms: source reduction, reusability/refillability and recycled content. Source reduction directly reduces the amount of packaging in the marketplace on a per capita basis. Reusability and refillability also directly result in packaging reductions on a per capita basis. These are waste reduction strategies.

Recycled content mandates, however, do not require less packaging. Rather, they are a second tier waste management tool designed to force the development of markets for recycled resins. This, in turn, is intended to extend the life of landfills and minimize incineration by diverting material for recycling. Such mandates, however, are not directed at reducing the amount of packaging placed into the wastestream.

The solid waste management hierarchy of reduction, reuse, recycling and disposal incorporates a simple, straightforward rationale. First, reduce packaging to the extent possible through reduction and reuse. Second, manage the remainder, to the extent possible, through recycling. This management algorithm operates effectively so long as the priorities are maintained.

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Under the Oregon statute, however, source reduction is assigned a lower priority than other qualifiers by the very fact that it is time-limited. As a result, the value of source reduction to a product manufacturer is diminished. The current statute erects a prejudicial barrier to waste reduction. In addition, the current law makes it impossible to qualify any container not in the stream of commerce in 1990 as a source reduced container.

In Oregon, source reduction is not only dethroned from its preeminent position in the management hierarchy for existing packages, but has its advantages prospectively denied to new packages. It has been made a stepchild. It is SDA's view that restoring the primacy of source reduction is essential for effective waste management. Doing so would restore to Oregon the benefits of reduced packaging as well as promoting markets for PCR.

Compromising this hierarchy is not just a policy preference matter. It has potentially significant fiscal implications as well. For over a decade, state and local governments have been acutely aware of the cost of handling municipal solid waste. They have favored source reduction as a means of eliminating or reducing the capital expenditures and attendant tax costs, for solid waste handling. The current time-limited reduced container proposal is completely out of step with the cost reduction goal of government. Less waste equals less need for capital facility capacity, fewer public employees, and therefore less pressure on state and local tax rates.

To restore the rationale of the solid waste hierarchy to Oregon law, the SDA strongly recommends that the underlying statute be amended by striking the current reduced container provisions and substituting the California model. This language is found in Section 17943(b)(31) of the California regulations which is attached hereto as Appendix A. SDA firmly believes that restoration of the solid waste hierarchy will provide Oregon with the most practical benefits available through effective, rational management. Especially notable in the California regulations is the mechanism providing for the qualification of reduced containers in the future through a comparison with comparable packages at the time of introduction.

As part of any amendment, the SDA further urges inclusion of provisions to reward companies which engaged in source reduction long prior to its current popularity. To this end, we propose inclusion of language recognizing the inherent source reduction in products which are diluted for use at some minimum ratio. Alternatively, provision could be made for accepting as "reduced packages" those which have reached the limit of technical feasibility.

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VI. OAR 340-90-340(6) Substantial Investment

SDA fully supports the inclusion of this provision in the regulations as an important incentive to industry as it strives to comply with the statute. However, for the sake of clarity we recommend the deletion of sections (6)(a)(A) and (6)(a)(B). The former is simply repetitive of (6)(a) and thereby superfluous. The latter is unnecessary because a "viable market" is subsequently defined by what immediately follows.

VII. OAR 340-90-360 (2)(a) Recycled Content Compliance

Section (2)(a) provides for the calculation of the recycled content rate on a "production run" basis. The SDA strongly urges that the time frame for determining compliance be amended to an annual basis. An annual basis would allow container manufacturers to accommodate any short term market/supply problems which might otherwise affect the ability to comply on the short term "production run" basis. The results would be the same for the State. In addition, an annual compliance basis would simplify and reduce paperwork responsibilities for industry and the DEQ.

Use of the mass balance method of determining compliance is already incorporated in the proposed rulemaking. Extending the time factor to an annual basis would simply mitigate against potential short term disruptions, not relieve a manufacturer from his responsibilities.

VIII. Additional Critical Issues

The effective functioning of the Rigid Plastic Container Law will require additional modifications in order to assure its efficient implementation and operation. For the SDA and its members, the following three additional issues are especially critical: (1) Provision for corporate averaging of compliance; (2) Exemptions for containers regulated under the Federal Insecticide, Fungicide and Rodenticide Act (7 USC 136-136y) (FIFRA); and, (3) Exemptions for plastic packaging used in the transportation of hazardous materials and regulated by the Federal Department of Transportation (DOT) and/or United Nations Transport of Dangerous Goods Code (UN).

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A. Corporate Averaging

Corporate averaging is the principle under which manufacturers are allowed to base compliance on an averaging of packages within a selected compliance option, as determined by the manufacturer. While much of the debate to this point has focused on the implications of averaging food and non-food containers, the SDA wishes to emphasize unequivocally the critical importance of the ability to average among non-food containers as well. To this end, SDA supports including corporate averaging in a manner identical to that found in the California regulations. Corporate averaging would also serve to prevent the banning from commerce in Oregon of small volume items which would not warrant the cost of a packaging conversion.

Further, the SDA supports the extension of corporate averaging to container manufacturers as discussed at length during the Task Force process. Such an extension would assist local food companies in reaching compliance.

Non-Food Container Issues

Cleaning products are not inert formulations and interact with their packaging in different and complex ways. Different packaging characteristics are required depending on the nature of the product formulation. For example, PETE provides better fragrance barrier characteristics than HDPE and is therefore used for packaging pine oil cleaners. Package integrity, color and clarity, product/package compatibility, conditions of storage, transportation and use, existing regulatory requirements, future product innovation and minimum standards for the quality of reprocessed material are all issues which are considered by formulators when designing their packages.

Concentrated products, for example, are relatively more aggressive and can present special concerns distinct from their older, less concentrated predecessor formulations. In response, the packages for these products are designed and composed of materials to accommodate these special formulatory needs. With respect to plastic bottles, the presence of recycled resins increases the potential for problems arising from possible PCR contamination and other quality control issues which pose compatibility concerns.

In some instances, packaging/product compatibility issues may significantly inhibit or prevent the use PCR or source reduction. If at the same time, however, other packaging by the same company is capable of containing more than the stipulated minimum, why shouldn't the company receive credit for using what it can where it is most suitable. As

SDA Comments On Oregon DEQ  
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noted above in Section VII, the mass balance principle of compliance is already recognized. To extend it on a company wide basis would not exempt a manufacturer from his compliance obligations. The practical result, in terms of tonnage of PCR used, would remain the same.

SDA strongly urges adoption of the provisions of Section 17944(b) of the California packaging regulations and their extension to include container manufacturers as a reasonable way of addressing this issue.

B. FIFRA Exemption

FIFRA is a comprehensive statute which covers all "pesticides." The term, pest, is defined as follows:

"(t) Pest. -- The term "pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro-organism (except viruses, bacteria or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 136w(c)(1) of this title."

The term "pesticide" is defined as follows:

"(u) Pesticide. - The term "pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant,..."

The practical effect of this definition is that the term "pesticide" is applied to a diverse population of products ranging from agricultural pesticides to disinfectant cleaning products. In Section 24 of the FIFRA statute, titled "Authority of States," Section 24(b) reads as follows:

"(b) Uniformity. -- Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."(emphasis added).

The SDA believes that the Congress has clearly and expressly preempted the state regulation of pesticide packaging. Further, Section 19 of FIFRA, as amended in 1988,

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expands and reiterates EPA's authority in the area of pesticide storage, transportation and disposal of pesticide containers. Section 19(e) states:

"(e) Not later than three years after the effective date of this subsection, the Administrator shall, in consultation with the heads of other interested Federal agencies, promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides." (emphasis added).

EPA is moving forward in response to this directive. After a lengthy study, on February 11, 1994, EPA published proposed rules in the Federal Register with requirements for container design for both refillable and non refillable pesticide containers. (Federal Register, p. 6712, 2/11/94, proposing amendments to 49 CFR 156 and 165). The comment period ended July 11, 1994.

SDA members who manufacture registered pesticide products may, in fact, be able to utilize refillable containers or incorporate recycled content in the containers of certain products,, consistent with the goals of the Oregon statute. But, the legal obligations of a pesticide registrant to meet the requirements of federal law and regulation under FIFRA are, in our view, unambiguous, particularly in light of Section 24(b).

It has been argued that the Oregon DEQ, without specific legislative direction, cannot grant an exemption for FIFRA products. In our view, federal law requires it.

A FIFRA exemption is included in Section 17944.5(a)(3) of the California regulations as follows:

"(2) Rigid plastic packaging containers that contain products regulated by the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.)."

Based on the foregoing, the SDA strongly urges the inclusion of an exemption for FIFRA products at OAR 340-90-340(2).

### C. Hazardous Material Container Exemption

Containers used in the shipment of hazardous materials are regulated by the United States Department of Transportation (DOT) under Code of Federal Regulations (CFR) Title 49 and the United Nations Transport of Dangerous Goods Code (UN).

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Title 49 CFR Section 178.509(b)(1) describes the construction requirements for "plastic drums and jerricans." The section reads as follows:

"(1) The packaging must be manufactured from suitable plastic material and be of adequate strength in relation to its capacity and intended use. No used material other than production residues or regrind from the same manufacturing process may be used. The packaging must be adequately resistant to aging and to degradation caused either by the substance contained or by ultra-violet radiation. Any permeation of the substance contained may not constitute a danger under normal conditions of transport."(emphasis added)

Further, in Section 178.522, "Standards for composite packagings with inner plastic receptacles," at 178.522(b)(2), the standard set forth in 178.509.(b)(1) are cited.

"(1) Inner receptacles be constructed under the applicable construction requirements prescribed in Section 178.509(b) (1) through (7) of this subpart."

Composite packaging includes several types, Section 178.522(a)(9), for example, assigns a code to composite packagings using a fiberboard protective box as follows:

"(9) 6HG2 for a plastic receptacle within a protective fiberboard box."

In addition, all combination packaging, i.e., bottles, jars, tubes, etc. within DOT specification outer fiberboard packaging, while not subject directly to the production regrind only standard, must still pass extensive safety testing, e.g., drop tests, as a unit in order to be approved. The purpose of the foregoing is to indicate the detailed nature of the regulatory environment surrounding hazardous material packaging. In one aspect or another, such packaging is tightly controlled by federal and international authorities. In addition, there are private transportation industry standards which also must be met.

There is also a serious question that even if a package were given a "W" mark, i.e., waiver, under the conditions prescribed in Section 178.601(h) *Approval of equivalent packaging*, as to whether or not that package would be accepted for use in shipping outside the United States. In view of the preceding, the SDA strongly urges that an exemption at OAR 340-90-340 be provided for packages containing hazardous materials in rigid plastic as specified in US Code of Federal Regulations, Title 49 and/or United Nations Transport of Dangerous Goods Code.

SDA Comments On Oregon DEQ  
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Moreover, we believe that the overriding issues of transportation and storage safety are such that the State of Oregon ought not to interfere with the established regulatory system. In any event, the solid waste benefit of imposing the rigid plastic container standards on DOT regulated packages would be minimal and would not offset the safety benefits provided by the current system of national, federal and international standards.

IX. Conclusion

The issues raised by the SDA are intended to assist in the effective implementation of the law. In its current state, the RPCL poses significant difficulties for even the most conscientious and committed companies. We have also cited several sections of the California regulations which we believe the State of Oregon should adopt. While Oregon clearly has the right to pursue an independent course in such matters, the SDA respectfully suggests that the nature of the national economy with its regional and national distribution networks require a significant degree of uniformity and comity between the states on matters such as packaging standards.

In making its recommendations, the SDA has focused less on specific statutory language and more on the practical effects of its suggestions with respect to the enhancement of both recycling and waste management under the statute. Nevertheless, the SDA believes that its recommendations are fully within the spirit and intent of the current statute and in the best interests of the State of Oregon.



# APPENDIX A

(C) "Flexible container" is a container that can be flexed, folded, and twisted, without the aid of tools, without damaging the container.

(D) "Rigid container" is a container which is not a flexible container and has essentially the same shape empty as full.

(E) If it is unclear whether a container is a rigid plastic packaging container, the Board will make that determination on a case by case basis. The Board will make that determination by considering, at a minimum, how the container compares to others that are clearly regulated or excluded by the program.

(31) "Source reduced container" as defined by Public Resources Code §42301, means either of the following:

(A) A rigid plastic packaging container for which the manufacturer seeks compliance as of January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with the packaging used for that product by the manufacturer from January 1, 1990, to December 31, 1994.

1. If the product held by the container was sold ~~in California~~ prior to January 1, 1990, the non-source reduced container weight is the average weight of the container during the first 60 days commencing with the first day of sale in multiple jurisdictions in 1990, throughout the year 1990.

2. If the product held by the container was initially sold ~~in California~~ on or after January 1, 1990, the non-source reduced weight is the average weight of the container throughout the first year of introduction during the first 60 days it was introduced for sale in multiple jurisdictions.

(B) A rigid plastic packaging container for which the manufacturer seeks compliance after January 1, 1995, whose package weight per unit or use of product has been reduced by 10 percent when compared with one of the following:

1. The packaging used for the product by the manufacturer on January 1, 1995.

2. The packaging used for that product by the manufacturer over the course of the first full year of commerce in this state.

3. The packaging used in commerce that same year for similar products whose containers have not been considered source reduced. "Similar products" are the same products held by "particular type rigid plastic packaging containers", as defined in (21) of this section. The product manufacturer may demonstrate a comparison to "similar products" made by the same product manufacturer or made by another manufacturer.

(C) A rigid plastic packaging container is not a source reduced container for the purposes of this chapter if the packaging reduction was achieved by any of the following:

1. Substituting a different material type for a material which previously constituted the principle material of the container.
2. Increasing a container's weight per unit or use of product after January 1, 1991.
3. Packaging changes that adversely affect the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material. The Board may review any information provided by the manufacturer to determine if the packaging change adversely affects the potential for the rigid plastic packaging container to be recycled or to be made of postconsumer material.

(D) For the purposes of calculating source reduction, the stated weight of a non-source reduced container used for comparison purposes must be the weight of the actual non-source reduced container used for twelve consecutive months. If the non-source reduced container has not been used for twelve consecutive months, the product manufacturer must provide information to the Board to support its claim if the Board requests supporting documentation as described in Section 17946.5. In addition, the stated weight of the source reduced container must be no greater than the weight of the actual container used for the duration that the source reduction compliance option is used.

1. If the source reduction of the container was achieved by manufacturing the container with a different resin than was used for the non-source reduced container, the new container is considered source reduced for the purpose of this program.
2. Any source reduction achieved by changing the rigid plastic packaging container to a flexible plastic container may be credited to other containers as part of the averaging method of compliance described in Section 17944 (b), *Container Requirements*.
3. If a rigid plastic packaging container for a specific product is entirely eliminated and the same product is sold in California without any packaging, the source reduction may be credited to other containers as part of the averaging method of compliance described in Section 17944 (b), *Container Requirements*.

Note: Authority cited: Section 40502, 42325, Public Resources Code

Reference: Sections 42300, 42301, 42310, 42330, 42340, Public Resources Code

## Section 17944 CONTAINER REQUIREMENTS

(a) I am a product manufacturer responsible for ensuring that rigid plastic packaging containers comply with program requirements. What standards must these containers meet?

On or after January 1, 1995, all rigid plastic packaging containers sold or offered for sale in the state must meet one of the following criteria:

- (1) Be made from at least 25 percent postconsumer material.
- (2) Be recycled at one of the following rates:



Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW 6th Avenue  
Portland, OR 97204

September 1, 1994

**RE: RULEMAKING PROPOSAL/IMPLEMENTING OREGON'S RIGID PLASTIC CONTAINER LAW - Public Hearing, September 1, 1994**

Attention: DEQ Hearings Officer:

Please enter Safeway's letter, and the points listed below, into the official record for the Public Comment Hearing, held on September 1, 1994 to discuss DEQ's proposed rules to implement Oregon's Rigid Plastic Container Law.

Safeway has operated stores in the Pacific Northwest for over 70 years. Today, Safeway serves customers from over 1,000 stores in the United States and Canada; 91 of those stores are in Oregon.

I'm here this morning to state a retail grocer's concerns - Safeway's concerns for our customers - about the proposed regulations for the implementation of Oregon's Rigid Plastic Container Law. Frankly, the number of ambiguities & uncertainties in the proposed regulations make it virtually impossible for retailers to comply with the regulations and continue using any rigid plastic container.

Oregon's Rigid Plastic Container Law severely impacts how we will conduct our business in the future. It impacts the availability of products we will be able to offer our Oregon shoppers - and yet, it will not impact the same products Safeway sells across the Columbia River in Vancouver, Washington or across the California, Nevada and Idaho borders.

Oregon's Rigid Plastic Container law impacts our shoppers in a way no other law in any other state where we operate impacts us.

I'd like to start by defining what retail grocery stores are. What we do. I need to stress the word "retailer". Grocery stores, like Safeway, are retailers, serving customers. Merchants serving Oregon citizens.

We make our living selling products to consumers obtained from companies who make their living producing those products. With the exception of private label products, retailers have absolutely no control over how a product is produced, distributed, marketed or packaged. And yet, under Oregon's Rigid Plastic Container Law, grocery stores are considered the "product manufacturer" if we simply fill a plastic container with a cake, a dozen cookies, a deli salad, or Jell-o in our Deli or Bakery, or if we distribute a product through a 3rd party manufacturer.

So now - the grocer is considered and defined as a "product manufacturer", faced with complex compliance, record-keeping, documentation and auditing responsibilities that rightfully belong to the companies who make these containers.

Before I proceed, I want to mention that Safeway, as well as other grocery retailers, is in support of the goal of increasing the recycling rates for plastic within Oregon or any other state. Obviously, with a finite amount of natural resources, but an infinite, never ending level of demand, our society must recycle.

However, we have serious concerns with how DEQ is attempting to reach that goal.

The uncertainty surrounding which plastic containers will meet DEQ's proposed criteria makes it impossible for retailers to respond to Oregon shoppers with long-term or short-term purchasing decisions for the containers we can legally use in our bakeries, delis and all point-of-sale containers. It affects how we negotiate contracts, how we buy containers, and could impact how we market our in-store displays.

The uncertainties our customers face stem from a number of areas:

1. **First of all, there is no clear definition of what a rigid plastic container is.** DEQ is currently looking at two definitions. Retailers won't actually know which rigid plastic containers will be regulated for some time. However, it's clear to see that whichever definition is accepted, point-of-sale containers will be regulated. If we were pressed to make a choice, alternative "B" is the better of the two definitions.

Under the proposed regulations, all containers used to sell products offered for sale in grocery store delis and bakeries will be regulated. As the retailer, we are simply putting product that was cooked or prepared in our stores, in containers designed to help the customer transport the product home.

However, now the retailer is suddenly expected to know everything about how the container was manufactured and produced.

When a grocery retailer addresses consumer needs by selecting containers for bakery and deli items, we look for several important container "attributes":

- A. Will the container maintain the integrity of the food product? Will the container protect the product from contaminants & bacteria? Food safety is a critical piece in grocer's decision-making process.
- B. Will the container continue to maintain the product's integrity once the consumer gets the product home, to store in either the refrigerator or the cupboard?

The vast majority of customers store these products in the original container once they get home. Plastic containers DO offer the highest level of food safety confidence - both for the retailer and the consumer.

- C. Does the container let the shopper SEE what's inside the container? Shoppers WANT to see the product they are purchasing to insure freshness and consistency of quality. The visual marketing qualities of clear plastic containers are important to both the retailer and the shopper.

Today's shopper expects food containers to serve in these capacities. Changing the container to anything less than this will soon result in serious food safety concerns. It's safe to say that the shopper will not change how they handle the product once they get it home.

During one of the DEQ work sessions, a representative from OSPIRG made the comment that "Butcher paper was good enough for my grandparents and parents - so, it's good enough for me". To grocery retailers and businesses who handle food, this represents a dangerous line of thinking for modern families.

With today's food safety concerns stemming from Salmonella, Hepatitis, E-coli and a number of other food borne illnesses, our society cannot afford to add to the problem by prohibiting the use of plastic containers. DEQ's proposed regulations literally take food service and consumers back 10 years - a decade - in food safety.

Food safety, product quality and the people of Oregon, cannot be compromised.

Switching to butcher paper is not the answer. Switching to plastic-coated cardboard containers is not the answer. Switching to "Chinese-style" take out containers is also not the answer, either. The advantages of plastic containers cannot be ignored.

Customer safety cannot be ignored.

To serve shoppers in the most efficient, economic way, Safeway purchases all of the supplies used in our in-store operations from a central location. In the case of rigid plastic containers, Safeway purchases containers from over 65 different rigid plastic container manufacturers. Several months ago, Safeway's Corporate Office contacted each of our plastic suppliers to make sure they knew about and understood Oregon's Rigid Plastic Container Law.

Obviously, we wanted to know how they intended to comply with the law on behalf of the citizens of Oregon.

As such, we asked each manufacturer to provide this information to us by September 1, 1994 (that's today's date!). Once we have reviewed their responses, Safeway will determine what packaging changes we may be forced to make in order to comply with the Oregon law by the time it goes into effect. But, we need to be clear that this seriously impacts how we will do business in other divisions and, it will impact costs.

2. **Our second concern involves recycling rates.** Since DEQ has told us that the actual 1995 recycling rates for plastics in Oregon won't be known until mid 1996, no one knows for certain what plastics will be approved, acceptable and legal to use. We won't know what plastics are being recycled at acceptable rates in Oregon until a year after the date the law goes into effect. The proposed regulations are asking retailers to make business/buying decisions in a vacuum, yet there is no apparent consumer benefit.

Given these circumstances, it's impossible to make long-term purchasing decisions for point-of-sale packaging that grocers can use in serving deli or bakery shoppers.

3. **We are also very concerned about the proposed fines that will be levied against retailers for non-compliance.**

We understand and appreciate that the fines have been reduced from earlier rates. However, we have been given no assurance by DEQ that fines will not be levied retro-actively (in 1996) for the containers we used in 1995. In any event, lower fines don't address the problem with these regulations.

4. As if the concerns listed above aren't enough, we also have another serious concern with the statutes. Safeway's Corporate Legal Department has reviewed the proposed regulations and believes retailers are at risk of **third-party challenges**. According to our Legal Department, there is definitely a "window of vulnerability" to Plaintiff's lawyers. Obviously, it is not in the best interest of our company or the judicial system in Oregon. More importantly, it is not in the best interest of Oregon consumers - our shoppers.

In closing, Safeway joins other Oregon retailers who share our concerns with the proposed regulations, and we ask for DEQ's assistance in providing regulatory relief now.

Sincerely,

  
Bridget A. Flanagan  
Public Affairs Director

cc: W.S. Schinner      Senior V.P. & Division Manager  
Melissa Plaisance      Corporate Public Affairs  
John Shepherd      Corporate Government Affairs  
Melita Elmore      Corporate Environmental Affairs

DEQ-Com.L02

RECKITT & COLMAN

September 1, 1994

Oregon Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, OR 97204

Dear Sir/Madam:

Attached are our comments concerning administrative rules proposed to be added to OAR 340-90 for the implementation of the Oregon Rigid Plastic Container Recycling Law.

Very truly yours,



Gene F. Tappan  
Senior Regulatory Affairs Specialist

GFT/g



COMMENTS

SUBMITTED BY

GENE F. TAPPAN

SENIOR REGULATORY AFFAIRS SPECIALIST

RECKITT & COLMAN INC.

TO

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

WASTE MANAGEMENT AND CLEANUP DIVISION

ON

PROPOSED RULEMAKING TO IMPLEMENT

RIGID PLASTIC CONTAINER LAW

SEPTEMBER 1, 1994

PORTLAND, OREGON

Reckitt & Colman Inc. is a manufacturer of household consumer products and food preparations that are marketed nationally. Many of our products are packaged in plastic containers. We have been following the efforts of the Department's task forces to address the many complex issues raised by the Rigid Plastic Container Law. The proposed regulations embody responses to many comments already offered by interested parties. We particularly applaud the provision in the definition of rigid plastic container which excludes from consideration as part of a container those components which provide a tamper evident seal.

Despite the diligence of the task forces and the many compromises already made, there remain a number of issues of interest to us which need to be addressed.

Technical Feasibility

The process to modify an existing container either by source reduction or by incorporating recycled content takes more time and effort than most people realize. The evaluation process is virtually the same as developing a new container. It is lengthy and fraught with opportunity for failure. Manufacturers with

extensive product lines have invested significant monetary and human resources to bring all of their packages into compliance. Nevertheless, they may fall short of their goal for lack of time to work out all of their challenges.

Some of the problems we have encountered in preparing to meet the post-consumer recycled content rule are incompatibility between product and package, stress cracking, breakage in impact testing, discoloration of bottles, and odor from the recycled resin. Attempts to source reduce have led to packages which are no longer rigid or which cannot withstand the rigors of machine handling. Each of these obstacles mean delays while solutions are found. Finding FDA approved resins for our food products has also been a problem.

The process has many steps. It begins with a review of previous experience with plastic resins and typical product formulations. This review is conducted both internally and among possible suppliers. Based on data gathered, suppliers will be solicited to submit candidate packages using designs as close to the intended final design as possible made from resins most likely to be compatible with the product.

These initial candidate packages undergo preliminary or "bench" stability tests with product for three months. Survivors of bench tests go into full stability testing, preferably with packages from a unit cavity mold representative of the final design. Acquisition of a unit cavity may take as long as four months. The testing is continued for two years although results obtained after three months are used to guide the selection of the final material and design. During these three months, other tests are conducted including those for impact resistance, vibration tolerance, stress cracking, and production line performance.

If no candidate package remains after this level of testing, the entire process must be repeated. If satisfactory results are obtained after three months of full stability testing, the construction and testing of production molds begins, taking approximately six months. In most cases, confirmatory evaluation of samples from the production molds precedes the start of commercial production.

Although a great deal has been accomplished to date, it may be that no solution to these technical problems can be found by the deadline. There is no allowance in the regulations for marketers in this position but who still have possible solutions yet to explore. There needs to be a provision for the Department to extend the compliance deadline in instances such as these. One way to do that is to utilize the concept of corporate averaging.

### Corporate Averaging

California's rules on plastic packaging offer two means of relief under the concept of corporate averaging. In one, an extension (waiver) is available in Section 17944.2(a)(4) of the California Code of Regulations. This recognizes a marketer's substantial achievement of the goal and their intent to be in full compliance at a later date. It allows additional time to overcome the most difficult obstacles.

The other, found in Section 17944(b), allows averaging of packages containing more than the required minimum recycled content with others that do not. This rewards success in achieving over-compliance and in fact encourages it.

### Reduced Containers

The proposed rules list alternative language for OAR 340-90-340(5) concerning exempt rigid plastic containers. Alternative A penalizes packages whose weight was increased for legitimate reasons but which could be source reduced below the original weight. Paragraph (f) of Alternative B avoids that penalty by permitting a container to qualify for the source reduction exemption if material added since January 1, 1990 plus 10% or more beyond the pre-1990 weight is removed.

It is unfortunate that the statute places a time limitation on the utilization of source reduction as a compliance option. This could serve to discourage capital investment in molds and machinery that would be needed to reduce container weight. It requires the initiation of a development project to replace the source reduced package with all of the effort and commitment of resources discussed above.

We favor California's treatment of this matter in Section 17943(b)31 of their code.

### Delayed Enforcement

There is a need to clarify the ambiguity in the provision of the law delaying enforcement until January 1, 1996. The intent of this provision would seem to be to allow marketers a grace period in which to complete their package development processes to achieve compliance. However, the language provides a risk of retroactive enforcement for marketers who are in technical non-compliance during 1995. This potential trap may force some marketers to face a choice between being in temporary technical violation or withdrawing from the market. Clarification or interpretation of an ambiguity in the law is a proper function of rulemaking.

Conclusion

We appreciate the opportunity to submit these comments and request they be given serious consideration. We wish to call attention to the comments offered by the Soap and Detergent Association and the Grocery Manufacturers of America. As a member of both organizations, we support their suggestions.

OREGON'S RIGID PLASTIC CONTAINER LAW, DEQ HEARING

PLACE

1120 SW 5th Ave  
Portland Bldg  
2nd Floor Auditorium

TIME

10:00AM - 1:00 2:00 - 6:00PM  
REGISTER AT 9:00 AM

Issues:

1) Our belief is that the legislature did not intend to define retailers, especially a small retailer like 7-Eleven, as a "manufacturer." The American Heritage Dictionary defines manufacturer as "A person, enterprise, or entity that manufactures especially the owner or operator of a factory" Clearly, 7-Eleven's are not factories. We also believe that the state legislature did not intend to consider 7-Elevens as factories.

2) We believe, that the paperwork that Rigid Plastic Container law will require will be extremely onerous and burdensome for our Franchisees who are small independent businesses. Already many of them work 7 days a week and their stores are open 365 days a year. 7-Eleven franchisees are simply not equipped to handle the complex record keeping that this bill would require. Moreover, the added costs of compliance will reduce the income of 7-Eleven's and the subsequent tax base that goes with that income.

3) The waste stream that these containers affect is an insignificant portion on the total waste stream into landfills (which is less than one half of one per cent). In terms of plastic food containers, the ruling appears to unfairly weight the desired affect on small businesses.

4) In order for 7-Elevens to do the required paperwork for such a small part of the problem would be severely anti-small business. These added regulations for compliance would not only be burdensome but encourage competitive states such as Washington to pick up business where regulations may not be as stringent. Clark county may in fact experience a windfall of new business.

5) As a health factor, we question the wisdom of using re-cycled materials in food containers as a primary contact with consumers' food. When food comes into direct contact with re-cycled containers, there could be a bacteria liability we would not wish to encounter. In lieu of the recent E Coli problems, we feel the overwhelming majority of citizens in Oregon would object to this packaging as well.

(503) 259-3573  
(503) 259-3506 Fax



# DIET LIGHT

WEIGHT LOSS SYSTEM

300 Market #101  
P.O. Box 629  
Lebanon, OR 97355

August 30, 1994

RECEIVED  
SEP 2 1994

To whom it may concern:

I am writing in regards to the proposed Environmental Quality Commission Rigid Plastic Container Law. I am opposed to the law as it reads, as it would have a heavy impact on business in Oregon.

Waste Management & Cleanup Division  
Department of Environmental Quality

Diet Light is an Oregon based weight loss program with 15 locations, 13 of which are in Oregon. I started Diet Light 10 years ago in my home town of Lebanon, Oregon. We currently employ 30 people.

The food that we sell at Diet Light is manufactured under our own private label by three different manufacturers, the main one being Truitt Brothers of Salem. Truitt Brothers produces vacuum sealed meals for us in rigid plastic trays. They have informed me that because of the retort process, they cannot use cardboard trays and because of the safety standards enforced by the federal government, they cannot use a recycled plastic tray.

If this law were to pass, we would be forced to send all of our business out of state. Currently, there is only one manufacturer still using soft plastic pouches along with trays, and they require a minimum 30,000 production run for special products. Because of the size of our business, we order 5000 units of each item, which lasts us several months. Ordering more than that is simply not feasible for us.

The passage of this law could very possibly force us to close our doors. Certainly we are not the only ones. Please consider all the ramifications of passing such an inflexible law that has the potential to put many Oregonians out of business. What use are laws that do not serve the people well?

I would like to make a request to be notified of the date the Environmental Quality Commission will consider the matter. Thank you in advance.

Very sincerely,

*Kathy Bengtson*

Kathy Bengtson  
President  
Diet Light, Inc.



# BLOCK DRUG COMPANY, INC.

257 Cornelson Avenue Jersey City, N.J. 07302-3198  
Telephone (201) 434-3000  
FAX (201) 434-0842

Research and Development Laboratories

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

RECEIVED  
August 23, 1994  
SEP 21

Waste Management & Cleanup Division  
Department of Environmental Quality

SUBJECT: TESTIMONY REGARDING RULEMAKING PROPOSAL IMPLEMENTING  
OREGON'S RIGID PLASTIC CONTAINER LAW

Environmental Quality Commission Members:

The successful implementation of legislation which results in the increase in the recovery of materials from the waste stream and the stimulation of markets for recycled materials is a commendable achievement. The Oregon Department of Environmental Quality (DEQ), through special task forces, has been diligent in its' effort to develop just and comprehensive rules. Progress has been realized in the establishment of a method for the calculation of the recycling rate, aggregate recycling rate and the definition for "recycled content". However, the final rule must take into consideration both Federal requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and mitigating circumstances which make compliance with the rule unfeasible.

Products regulated by the Environmental Protection Agency under FIFRA must meet stringent efficacy, manufacturing, labeling and packaging requirements. Package compatibility information must be provided to support the registration of each manufacturing-use and end-use product. Moreover, FIFRA § 24 (b) states "Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter". Clearly, Oregon's Rigid Plastic Container regulations should not apply to products regulated under FIFRA.

The inability of the Implementation Task Force to recommend the inclusion of an "Corporate Averaging" method of compliance will cause a segment of products, "special circumstance" products, to have no method of compliance with the proposed rigid plastic container regulations. Should this occur, Oregonians will be denied the ability to purchase certain products which they have relied upon for years. Accommodation for these "special circumstance" products must be included in the final regulation of rigid plastic containers.

We propose that a "Special circumstance" product is one which:

- 1) must be packaged in very specific plastic resin due to ingredient/resin compatibility issues;
- 2) is limited by product protection and/or package integrity requirements and cannot be packaged in a source-reduced container;
- 3) cannot contain recycled content as a recycled material market is for all practical purposes, non-existent for the specific resin required;
- 4) the inclusion of post-consumer material compromises package integrity which may lead to hazardous product spills, environmental contamination or human health hazard;

and

- 5) cannot be refilled or reused as it may be packaged in a container which is not reclosable or it contains ingredients which are hazardous to humans and do not lend themselves to reuse.

Upon request by the DEQ, the product manufacturer may be required to:

- 1) document efforts taken to achieve compliance of a container for which "special circumstance" exclusion is claimed. (Address each of the requirements listed above.)

and

- 2) document that all other containers sold by the manufacturer comply with the rigid plastic container regulations.

Fulfillment of these specific requirements ensures that the product for which a manufacturer seeks exclusion, is in fact a "special circumstance" product. Documentation that all other containers sold by the manufacturer comply with the rigid plastic container regulations helps to define the special nature of the exclusion. This exclusion is not tantamount to a "Corporate averaging" option as the product for which exclusion is sought, must meet a list of requirements. Furthermore, a manufacturer that has succeeded in

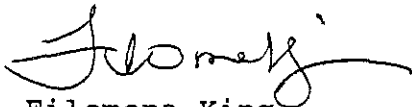


Department of Environmental Quality  
August 23, 1994  
Page 3

bringing all of its product containers into compliance except one, and makes a bona fide effort to bring the one "special circumstance" container into compliance but is unsuccessful, should not be penalized. To do so would do nothing to further the cause. Finally, Oregonians should not be deprived of the ability to purchase these useful products.

In summary, the regulations promulgated to enforce Oregon's Rigid Plastic Container Law must give consideration to products packaged in specific containers which cannot meet compliance options and those regulated under FIFRA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Filomena King".

Filomena King  
Regulatory Affairs Specialist



Better Health  
Through Responsible  
Self-Medication

NONPRESCRIPTION DRUG MANUFACTURERS ASSOCIATION

RECEIVED  
SEP 2 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Comments to the Oregon Department of Environmental Quality

on Proposed Regulations OAR 340-90-310, et seq.,

Implementing the Rigid Plastic Container Law

September 1, 1994

These comments are filed on behalf of the Nonprescription Drug Manufacturers Association (NDMA) in regards to the Notice of Proposed Rulemaking to adopt OAR 340-90-310, et seq., and amend OAR 340-12, implementing the Oregon Rigid Plastic Container Recycling Law, ORS 459.650, et seq.

The issues to be addressed in these comments are:

- 1) Definition of a "drug" for purposes of an exemption; and
- 2) Documentation necessary to demonstrate that a product is a "drug" and, therefore, exempt from compliance.

The NDMA is a 113-year-old trade association which represents manufacturers -- both large and small -- of nonprescription or over-the-counter (OTC) medicines such as Tylenol<sup>®</sup>, Bayer<sup>®</sup> Aspirin, Alka-Seltzer<sup>®</sup> and the many cough-cold, antacid and other medicinal products which consumers keep in their homes for family use. NDMA members account for approximately ninety-five percent of all nonprescription drug sales in this country.

A nonprescription drug is one that the U.S. Food and Drug Administration has found to be safe and effective for direct consumer use with the required label directions and warnings. In addition to insuring that OTCs are safe and effective for use according to the label directions and warnings, the FDA has the statutory responsibility to regulate materials that come in contact with these products, including containers, if they may render the drug adulterated.

### 1) Definition of a "drug"

OAR 340-90-320(5) of the proposed regulations defines "drug" using the same definition contained in the federal Food, Drug, and Cosmetic Act (21 USC 321) and is virtually identical to the definition found in the Revised Oregon Statutes (ORS 689.005(11)). NDMA is in agreement with the use of this definition because it includes both nonprescription and prescription drugs, which was clearly the intent of the legislature.

However, after subsection (5)(d) of OAR 320-90-320 (page 2, lines 12-13) the drafters have included the following statement: "Drugs include over-the-counter drugs referenced in the federal Food, Drug and Cosmetic Act (21 USC 321)" (underline added). Because of the fact that nonprescription drugs are included in the definition proposed, NDMA believes that this statement is unnecessary. Also, neither nonprescription nor prescription drugs are specifically "referenced" in the federal or Oregon definition of a drug as cited above. If the statement is being added to clarify that OTCs are included in the exemption, it should be amended to read, "Drugs include nonprescription or over-the-counter drugs regulated pursuant to the federal Food, Drug and Cosmetic Act."

### 2) Documentation Necessary to Demonstrate a Drug Exemption

NDMA is in basic agreement with the proposed regulations as they relate to how a product or container manufacturer would demonstrate to the Department that the containers in question are used for drugs (OAR 340-90-400, pages 22-27). However, a technical correction is suggested.

On page 24, lines 1 through 10, the proposed regulations reflect the fact that there are two basic ways that drugs can be marketed in the United States:

- 1) Pursuant to a New Drug Application that is approved by the FDA, or
- 2) In accordance with a Final Monograph or Tentative Final Monograph published in the Federal Register.

Subsection (C)(ii) (page 24, lines 5 through 7) provides as one option that a manufacturer would provide documentation of "consistency between the over-the-counter drug claims and FDA requirements, e.g. appropriate pages from the FDA regulations; . . . ." While drug claims can be important in trying to determine if a product is a drug, the OTC monographs in the FDA regulations contain requirements for ingredients and labeling. They do not necessarily regulate "drug claims."

It would be more appropriate to strike all of the existing language in Subsection (C)(ii) and insert the following:

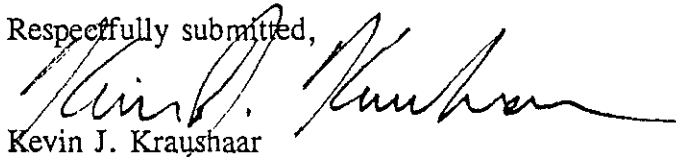
"Appropriate references to the FDA Final Monograph or Tentative Final Monograph under which the drug is marketed."

Subsection (C)(iii) (lines 9 and 10) should be maintained in the final regulation because it reflects the fact that there are a handful of drugs on the market which are lawfully marketed pursuant to "grandfather" provisions of the federal Food, Drug and Cosmetic Act. There might also be prescription and nonprescription drugs on the market for which an "FDA letter of Approval" cannot be located. This subsection will allow the Department to handle these products on a case-by-case basis.

### 3) Conclusion

The Nonprescription Drug Manufacturers Association appreciates the cooperation of the Department of Environmental Quality and the Task Force members who worked so hard in the preparation of these proposed regulations. NDMA and its member companies are committed to recycling and other environmental efforts where they do not potentially compromise drug product safety and effectiveness.

Respectfully submitted,



Kevin J. Kraushaar  
Assistant General Counsel and  
Director of State Government Relations

KJK/jz

3650 SE Knight  
Portland, Ore. 97202  
(503)775-6829  
31 Aug. 1994

DEQ Waste Management and Clean-up Div.  
811 SW Sixth Ave.  
Portland, OR 97204

RE: Proposed rules for plastic recycling

Dear People:

The new recycling law, which takes effect next January, should be all-inclusive.

All plastics, including take-out containers, trays inside cookie boxes, etc., should be included under the law.

The best way to encourage recycling is to show that the products are actually being reused, not dumped in a Third World country or left in storage. True recycling "closes the loop."

I hope you will make the law as broad as possible.

Sincerely,



Ana Maria Capestany

RECEIVED  
SEP 2 1994

Waste Management & Cleanup Division  
Department of Environmental Quality



8/30/94

TO: Oregon Department of Environmental Quality  
Waste Management and Cleanup Division  
811 Southwest 6th Ave.  
Portland, OR, 97204

Ciba-Geigy Corporation  
5510 Birdcage St., Ste. 110  
Citrus Heights, CA 95610-7620  
(916) 965-1834  
(916) 965-4252 - Fax

**SUBJECT: RULE MAKING ON OREGON'S RIGID PLASTIC CONTAINER LAW.**

Dear Sirs:

I am writing on behalf of Ciba Crop Protection (a division of CIBA-GEIGY Corp.) to express our divisions' comments on the proposed rule making concerning Oregon's Rigid Plastic Container Law. Ciba Crop Protection and the entire agricultural chemical community has been very active the past several years in many "environmentally friendly" solutions to the rigid plastic situation that your SB 1006 and SB66 address. We think these programs that we have developed and support should make a difference in how we are treated by the regulators when developing these rules.

While the agricultural chemical community still uses many 1.0 and 2.5 gallon plastic containers for the distribution of our liquid pesticides it is important to note the following:

1. The industry has been very proactive in developing alternative containers. Bulk pesticides which are sold in various sized reusable containers are used wherever the market size and usage allows. As an industry we are, however, cautious not to sell growers too much product as this then can end up as unusable material and create it's own disposal problems. The "one way" or smaller, plastic, package sizes prevent this from occurring.
2. Many products are now being packaged in water soluble packages, thus eliminating any disposal problems. While this technology is not feasible for all types of chemistry, it is being used with many products.
3. Through the Oregon Department of Agriculture and the Oregon Agricultural Chemical and Fertilizer Association we have a very aggressive plastic container recycling program currently in operation. In 1989, the first year of the program, we recycled 28,000 containers. Through the first 6 months of 1994, 40,000 containers have already been recycled. As an industry we should recycle 80,000 containers in Oregon in 1994. Nationally, approximately 20% of all plastic pesticide containers are recycled. The Agricultural Container Research Council (ACRC) is actively looking for uses for this recycled plastic.
4. California, and other states, have plastic recycling laws on the books. California exempts all FIFRA regulated pesticides from the requirements. That is because the structural strength of the recycled plastic is not as well documented as that of virgin plastic and our industry is very concerned about container integrity and pesticide spill prevention. Also, Department of Transportation Hazardous Materials Regulations 49 CFR 178, Sec. 178.509 prohibits the use of reground materials in the plastic containers used to ship products regulated as hazardous materials. There are many pesticides regulated as hazardous materials.
5. Should the industry be forced to abandon or limit the number of 2.5 gallon plastic containers used in Oregon I am afraid that many companies will merely switch back to the 5 gallon metal containers of yesteryear. This would be a shame as these containers are much harder to use and much harder to clean out prior to recycling.

Should you have any questions, I can be reached at (916) 965-1834.

Sincerely,

Dennis Kelly, State Government Relations Manager

RECEIVED  
SEP 2 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

To Whom it May Concern      8-30-94  
I read the article on the Plastic recycling.  
I believe it should be every Plastic  
bottle should be recycled. Our Earth is  
not growing - but our garbage is  
growing - We need to keep recycling  
any thing we can to help our dilemma.  
Thank you -  
for your time \* Thanks for asking!  
Respectfully -  
D. M. J.

Dear Sir :

8-30-94

I am in favor of including  
all rigid plastic containers  
to be made of material  
that is 25% recycled, or be  
reusable. Let the plastics  
manufacturers come up with  
some creative solutions to  
the land-fill problem. *Caroline Luciano*

# Campbell SOUP Company

WORLD HEADQUARTERS  
CAMDEN, NEW JERSEY 08103-1799

August 31, 1994

Ms. Deanna Mueller-Crisp  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon, 97204

RECEIVED  
SEP 2 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Ms. Mueller-Crisp:

I am making written comments on behalf of Campbell Soup Company on the *July 22, 1994 Rulemaking Proposal - Implementing Rigid Plastic Container Law*. Campbell Soup Company has a strong commitment to reducing the solid waste burden. The Company has a sound Packaging Solid Waste Policy in place ( attached ) which it proactively applies. A summary of the Company's recent packaging solid waste reduction activities is found in the 1993 CONEG Challenge report ( attached ).

The development of food packaging, above all other packaging forms, requires extreme care and testing to assure product safety and integrity is maintained throughout its shelf life. Additionally food contact packages require that pristine surfaces are always in contact with the food. The results of this unique development process have significantly reduced the incidence of food spoilage worldwide while at the same time delivering fresher, tastier, more convenient, and more wholesome foods at a good price value. While recognizing the importance to reduce municipal solid waste, arbitrary laws and regulations enacted without full consideration of their impact on the safety and integrity of food packaging are not in the public interest. We applaud the state of Oregon's willingness to consider these important facts.

We feel the *Proposal* goes beyond the intent of the law in defining a " rigid plastic container". A rigid plastic container should be predominately plastic in composition, be inflexible and must completely contain the product in a closed manner without other means of additional packaging except caps or lids. Typical of this would be bottles and jars. We therefore strongly support Alternative B as the definition of "Rigid Plastic Container". Campbell Soup Company utilizes ultra thin plastic trays as minor packaging

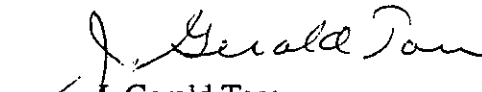


components in its cookie and candy commercial packages. These trays are thermoformed out of thin plastic sheet into a final tray form that approximates the thicknesses of many flexible films. For instance, a Pepperidge Farm mini dumpling tray is formed out of a 5 1/8" square of plastic sheet that is 0.010" thick. When formed into a four compartment tray, the surface area increases nearly three times. The average thickness of the formed tray then becomes 0.0033", a common thickness of many flexible films. Our Godiva candy trays are formed similarly to the above trays and additionally constitute a very small part of the final candy box. One could argue that these trays are therefore a *flexible inner wrap* which by rule definition is not considered part of a rigid plastic container.

Consequently, we strongly assert that these ultra thin tray forms used inside our packages should not fall within the definition of "rigid plastic containers" and we strongly support the Alternative "B" definition.

Thank you for consideration of our comments to this rule making. You can be assured that Campbell Soup Company will continue to be aggressive in voluntarily reducing its package to product ratio in a safe and sound manner to lessen the solid waste burden.

Very Truly Yours,

  
J. Gerald Tarr  
Group Manager,  
Environmental Packaging

JGT/bad

cc: J. Caporaso

D. Costello

M. Niemiec

B. Willis/J. Joseph

OREG826

## CAMPBELL SOUP COMPANY PACKAGING SOLID WASTE POLICY



A basic commitment of Campbell Soup Company is to help protect natural resources. We recognize that finding environmentally safe and cost-effective ways to minimize and dispose of solid waste has become a national and global priority. We can help achieve these goals through the choice of materials used in the packaging of our food products.

*Our dedication to make the best quality food products includes the packages that contain, protect, and preserve them. Our pledge is to use the safest, most technologically appropriate, environmentally friendly packaging that is economically feasible. We will minimize the amount of materials necessary to deliver products to our customers. To those goals, we are committed to the following:*

- To minimize, to the greatest extent possible, our contribution to the volume of packaging materials entering our nation's waste stream
- To discourage the use of materials harmful to the environment
- To encourage the use of packaging materials that can be recycled
- To give preference to those suppliers who maximize the use of recycled materials in the packaging products we buy, consistent with the health and safety requirements for our products
- To code packages to aid recycling
- To implement programs that recycle and minimize the discard of solid wastes at plant and office sites
- To participate in industry initiatives and programs that are effectively working to bring viable and long-lasting solutions to solid waste management problems
- To join in appropriate efforts that explore opportunities to turn waste materials into products
- To seek out opportunities in locations where we have operations to become involved in community solid waste recycling projects

Carpe Futurum!



Seize The Future



# The CONEG Challenge

Voluntary  
Packaging  
Reductions  
by Industry

## Campbell Soup Company Camden, New Jersey

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Date Accepted: 06-14-91

*A basic commitment of Campbell Soup Company is to help protect natural resources. We recognize that finding environmentally safe and cost-effective ways to minimize and dispose of solid waste has become a national global priority. We can help achieve these goals through the choice of materials used in the packaging of our food products.*

*Our dedication to make the best quality food products includes the packages that contain, protect and preserve them. Our pledge is to use the safest, most technologically appropriate, environmentally friendly packaging that is economically feasible. We will minimize the amount of materials necessary to deliver products to our customers.*

-- Campbell Soup Company  
Packaging Solid Waste Policy

### BUSINESS SUMMARY

Campbell Soup Company, one of America's premier food companies, reported sales in fiscal 1993 of \$6.6 billion. Campbell produces some 3,000 products and markets them around the world. Campbell's brands are among the best known in the U.S., among them: "Campbell's" soups, beans, and tomato juices, "Pepperidge Farm" baked goods; "Vlasic" pickles; "Godiva" chocolates; "Swanson" and "Mrs. Paul's" frozen products; "V8" vegetable juice; "Franco-American" and "SpaghettiO's" pasta; "Prego" pasta and pizza sauces; and "Marie's" salad dressings. Campbell, headquartered in Camden, New Jersey, has 47,000 employees around the world.

### GOALS

Campbell's Environmental Packaging Task Group developed the Packaging Solid Waste Policy in 1991. Many of the principles and practices outlined therein were already being followed at Campbell's. The policy was distributed throughout the company and was also sent to Campbell's suppliers and customers to ensure that they understood the company's goals, principles, and actions.

Product safety and package integrity are paramount in delivering a quality, competitive product at good value. Source reduction in the food industry is incremental and variable from year to year because of these paramount issues. It is for these reasons that Campbell's has not publicly set numerical goals for food packaging. However, Campbell's is committed to the following:

- Minimize, to the greatest extent possible, Campbell's contribution to the volume of packaging materials entering our nation's waste stream.
- Discourage the use of materials harmful to the environment.
- Encourage the use of packaging materials that can be recycled.

- Give preference to those suppliers who maximize the use of recycled materials in their packaging products, consistent with health and safety requirements.
- Code packages to aid recycling.
- Implement programs that encourage recycling and minimize discarding of solid wastes at plant and office sites.
- Participate in industry initiatives and programs that are working effectively to bring viable and long-lasting solutions to solid waste management problems.
- Join appropriate efforts that explore opportunities to turn waste materials into usable products and energy resources.
- Seek opportunities, in locations where the company has operations, to become involved in community solid waste recycling projects.

## ORGANIZATION

Campbell's multi-disciplinary Environmental Packaging Task Group was formed in 1991 and meets bi-weekly. The Packaging Department includes a Group Manager of Environmental Packaging, who chairs the Task Force and is responsible to ensure proactive execution of Campbell's policies, goals, and principles.

## ACTIVITIES

### Source Reduction through Lightweighting and Redesign

- Steel used in manufacturing cans has safely been reduced by 1 percent, representing a 4 million pound annual diversion of steel from the waste stream.
- Aluminum has been significantly reduced in 5.5 oz. and 11 oz. juice cans, resulting in a total weight reduction of 1.1 million pounds of waste.
- Glass usage was reduced significantly in 1991; further gains have resulted in an annual reduction of 240,000 pounds.
- Paper use has been reduced through major corrugated case design changes, resulting in an annual reduction of 8.5 million pounds of corrugated.

### Reuse

Campbell Soup Company provided leadership within the industry in designing and obtaining trade acceptance of a returnable/reusable block style wooden pallet. Campbell's current 40 percent conversion to this leasable reusable pallet prevents 50 million pounds of wooden pallets from entering the waste stream annually. In addition, the sturdiness and design of this pallet is projected to reduce can damage, thereby keeping damaged canned products from landfills.

### Recycled Content

Where allowed, the safe use of recycled content in packaging has resulted in an average of approximately 28 percent recycled content for our domestic packages. The estimated increased use of recycled materials from the previous year is 30 million pounds.

### Recycling

World Headquarters Recycling. In calendar year 1992, the Campbell's World Headquarters complex achieved a 55.9 percent recycling rate, well on the way to achieving its goal of 60 percent recycling of office solid waste by 1995.

Manufacturing Facilities. Solid waste recycling reached 80 percent in 1991 and remains at that rate.

## **BENEFITS**

Although the specifics are not available for release, these actions have generated significant savings.

## **PROBLEMS**

Reducing packaging solid waste is functionally complex. "Rates and Dates" reflect an overly simplified approach to a complex problem. The Franklin data, as recently reported by the Grocery Manufacturers of America (GMA), shows that food packaging per capita has decreased over the past ten years. Continued improvement will require an integrated approach between materials' suppliers, manufacturers, consumers, municipalities, and waste managers.

## **FUTURE PLANNING**

Campbell Soup Company will continue to practice the principles of its solid waste policy. The company will work with national trade associations as well as CONEG to ensure that its contribution to the municipal solid waste solution is handled on a sound, integrated basis. Food packaging requires separate attention and review mechanisms because of the unique needs of package integrity and food safety.



# POLYSTYRENE PACKAGING COUNCIL

1025 CONNECTICUT AVE., NW SUITE 515 WASHINGTON, DC 20036 TEL. 202/822-6424 FAX: 202/331-0538

September 1, 1994

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SEP 2 1994

Oregon Department of  
Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

**Re: Comments Before the Oregon Department of Environmental Quality on  
Proposed Regulations to Implement the Rigid Plastic Container Law**

To Whom It May Concern:

The Polystyrene Packaging Council (PSPC) of The Society of the Plastics Industry, Inc. respectfully submits the following comments in response to the recently-proposed regulations implementing Oregon's Rigid Plastic Container Law. On July 22, 1994 the Oregon Department of Environmental Quality (DEQ) released its proposed regulations implementing Oregon's Rigid Plastic Container Law and issued an accompanying explanatory memorandum (hereinafter the DEQ Memo) which invited written comments on the proposal by September 6, 1994.

The PSPC is a Special Purpose Group of The Society of the Plastics Industry, Inc. (SPI), a non-profit trade organization of more than 2,000 members, representing all segments of the plastics industry. The members of the PSPC consist of producers and fabricators of polystyrene resin products and number sixteen companies. Members of the PSPC supply a variety of polystyrene resin products to product manufacturers subject to the Oregon Rigid Plastic Container (RPC) Law. The PSPC is committed to the continued development of recycled polystyrene products and of recycling markets for polystyrene and plastics generally.

With respect to the issues raised by the DEQ's proposed regulations, the PSPC fully endorses and supports the comments submitted by the American Plastics Council (APC), a joint initiative with SPI. The purpose of the supplementary PSPC comments below is to bring to the attention of the DEQ issues of special concern to PSPC's members. Specifically, the PSPC urges DEQ to consider the following points before issuing its final rules:



1. Serious environmental and economic impacts will result from a switch away from plastic food service products to alternatives.
2. "Point of sale" enforcement will be impractical and will impose an unjustified and overly burdensome recordkeeping obligation on small businesses.
3. The PSPC supports Alternative B for both the "rigid plastic container" and "reduced package" definitions, and supports the more extensive APC comments on these issues.
4. The polystyrene food service industry has made significant source-reductions over the past two decades, both as compared to earlier versions of polystyrene products and to predecessor products made from alternative materials, and these reductions should be taken into account under the "reduced package" exemption.

Each of these points is discussed in turn below.

- 1. Serious environmental and economic impacts will result from a switch away from plastic food service products to alternatives.**

Food service disposable polystyrene products, such as foam cups, hinged foam containers, and crystal polystyrene vending and portion cups, account for almost one-third of the nation's annual polystyrene food service and packaging market. By subjecting polystyrene food service disposables to the full requirements of the law without any measure of relief, Oregon's proposed regulations will encourage retailers to replace polystyrene packaging with other products, which are not subject to the RPC Law or to any comparable waste reduction statute. Because these replacement products will weigh significantly more than polystyrene products, are not recycled, and are likely to be landfilled, the proposed regulations will increase the weight of solid waste produced and disposed of in Oregon.<sup>1/</sup> Thus, the proposed regulations run directly counter to the stated goals of the RPC Law and undermine the efforts by Oregon's cities and counties to reduce the amount of waste sent to landfills.

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<sup>1/</sup> Lifecycle analyses of the production, use, and disposal of polystyrene versus paper disposables, including an examination of energy use, atmospheric emissions, waterborne waste pollutants, and solid waste generation, are favorable to polystyrene products.



In addition, the National Polystyrene Recycling Company (NPRC) currently operates a polystyrene recycling facility in Corona, California. The plant's total operating capacity is approximately 1 million pounds of polystyrene a month. While not yet operating at capacity, the facility currently accepts polystyrene food service disposables from schools located in Oregon and Washington, in addition to those in California. If the expected shift to other replacement products occurs due to the inclusion of polystyrene products within the scope of the RPC Law, the facility will suffer a significant reduction in post-consumer polystyrene feedstock for recycling and could even be forced out of business. A shut down of the NPRC facility will bring to a premature halt the progress now being made towards more widespread recycling of polystyrene products, and the impact of DEQ's regulations will have directly clashed with the purposes of the RPC Law to encourage recycling and waste minimization. This certainly could not have been the intent of the Oregon Legislature.

Aside from these paradoxical environmental impacts, food service packages or other alternatives generally cost more than their plastic counterparts (DEQ Memo, Att. D, at page 12). These higher costs can only be handled in one of two ways: they will either be passed on to consumers in the form of higher prices for food items or absorbed by the predominantly small point-of-sale "product manufacturer." In short, the effect of DEQ's regulations will be to drive up the costs of doing business in Oregon, particularly for small food service operations, and encourage the use of alternatives to RPCs that have no prospect of widespread, economical recycling and are headed for Oregon's landfills.

It is incumbent upon DEQ to address through regulation these unanticipated impacts and implement a program that is true to the law's purposes and goals.

**2. "Point of sale" enforcement will be impractical and impose an unjustified and overly burdensome recordkeeping obligation on small businesses.**

Proposed O.A.R. 340-90-320(13) would include "point of sale" product sellers within the scope of "product manufacturer." Despite the constraints DEQ believes are imposed on its discretion by the RPC Law, defining "product manufacturer" in this manner will place an inordinately heavy compliance burden on small businesses. Merchants using containers that comply with either the "recycling rate," "reuse/refill," or "recycled content" provisions face the prospect of maintaining extensive compliance documentation on each such RPC they use. The many small businesses that fall within this "product manufacturer" definition, businesses that are essential to Oregon's economic vitality, will be particularly affected. These operations, such as delicatessens and other small food service establishments, simply do not have the resources of larger businesses to develop compliance programs, and may be placed at a competitive disadvantage because the costs of compliance will be proportionately larger

for small businesses than for larger ones. Even keeping an accurate and up-to-date account of the Certificates of Compliance provided by container manufacturers for "recycled content" products can be a daunting task for those that must operate close to the margin.

Imposing this type of recordkeeping burden under the threat of civil penalties is unfair to those small businesses who seek only to use RPCs that comply with the law. This additional burden, and the fear of sanctions for noncompliance, will act as a barrier to the selection of containers that may not only perform better and cost less than alternative packaging, but that have also met the demanding recycling goals of the Oregon RPC law. Such an approach will lead to the increased use of products that are not recycled (but that carry no recordkeeping burden), instead of products that are being recycled, reduced, or reused at significant rates, and thus undermine the central environmental objectives of the RPC Law itself.

Enforcement at the "point of sale" will also be impractical and, consequently, unfair. First, it is clear that DEQ's limited resources will not be adequate to ensure that the law is being enforced fairly and equitably. Moreover, the DEQ has failed to demonstrate that this onerous enforcement approach will produce any clear countervailing public benefit. DEQ has already implicitly acknowledged the limited public interest in and disproportionate impact of enforcing the law against "point of sale" product manufacturers by proposing to reduce (to Class III) the status of a violation by a product manufacturer selling fewer than 500 RPCs per day (see proposed O.A.R. 340-12-065(2)(1)). However, the mere threat of sanctions will be enough to discourage many proprietors from continuing to use even lawful plastic packaging, force them unnecessarily to increase their costs, and threaten their ability to continue to do business in Oregon.

As required by O.R.S. 183.540, DEQ is obligated to eliminate this unjustified burden on small businesses and protect their ability to compete economically. Such actions will also help discourage the selection of packaging that runs counter to the professed objectives of the RPC Law.

3. **The PSPC supports Alternative B for both the "rigid plastic container" and "reduced package" definitions, and supports the more extensive APC comments on these issues.**

The PSPC believes that Alternative B for the "rigid plastic container" definition is far more clear than Alternative A, and will thus provide better compliance guidance to industry. Adopting Alternative B will eliminate much of the guesswork that would otherwise be

required to determine whether a plastic item fits within the definition. For example, domed lids of paperboard containers and plastic packaging inserts may or may not be "rigid plastic containers" under Alternative A; they certainly would not be under Alternative B. In addition, Alternative B would exclude plastic containers which can be "easily hand folded, flexed, and twisted without damage to the container." Given that the intent of the law is to regulate "rigid" plastic containers, the exclusion of such flexible products is appropriate and is made more clear by Alternative B.

The PSPC also believes that it was not the intent of the Oregon Legislature to deny to manufacturers of newly-introduced products the availability of the "reduced package" exemption. We thus join the APC in supporting Alternative B for the definition of "reduced package." The intent behind the first sentence of Section 459A.660(5)(d) of the RPC Law was to allow package manufacturers to qualify for the exemption through weight reductions achieved in marketed products at any time during the last five years. Its intent was clearly to provide greater flexibility in qualifying for this exemption, not less. Under Alternative A, however, a container introduced to the marketplace in 1991 that subsequently achieved the required significant reduction in weight, or one introduced in 1993 that can be significantly reduced in weight, would not be eligible for the exemption. This interpretation would discourage or even penalize innovation, and would be unfair to those package and product manufacturers that have more recently taken the same constructive steps towards source reduction for products that have been on the market for less than five years.

The PSPC therefore joins with the APC, and endorses its comments in support of Alternative B for the definitions of both "rigid plastic container" and "reduced package."

- 4. The polystyrene food service industry has made significant source-reductions over the past two decades, both as compared to earlier versions of polystyrene products and to predecessor products made from alternative materials, and these reductions should be taken into account under the "reduced package" exemption.**

Over the past ten to twenty years, the polystyrene industry has led the way in developing lower-weight alternatives to traditional packaging materials and, later, in reducing the amount of material used in the earlier versions of polystyrene food service packages. Because of the significant source reductions that have been achieved over that time period, however, there has been limited opportunity for further source reduction in the past five years. Rather, many of today's polystyrene food packages are comprised of as little polystyrene material as is technologically possible. The RPC Law and proposed regulations

fail to recognize these advances and to take into account the inequitable application of this exemption provision on this segment of the plastics industry. By not appropriately crediting polystyrene container manufacturers that have been "ahead of the curve" in source reduction, the regulations essentially deny them the opportunity to seek an exemption for their products as "reduced packages."

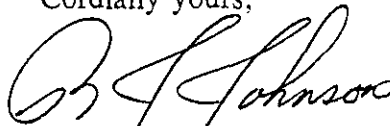
Denial of this exemption is particularly detrimental when combined with the fact that polystyrene packages will also have a limited opportunity to qualify for the "recycled content" option under the law. Since polystyrene RPCs are used predominantly for food packaging applications, their manufacturers can only utilize the "recycled content" option if the manufacturer can successfully obtain U.S. Food and Drug Administration authorization to use recycled content in those packages. This process alone involves administrative, legal, and testing costs that DEQ itself estimates at \$500,000, an amount that increases the cost of the package by 20-30%. See DEQ Memo, Att. D, at page 8. Again, the consumer or small food service establishment would ultimately be forced to bear these costs.

In short, from a practical standpoint, polystyrene package manufacturers and food service establishments have few compliance "options" available to them under the law. Such an inequitable application of the law could not have been intended by the Oregon Legislature. The DEQ regulations can help to remedy this unanticipated disproportionate impact by including additional language in the "reduced package" definition that will recognize the significant source reductions that polystyrene has achieved in a variety of packaging applications during the period before 1990. Again, if the DEQ takes the position that it cannot address this matter in amendments to the regulations, it should bring this inequitable situation to the attention of the Legislature.

\* \* \*

We appreciate your consideration of the above comments and look forward to working with the DEQ as the Rigid Plastic Container Law is implemented. In the meantime, if you should have any questions regarding the above, please feel free to call me at (202) 822-6424.

Cordially yours,



R. Jerry Johnson  
Executive Director  
Polystyrene Packaging Council



**Continental Plastic Containers, Inc.**  
Subsidiary of Continental Can Company, Inc.

August 31, 1994

RECEIVED  
SEP 2 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

**Re: Comments on Proposed Rules OAR 340-90-310 through 340-90-430 Rigid Plastic Container Law**

Continental Plastic Containers, Inc. is pleased to submit the following comments on the above proposed rules. As a blow molder of plastic bottles and directly affected by these rules, we sincerely hope that our comments, and those of our industry, will be taken under serious consideration in an effort to make a very complex, costly, difficult law implemented in the most efficient way possible under the restrictions and limitations imposed by the statute, and by the proposed rules.

In general, this law and these rules are somewhat more of a burden than a similar law and proposed rules in California. By not allowing exemption for containers subject to federal regulations such as F&DA, FIFRA, and DOT, plastics containers that have significant other environmental advantages compared with their alternatives are threatened in Oregon. By not allowing more options for compliance such as corporate averaging which would not change the recycling and waste reduction goals, plastic containers that have significant other environmental advantages are threatened in Oregon. We believe that these rules need to increase our flexibility and our options for compliance wherever possible while reducing our costs within the limitations of the statute.

Enclosed are our suggestions on changes to specific rules.

Thank you for your consideration of these Continental Plastic Containers comments.

Sincerely,

**John McDonald**  
Director Environmental Affairs

JM/lsr  
Enclosure

800 Connecticut Avenue  
Post Office Box 5410  
Norwalk CT 06856  
203 855 5800  
Fax 203 855 5856

Specific comments on rules follow:

OAR-340-90-320 (2) Definitions-Container Manufacturer's Certificate of Compliance

We suggest that two words be added on Page A-1 line 34 as follows:

..."provided by the container manufacturer to a product manufacturer upon request"...

These words should also be added to OAR-340-90-410(2)(a) Responsibility of a Container Manufacturer page A-28, line 24 as follows: "...available upon request to"... If this is done, the words upon request on line 30 can be deleted. These changes would clarify the container maker's responsibility and minimize the exchange of paper until needed. The container maker still has the obligations to keep certain supporting records and to submit certification when requested by the product manufacturer.

OAR-340-90-330 Rigid Plastic Containers

Continental Plastic Containers strongly supports Alternative B over Alternative A. Under Alternative B, the adoption of (1)(b)(A) and (B), lines 22-28, page A-5 gives product manufacturers more flexibility to determine compliance at minimum cost. It recognizes the need to make it easier to identify the laws' applicability for the thousands of products, dry, viscous, or liquid, currently being packaged in rigid plastic containers of all shapes and sizes.

Under (1)(2)(c), lines 44 to 48, Alternative B gives a more focused, normally used definition of a rigid plastic container. Adoption of this reduces some of the gray areas in the implementation of this law.

Under (2)(b), lines 11-16, page A-6, "rigid plastic tubes", and under (2)(c), lines 18-23, "plastic trays", Alternative B eliminates containers which are not really stand alone rigid plastic containers which are the original focus of the law in our opinion. Every effort should be made to adopt rule language which is clear and which eliminates marginal, questionable containers or plastic components of packages.

OAR-340-90-340 (5) Exempt Rigid Plastic Containers - Reduced Containers

Continental Plastic Containers urges the adoption of Alternative B because it recognizes and then addresses more of the real world situations and gives products manufacturers more options to comply with this law. These options will not dilute the objectives of the law, but will increase the effectiveness of the law by increasing the great environmental value of 10% source reduction. In addition, Alternative B seems to be close to the California definition, and consistency with California would greatly help to minimize compliance costs of industry distributing products in plastic containers in both states.

### 340-90-380 Regarding Rate Calculation

The statute does not use the term "post-consumer rigid plastic containers", but rather uses "rigid plastic containers". In the interests of conformance to the law, of increased clarity and reduced confusion, and consistency, we think "post-consumer rigid plastic containers" should revert back to "rigid plastic containers" wherever it is used. We are recycling "rigid plastic containers" into recycled material as defined in the statute, and "rigid plastic containers" are complying with the law by using one of the defined options such as containing 25% content or being made of plastic that is being recycled in Oregon at a rate of 25%.

Margaret Thornton  
12024 SE Beckman Ave.  
Milwaukie, OR 97222

August 30, 1994

DEQ Waste Management  
811 SW Sixth Avenue  
Portland, Oregon 97204

RECEIVED  
SEP 2 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear DEQ Representative:

I'm responding to the proposal which will go into effect in January of 1995 regarding plastics recycling. As I cannot attend the public hearing which will be held on September 1st, 1994, I'd like this letter to be admitted to the public record.

It is imperative that the most stringent proposal possible be adopted, with few, if any, exceptions for the following reasons:

1. It will be easier and more cost-effective to start right from the beginning. Oregon is known as a progressive, forward-thinking state. Let's not buckle under to rhetoric that exceptions allowed now will be fit into the proposal later on. When has implimenting guidelines like these ever cost less when done in multiple parts?
2. Consumers will recycle more if the process is easier. Right now, a mishmash of recycling rules still confuse many people. One set of guidelines in terms of what can be recycled and what constitutes a recycled product will ease consumer mistrust and encourage compliance.
3. Other communities do have industry regulations such as what is being proposed, and their plastic and manufacturing businesses are still going strong. Please look at Germany for a good example of strict packaging laws which are working well.

There is no good, intelligent arguement for not doing things right the first time. Please, limit exceptions to the proposed plastics recycling requirements.

Sincerely,  
*Margaret Thornton*  
Margaret Thornton





## NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION

1156 Fifteenth Street, N.W., Suite 400, Washington, D. C. 20005  
202 • 296 1585 FAX 202 • 463-0474

August 31, 1994

RECEIVED  
SEP 2 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Madam/Sir:

This is in response to your request for comments on the proposed rule to implement Oregon's Rigid Plastic Container Law. These remarks are being filed on behalf of the National Agricultural Chemicals Association which represents manufacturers, distributors and formulators of virtually all the active compounds used in crop protection chemicals registered for use in the U.S.

On a positive note, NACA is encouraged by the outstanding voluntary efforts by its member companies to recycle plastic containers. This year, the Agricultural Container Research Council which operates nationally will recover roughly 25% of the plastic containers used by the crop protection chemical industry.

In your state the program established by the Oregon Agricultural Chemicals and Fertilizers Association is one of the first of its kind in the U.S. With the participation of the Oregon Department of Agriculture, the OACFA program should collect and recycle over 80,000 containers this year.

These efforts, in conjunction with other creative approaches undertaken by the crop protection chemicals industry, are making significant progress in reducing, recovering, and reusing the volume of plastic used in product containers.

On the other hand, we strongly support an exemption from this statute for products regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). ORS Sections 459A.655 and 459A.660 purport to require, with limited exception, that all rigid containers sold, offered for sale or used in association with the sale or offer for sale: (1) contain 25% recycled content, (2) be made of plastic being recycled in Oregon, or (3) be a reusable package. The goals of this statute are admirable and, as noted above, the pesticide industry has already taken several important steps to encourage the recycling of its containers. However, this law is preempted by FIFRA and is therefore

unenforceable with respect to pesticide containers.

FIFRA is the pervasive Federal law under which the registration (licensing), sale and use of pesticides is governed. Sec. 24(b) (& U.S.C. 136v) of that law clearly states that a State:

"...shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

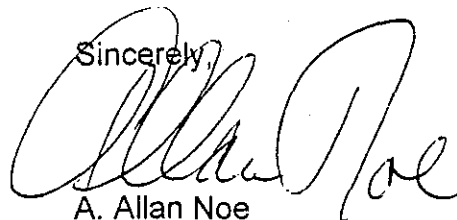
Under this section, any state or local regulation concerning the packaging of a pesticide product is preempted.

ORS 459A.655 and 459A.660 clearly impose requirements concerning the "packaging" of pesticide products sold or offered for sale in Oregon. By prescribing the percentage of recycled content and/or the source of packaging material, those sections impermissibly enter the precise field of "packaging" which FIFRA Sec. 24(b) expressly prohibits. As they relate to pesticide packaging, ORS 459A.655 and 459A.660 are preempted by FIFRA Sec. 24(b).

Furthermore, US Department of Transportation regulations for hazardous materials preempt hazardous material shipments in recycled plastic containers. Although not all pesticides are classified as hazardous materials, roughly one-third are and would be covered by DOT rules.

We feel the Oregon law must take into consideration the Federal law and regulations which have primacy in this matter. We would be pleased to discuss this issue with your representatives should you need us to elaborate on our comments. Thank you for the opportunity to participate in this discussion.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Allan Noe". The signature is fluid and cursive, with the first name being the most prominent.

A. Allan Noe  
State Affairs Director



American  
Plastics  
Council

September 2, 1994

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
**RECEIVED**  
SEP - 2 1994

Mr. Fred Hansen, Director  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW 6th Avenue  
Portland, Oregon 97204

OFFICE OF THE DIRECTOR

Subject: American Plastics Council Comments on Oregon Department of  
Environmental Quality Proposed Rigid Plastic Container Rule,  
July 22, 1994

Dear Mr. Hansen:

The American Plastics Council (APC) is pleased to submit written comments to the Department of Environmental Quality (DEQ) regarding the Proposed Rigid Plastic Container Rule that was mailed to interested parties on July 22, 1994.

The APC, a joint initiative with The Society of the Plastics Industry (SPI), is made up of 25 of the nation's leading resin producers. The APC and SPI have a vast membership of plastic resin and monomer producers and the broad plastics processor community. Together, we seek to develop technically and economically sound programs for the responsible use, recovery and conservation of plastics and its component raw materials.

The APC and its member companies have expended considerable effort, time and resources to review Oregon's Proposed Rigid Plastic Container Rule. Our interest in submitting these comments is to help DEQ adopt reasonable and workable regulations. As an active participant in DEQ's advisory task force process, we know just how complex the law is. We also recognize that confusing regulations will serve only to exacerbate the problem by making implementation more difficult.

We hope you find our comments helpful. Where possible, we outlined our issues, as well as, provided a recommended course of action. In an attempt to be as clear as possible, we organized our comments to follow the organization of the Proposed Rule. Quotations from the Proposed Rule and relevant statutes appear in italics. Most references are identified by page and section number, as appropriate. Comment headings appear in bold.

A Joint Initiative with The Society of the Plastics Industry, Inc.

1275 K Street NW Suite 400 • Washington, DC 20005 • Fax 202.371.5679 • 202.371.5319

Mr. Fred Hansen, Director  
September 2, 1994  
Page 2

If you have any questions regarding our comments or other issues that may come up during the rulemaking process, please call Rod Lowman at (202) 371-5317 or Patty Enneking at (202) 371-5365. We look forward to talking with you.



Rodney W. Lowman  
Vice President, Government Affairs

RWL/PAE/vtw

cc: Laurie Hansen  
Roger Bernstein

Sincerely,



Patricia A. Enneking  
Director, Regulatory Issues

AMERICAN PLASTICS COUNCIL COMMENTS ON  
OREGON RIGID PLASTIC CONTAINER PROPOSED RULES  
DATED JULY 22, 1994

**OAR 340-90-330 RIGID PLASTIC CONTAINERS**

The proposed regulations contain two proposals for the definition of a "rigid plastic container. APC strongly supports Alternative B over Alternative A for a number of reasons.

**Alternative B (1) (e), page A-5, lines 44-48 clarifies the definition of a rigid plastic container as distinct from other plastic packaging.**

SB66 very clearly targets rigid plastic containers as distinct from other types of plastic packaging, including film and non-container rigid packaging. The language in Alternative B (1) (e) clarifies the definition of a rigid plastic container to achieve the statutory intent:

*... Is designed to completely contain a product, under normal usage, without other packaging material except a lid or closure.*

This language meets the common sense test of a container as a package that basically encloses the product needing only a top or lid for closure. Included are items the average Oregonian and the regulated community would consider a rigid container – bottles, jars, cups, tubs, drums, pails, boxes and baskets. These are items we can all agree on. They also comprise the bulk of rigid plastic containers found in Oregon's waste stream.

This language properly excludes items not normally considered containers in and of themselves – cookie trays, packaging inserts and meat trays are prime examples. These items do not and cannot contain a product on their own. They hold, brace, provide a platform for, support, etc. a product but the product is in fact contained (e.g., enclosed) by other, additional and essential packaging – in most cases plastic film, polycoated paper, or boxboard. This type of plastic is properly defined as "other plastic packaging" rather than as a "rigid plastic container."

**Recommendation:** Adopt the language in Alternative B (1) (e), page A-5, lines 44-48.

**Alternative A, page 5 lacks clarifying language on the definition of a rigid plastic container and creates confusion.**

The clarifying language in Alternative B (1) (e) is missing entirely from Alternative A. Without this clarifying language, no clear understanding of a rigid container is provided. Instead, under Alternative A, a very broad spectrum of plastic and multi-material packaging is subject to SB66 enforcement. The result: SB66 will be transformed from a rigid plastic container law to a plastic packaging law. As such, both the intent and the language of SB66 will have been subverted.

The lack of clarity in Alternative A combined with the broader definition of what constitutes a rigid plastic container will mean more companies and more packaging items will be subject to the law. As a corollary, more companies will be confused about whether they do in fact have to comply. This in turn will mean that DEQ will need to field more questions from industry and make more judgment calls about what companies and packaging items must comply. These problems do not go away entirely with Alternative B but, with fewer "gray areas" about what is "in" and "out," they will be significantly reduced.

Recommendation: Delete sections on pages A-5 through A-7 that refer to Alternative A.

**Alternative B, page A-6, lines 11-16 clearly states that flexible tubes are excluded from the definition of a rigid plastic container.**

Alternative B (2) (b), page A-6, lines 11-16 clarifies that flexible tubes are excluded from the law:

*... Rigid plastic tubes, not including tubes which can be easily hand folded, flexed, and twisted without damage to the container;*

This language is consistent with legislative intent and the statutory language to exclude items that are flexible, not rigid. Section 34a (8) of SB66 defines a rigid plastic container as follows:

*... any package composed predominantly of plastic resin which has a relatively inflexible finite shape or form with a minimum capacity of eight ounces and a maximum capacity of five gallons, and that is capable of maintaining its shape while holding other products.*

While "inflexible" is not defined in the statute, Webster defines it as "1. not readily bent . . . : lacking or deficient in suppleness. . ." Webster further defines rigid as "1. deficient in or devoid of flexibility . . . 2. appearing stiff and unyielding. . ." Thus we can only conclude that the intent of the legislature and

the statutory language was to exclude flexible tubes from compliance requirements.

**Recommendation:** Adopt the language on page A-6, lines 11-16 under Alternative B.

**Alternative A, page A-6 does not exclude flexible tubes from the definition of a rigid plastic container. If adopted, this alternative will cause havoc to plastics recycling in Oregon.**

A second but equally important consideration for the DEQ to address is the practical impact of including "flexible tubes" in the definition of a rigid plastic container as specified in Alternative A. By including them, DEQ is determining that these items are covered by SB66 and therefore, must be recycled, include recycled content, be source reduced or reused or refilled.

Tubes contain a variety of products, including health and cosmetic applications such as shampoo; food applications, such as, cake decorating frosting and processed cheese; and other product applications, such as tub and tile caulking. In some cases, it may be technically possible to include recycled content in the tubes -- but the availability of this option will be limited due to Federal Food and Drug Administration requirements. None to our knowledge can be reused or refilled. Therefore, in order to comply, these products must meet the recycling rate or be source reduced (in many cases source reduction is not a viable option because there is no base package for comparison).

As such, recycling may be the only option. For these items to be recycled in traditional recycling programs, however, the public will need to be instructed to handle these items differently from other rigid plastic containers where they are asked only to remove caps and rinse the contents. For tubes, the consumer will be required to perform extra steps to ensure the containers are properly prepared for recycling. In addition to removing the caps, they will need to physically cut the tubes and properly clean them of any remaining residue. Tubes that enter the stream with the tops intact will have to be removed by handlers of the material, contributing to increased sorting costs and or reduced quality and value of the recycled materials when they are marketed. Those that make it to the next step (e.g., washing) will contaminate the other materials, plug up wash screens, require more water to fully clean the material, and cause havoc to the washing equipment -- all in order to capture what amounts to a very small impact on Oregon's solid waste stream.

**Recommendation:** As mentioned previously, delete all references to Alternative A, pages A-5 through A-7.

Alternative B (2) (c), page A-6, lines 18-23, further clarifies whether trays are "in" or "out" of the definition of a rigid plastic container.

This language further clarifies that a container (e.g., plastic tray) must fully contain the product without other packaging except a lid or closure to qualify as a rigid plastic container. The language on page A-6, lines 18-23 reads as follows:

*... Plastic trays which have sidewalls designed to contain a product in the tray without the use of packaging other than a lid or closure.*

The clarity provided by this language will reduce confusion on the part of the regulated community associated with knowing whether or not a product they manufacture must comply with the law. For example, a company who packages cookies in a plastic tray that is inserted in a paper bag or box would clearly know under Alternative B that their product was not covered under the law. This clarity is lacking under Alternative A.

This clarification will make it easier for the regulating community to implement the law. Specifically, Alternative B will reduce confusion and problems associated with performing waste composition studies. Under Alternative B, field crews will have to make fewer "judgment calls" on what is "in" and "out." This will result in fewer sorting errors by the crew into plastic categories and less time and state funded expense to complete the waste sort.

Additionally, DEQ staff charged with implementing the law will have fewer calls from the regulated community inquiring whether or not their product is required to comply under the law.

Recommendation: Adopt language on page A-6, lines 18-23.

## OAR 340-90-340(5) EXEMPTION FOR REDUCED CONTAINER

The proposed regulations contain two proposals for a reduced container. Of the two, Alternative B is preferred.

Alternative B (5) (A) (i) (II), page A-9, lines 34-42 provides greater opportunity for rigid plastic containers to be source reduced than does Alternative A.

Specifically, Alternative B allows this option to be used by rigid plastic containers that have been in existence for less than 5 years:

*... for containers not sold before January 1, 1990, when the container was initially introduced.*



Alternative A, on the other hand, is much more restrictive, as it applies only to containers sold before 1990. Given the dynamic, ever changing nature of consumer product packaging, this restriction serves to eliminate whole categories of containers that could potentially be source reduced. As such, Alternative A will likely result in more waste being disposed in Oregon's landfills.

Conversely, Alternative B encourages industry to be innovative in their packaging – to examine and implement all possible ways to achieve source reduction for rigid plastic containers, regardless of whether their containers were on the shelf before 1990. This will result in more waste reduction.

We, therefore, concur with the Implementation Task Force that Alternative B should be adopted. This interpretation is in line with DEQ's interest to minimize the amount of packaging generated in the first place, thereby conserving natural resources and reducing the amount of waste needing to be recycled or disposed of.

**Recommendation:** Support Alternative B of the proposed regulation for a reduced container.

## OAR 340-90-380 RECYCLING RATE CALCULATION

Introduction of the term "Post-Consumer Rigid Plastic Container," beginning on page A-17, (2) (c), line 19-20. (This term appears throughout the section and refers to calculating the rate in the aggregate, as a specified type and as a product-associated calculation. Additionally, this term is found in OAR 340-90-320 Definition (11), page A-3, lines 12-17.)

The proposed rule limits rigid plastic containers that can be used to determine the recycling rate to "post-consumer rigid plastic containers."

*... The elements of the formula to calculate the aggregate recycling rate for post-consumer rigid plastic containers in Oregon are: ...*

*... The specified type of post-consumer rigid plastic container numerator shall be calculated as the total of the specific type of post-consumer rigid plastic containers recycled in Oregon, expressed in tons. . .*

*... The numerator shall be calculated as the total weight of product-associated post-consumer rigid plastic containers recycled in Oregon, expressed in tons. . .*

"Post-consumer rigid plastic container" is defined in the proposed rule on page A-3, lines 12-17 as:

*... a rigid plastic container that would otherwise be destined for solid waste disposal, having completed its intended end-use and product lifecycle. Rigid plastic containers which held obsolete or unsold products shall be considered post-consumer rigid plastic containers when used as a feedstock for new products other than fuel or energy.*

We are unclear why the DEQ believes it is necessary to introduce a new term and definition in this section -- one that seems to make a distinction between "post-consumer rigid plastic container" and "rigid plastic container." In our opinion this terminology adds confusion unnecessarily and is not justifiable. Specifically, the term, "post-consumer rigid plastic container" is not found in the statute; nor is it found in other parts of the proposed rule.

In the interest of clarity in the rule, we therefore recommend that the DEQ look to the statute for guidance and terminology. The statute and the proposed rule quite clearly define "recycled material" as:

*... a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle. Recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.*

This definition encompasses the meaning found in DEQ's proposed definition of "post-consumer rigid plastic container."

Further reasons for the DEQ to look to the statute for guidance is that SB66 clearly states that "rigid plastic containers" as opposed to "post-consumer rigid plastic containers" can meet the recycling rate in one of three ways:

*... It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in the state at a rate of 25 percent by January 1, 1995;*

*... It is a specified type of rigid plastic container and that type of rigid plastic container, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995; or*

*... It is a particular product-associated package and that type of package, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995. (Product-*

*associated package means a brand-specific rigid plastic container line. . .)*

No mention is made of the term "post-consumer rigid plastic container." For this reason, it seems most reasonable for the DEQ to delete all references in this section to "post-consumer rigid plastic container" and replace them with "rigid plastic container" as is specified in the statute. This would also eliminate the need for the definition of "post-consumer rigid plastic container."

One last point on this issue. There is an added inconsistency between the statutory definition of "recycled material" and the proposed definition of "post-consumer rigid plastic container." The statutory language refers to *intended end use or product life cycle* while the proposed rule language references *intended end use and product life cycle*.

**Recommendation:** Delete the word "post-consumer" before the words rigid container throughout the section on Recycling Rate Calculation. Also, delete Definition (11) "post-consumer rigid plastic container" on page A-3, lines 12-17.

**Publication of Report on Aggregate Recycling Rate (2) (B) (d), page A19, lines 6-10.**

The section on Recycling Rate Calculation, pages A-17 through A-21 addresses many of the issues and concerns the APC presented in the DEQ Recycling Rate Task Force meetings. However, one significant omission is apparent. Section (2) (B) (d), page A19, lines 6-10 requires the DEQ to write a report on the aggregate recycling rate and provide information on the "margin of error for the percent composition of rigid plastic containers." While this information is essential, it is equally essential that this section reference "potential error associated with estimation of the total tons of municipal solid waste disposed in Oregon."

**Recommendation:** This section should be amended to include information on potential error associated with estimation of the total tons of municipal solid waste disposed.

## **FURTHER COMMENT ON OAR 340-90-380 RECYCLING RATE CALCULATION**

During the Recycling Rate Task Force meetings, industry representatives recommended that DEQ provide a mechanism to receive public comment on the aggregate recycling rate before issuing an official calendar year rate calculation. The benefit of this approach is that DEQ will receive feedback on its calculation before enforcement begins and so have the opportunity to make adjustments or revisions if shown that errors or omissions occurred. This approach is likely to yield the most accurate rate possible.

Recommendation: Add language to the rule that provides a mechanism for public feedback on the aggregate recycling rate calculation before it is finalized.

## OAR 340-90-400 RESPONSIBILITIES OF A PRODUCT MANUFACTURER

OAR 340-90-400 of the proposed rule on pages A-22 through A-27 outlines responsibilities of the "product manufacturer" to document that a rigid plastic container is in compliance with the requirements of the statute or exempted from the requirements.

DEQ has defined "product manufacturer" to include producers of products which are shipped off-site and retailers of point-of-sale containers, such as delicatessens, street vendors, and convenience and grocery stores. Specifically, a "product manufacturer" is defined on page A-3, lines 25-28 as:

*... the producer or generator of a packaged product that is offered for sale in Oregon in a rigid plastic container. Product manufacturer includes both persons who package a product which is shipped off-site for sale and those who package a product at the point of sale.*

The proposed rule is generally well thought out in regards to the specific responsibilities of the product manufacturer to document that a rigid plastic container is in compliance with or is exempted from the requirements set forth in the statute. The workability of the rule breaks down considerably, however, in regards to the retailer of a point-of-sale container (e.g., deli owner selling potato salad over the counter). These containers are often "generic" containers in that they can be used for a wide variety of products. Some are purchased through distributors while others are purchased directly off a store shelf. As a result, there is often little or no interface between a point-of-sale retailer and the container manufacturer. Because of this, documentation will be highly problematic and overly burdensome.

For example, use of recycled content, to the extent it is not limited by FDA requirements, may be possible but highly improbable to document since the container manufacturer of point-of-sale containers is often unknown to the point-of sale retailer.

Source reduction is even more difficult to document. In order to take advantage of this option the retailer must be able to determine and document the container to product ratio of a container. While this may be a relatively straightforward measurement for most labeled containers (e.g., XYZ detergent, XYZ water), it is less than straightforward for point-of-sale containers. These containers can be used for a multitude of different products on any given day -- the same type container can be used to hold potato salad, chicken soup, jello, or coleslaw. Each of these products is of a different weight and volume. The question becomes

how to measure the container to product ratio when you may not know who the container manufacturer is or how to measure the product.

**Recommendation:** These obstacles need to be examined by DEQ as it finalizes the rigid plastic container rule.

## OTHER ISSUES

Definition of "Recycled in Oregon" page A-3, lines 40-43. (Note: the analysis that follows also pertains to the definition of "post-consumer rigid plastic container." We have not included it in this discussion because we have already recommended in an earlier section of our comments that the definition of "post-consumer rigid plastic container" be dropped from the proposed rule.)

In determining the meaning of "recycled in Oregon" the DEQ proposes that it mean:

*... generated in Oregon as plastic from post-consumer rigid plastic containers and collected, processed and eventually manufactured into another product, other than a fuel or energy, either in Oregon or outside the state.*

Although APC concurs with part of the proposed definition of "recycled in Oregon," APC believes that the limitation on what is considered a "product" is contrary to the legislative intent and to the statute. No such limitation is found in the definition of "recycling," in the Oregon Solid Waste Law (ORS Section 459.005) nor is there any requirement that the recyclable materials be "manufactured" into a product. The legislation's sole requirement is that the recyclable material be "transformed" into a "product." Transforming liquid hydrocarbon, which can be used as a substitute for virgin petroleum meets the intent of the legislation. Liquid hydrocarbon is a product that has value and can be sold in commerce. Any determination that it is not a product is contrary to common sense, commercial practice and legislative intent.

Specifically, the Solid Waste Law defines "recycling" as:

*... any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.*

A product, although undefined by the Solid Waste Law or Recycling Law, is defined by Webster as "1. Something produced by human or mechanical effort.... 3. Chem. A substance produced by a chemical change . . ."

As DEQ is aware, the APC in conjunction with Conrad Industries, Inc., of Chehalis, Washington, and Kleenair Products Company of Clackamas, Oregon, developed a technology which converts mixed plastics into liquid hydrocarbon

("petroleum") by heating the materials in a chamber without oxygen. The by-products of the Advanced Recycling Technology System (ARTS) process are charcoal or carbon black and a gas which is used as an energy source for the ARTS. ARTS is almost 100% efficient in converting mixed waste plastic into usable products and by-products. For every 100 pounds of mixed waste plastic that it processes, ARTS produces 75-80 pounds of liquid hydrocarbon, 18-20 pounds of gas product, which is used as the energy source for ARTS, and 2-5 pounds of carbon. Consequently, there is virtually no waste remaining after the ARTS process.

The benefit of ARTS is that it can take mixed waste plastics and transform them back into the same material that was used to produce the plastics initially; liquid hydrocarbons. The liquid hydrocarbons produced by ARTS from mixed waste plastics contain the same significant chemical constituents that are contained in virgin petroleum. The ARTS liquid hydrocarbon's product can be substituted for virgin petroleum and used by a petrochemical refining facility to make a wide variety of end products derived from petroleum. These regenerated petroleum-based products, just like their crude oil derived predecessors, include monomers for plastic products, synthetic materials for clothing, lubricating oils or fuels. The derived liquid hydrocarbon which eventually may be used as a refinery processed fuel such as gasoline, jet fuel, or heating oil, is no less a valued product than liquid hydrocarbons used as plastics or chemical feedstocks, and provides for reuse and conservation of natural resources.

DEQ proposes only to give recycling credit for that portion of the ARTS product that can be traced through a refinery and into another plastic product, other than fuel or energy. This effort may be theoretically possible, but not realistically probable. Once the liquid hydrocarbon is substituted as a feedstock in a petrochemical refining facility for virgin petroleum, it is indistinguishable from the rest of the stream and its final disposition is impossible to determine for several reasons:

- the liquid hydrocarbon from ARTS is undetectable when combined with 120,000,000 pounds a day processed by a major petrochemical refining facility; and
- to trace such liquid petroleum would require a petrochemical refining facility to trace 1,000,000,000,000,000,000,000,000,000,000,000,000,000,000 petroleum molecules being processed every day. This is not a task for humans, computers or any means known to man.

In advancing overall plastics recycling, ARTS complements conventional mechanical recycling of easily separated plastic bottles and containers. The ARTS was developed specifically because other mixed waste plastics are difficult to recycle mechanically. This stems from the fact that they contain hundreds of different resin grades, many of which have different properties, flow rates and melt points. In addition, mixed waste plastics contain hundreds of different additives, colors and fillers. These properties make it virtually impossible to recycle these materials back into the types of products they came from. Plastics is

no different from other materials in this regard. For example, the same holds true for mixed waste paper.

ARTS is referred to as "tertiary recycling," because ARTS is able to recycle the mixed waste plastics back to its original state. Tertiary recycling is a step beyond present recycling which converts the plastic to an intermediate state only, e.g., pellets. Tertiary recycling has a distinct benefit. By taking the mixed waste plastic back to its original state, it can be used to make virtually all the products that are made from virgin material. This process is very analogous to recycling paper into de-inked pulp, where the pulp is a fungible commodity that can be reused to make a variety of final paper products when mixed with virgin pulp -- including office papers, newsprint and single-use items like toilet tissue and papertowels.

The plastics industry hopes that by focusing on this type of recycling, it will be technically and economically feasible to recycle large amounts of the more difficult to recycle plastics into liquid hydrocarbon, thereby helping Oregon conserve natural resources and energy and reduce waste plastics currently being landfilled.

Recommendation: Delete the phrase "*other than fuel or energy*" from the definition of "recycled in Oregon." Also, delete the definition of "post-consumer recycled material" for reasons discussed earlier.



COLGATE-PALMOLIVE COMPANY  
A Delaware Corporation

300 Park Avenue  
New York, NY 10022-7499  
Telephone 212-310-2000  
Cable Address PALMOLIVE

August 29, 1994

Ms. Patricia Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Dear Ms. Vernon,

Colgate-Palmolive Co. uses large quantities of post-consumer recycled plastics for our household and fabric care product lines. We support the expansion the recycling infrastructure and would like to insure that it develops rationally. We know that you are in the final stages of developing your state's recycling regulations and urge you to adopt Alternative B of the proposed rules OAR 340-90-310 through 340.

Alternative B is less confusing, easier to implement, and is more definitive as to which packages are in and out of the equation. Also, the exclusion of soft tubes makes sense particularly since Personal Care products contained in these packages are difficult to clean during recycling and may contaminate the reclaimed resin with residual product.

Please consider Alternative B in your work with the Oregon DEQ.

Yours truly,

Todd Van Gordon  
Environmental  
Packaging MGR.

Joseph T. Norris  
Associate Director  
US. Packaging

cc: Laurie Hansen  
SPI  
770 L Street  
Suite 960  
Sacramento, CA 95814

TV Gordon

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Waste Management & Cleanup Division  
Department of Environmental Quality





METRO

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SEP 6 1994

September 2, 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Rigid Plastic Container Rules Hearing  
Waste Management and Cleanup Division  
Department of Environmental Quality  
811 SW 6th Avenue  
Portland, OR 97204

To Whom It May Concern:

Thank you for the opportunity to comment on the draft rules to implement Oregon's Rigid Plastic Container Law. As the regional government responsible for solid waste management and disposal in the Portland tri-county area, Metro is anxious to increase plastics recycling. Approximately one-half of the state's waste is generated in the tri-county area.

For a number of years citizens in the Metro region have expressed concern about the lack of curbside and other plastics recycling programs available to them. In 1993, 12 percent of the calls (9,941) received by Metro's Recycling Information hotline concerned the recycling of plastics. Adoption of the proposed rules will provide the needed impetus to expand recycling collection in order to meet the aggregate rate, and to utilize post-consumer plastic in new products. In anticipation of the rigid plastic container rules, new and expanded programs at Thriftway and other depots have already begun. The material collected will be sent to a Plastics Recycling Facility to be established by the Garten Foundation in Salem.


Metro was a member of the Implementation Task Force for the rigid plastic container rules. It is our opinion that the rules were developed in a fair and open process. The methodology for calculating recovery rates for rigid plastic containers appears to be consistent with the waste characterization study currently underway in the Metro area. We will coordinate with the DEQ on future waste composition studies to ensure that the work of both agencies is consistent. Metro agrees with the Department that Alternative A, which uses labeled volume rather than volume determined by the product manufacturer, would be the least complicated approach for conducting a waste composition study.

Rigid Plastic Container Rules Hearing  
September 2, 1994  
Page two

Regarding the specific alternatives offered in the proposed rules, Metro can work with either alternative. Our main objective is to have a collection system that is easy for the public to understand, is simple to manage, and provides marketable material. Alternative A which states that a container does not have to be a "complete package" includes a wider variety of products and provides fewer exceptions for the public to deal with. Although we agree that flexible tubes may be complicated to prepare for recycling and could contaminate the feedstock, this would not appear to be the case with cookie trays or domed lids. From a practical waste sorting perspective, the fewer products that are excluded, the easier it is to gather an accurate disposal (denominator) number.

Once again, thank you for the opportunity to be involved in the rulemaking process. Although Metro realizes this is a complex issue, we believe the rules will translate into increased plastic recycling in Oregon. The delay in enforcement actions until after the 1995 aggregate recycling rate is calculated will provide time to determine the impact of expanded collection and processing programs now being put into place. We support the Department's efforts and urge the Environmental Quality Commission to adopt the rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Martin", with a long horizontal line extending to the right.

Bob Martin  
Solid Waste Director

BM:ay



Division of Heinz U.S.A.



September 1, 1994

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Waste Management & Cleanup Division  
Department of Environmental Quality

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, OR 97204

SUBJECT: Comments on the Draft Regulations Regarding the  
Implementation of Oregon's Rigid Plastic Container Law

Chef Francisco, a division of H.J. Heinz, is a frozen food processor primarily of soups for the food service industry. We employ approximately 200 employees at our operation in Eugene, Oregon. Our \$90MM per year sales are of products primarily packaged in high density polyethylene four-pound tubs and a small volume in plastic cups.

Our patented rigid plastic container was designed specifically for our frozen soup business. It would not be practical to package the product in glass or metal because of the freezing process it undergoes. To reduce the weight of the package would be to compromise its integrity and strength to support the product, particularly as it is filled with hot product. We, therefore, must retain plastic as the composition of our product container.

While we endorse the goals of reducing the amount of packaging that goes to landfills, we are concerned as to whether we will be able to continue selling our soup tub in Oregon if these rules are accepted as drafted. The following explains our compliance options.

a. Recycled Content

Providing a container from recycled materials for a product such as soup presents a challenge that even our technically proficient supplier of tubs has not been able to meet.

b. Reuse Option

No one has been able to provide evidence to convince FDA that containers made from HDPE such as our tubs could be reused for products such as ours.

c. Recycling Rate

This is the only area in which we could possibly comply. The rules should require that studies to calculate the aggregate rate be conducted frequently enough to be fair and accurate.

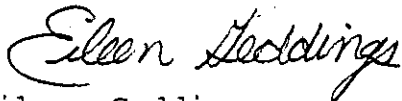
Regarding your Reduced Container option, we support Alternative B, which would allow weight comparison of the original container with a reduced-weight container, "even if that container had been sold less than five years." We would, however, request that a qualification be stated that the product need not have been sold in the state of Oregon prior to its weight reduction. That way, a product introduced and sold, for example, in the eastern U.S. for two years, could have had its packaging weight reduced and then sales expanded to the western states, and still qualify for this exemption.

Most of our customers are distributors who sell to a wide geographic area. If the rules are accepted as drafted, somehow these customers would have to limit their sales to states other than Oregon. This will certainly result in lowering production rates, thereby affecting employment security for our Eugene based employees. This decrease in production levels at our Eugene plant would certainly lead our parent company to consider producing all of our soups in our Pennsylvania plant since they can supply product to our entire customer base nationwide.

Please consider a more realistic, albeit slower, approach to the goals for which these rules were written. The citizens and employees of the state of Oregon will appreciate such regulations.

Sincerely,

HEINZ CHEF FRANCISCO OPERATIONS



Eileen Geddings  
Regulation & Standards Manager

EG:sg

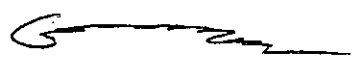
Dear ~~Madam~~ Madam or Sir,

Please make sure that any recycling laws ~~enforce~~ apply to all plastic containers, & that the recycling process be non-toxic. Please ban the "pyrolysis" technique.

Thank you,

JULIE DAVIS  
1547 SE. 32<sup>ND</sup> AV.  
PDX. OR. 97214

George Wornum  
3051 S.E. Alder  
Portland, OR 97214



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Waste Management & Cleanup Division  
Department of Environmental Quality



LEAGUE OF WOMEN VOTERS  
OF OREGON

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SEP 01 1994

September 1, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW 6th Ave.  
Portland OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

The League of Women Voters of Oregon supports measures to encourage source reduction, recycling and detoxification of toxic and hazardous materials. We support increased plastics recycling and the draft rules prepared by the Department of Environmental Quality.

We support these sections of the draft rules:

Definition of rigid plastic container: Alternative A to include domed cake, deli, and salad containers.

Reduced Container Exemption: Alternative A provides the most limited exemption.

Substantial Investment Exemption: This exemption should not be expanded beyond one time.

Pyrolysis: Plastics burned as energy or fuel cannot count toward the recycling goal.

Corporate averaging: Oregon's law does not support this and neither do we.

Post-consumer: Only post-consumer plastic should count.

These draft rules reflect the intent of the law - - to stimulate increased recycling of plastic packaging in Oregon. Strong rules will ensure that recycling incentives remain strong.

Sincerely,

Cheri Unger, President

*Mavis M. Cormic, Natural Resources*  
for

Eileen Adee, Recycling Chair

Good folks ~

9/1/94 n1

The DEQ should adopt strong rules to implement the plastic recycling law. The definition of a "rigid plastic container" should be as broad as possible, and should include domed cake, deli and salad containers; any exemptions should be as limited as the law allows.

Plastic pyrolysis should not count as recycling.

Thank you.

Nan McNatt

Waste Management & Cleanup Division  
Department of Environmental Quality

790 E. Elmore  
Lebanon, OR 97355

9-2-94

I am <sup>72</sup> concerned about the health of our environment + the future of recycling - I think the DEQ should adopt strong rules to implement the plastic recycling law. The definition of a "rigid plastic container" should be as broad as possible, + should include domed cake, deli, + salad containers; any exemptions should be as limited as the law allows.

Plastic pyrolysis should not count as recycling -

Thank you

Cathy Ellis, Oregon



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Waste Management & Cleanup Division  
Department of Environmental Quality

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Or. 97204

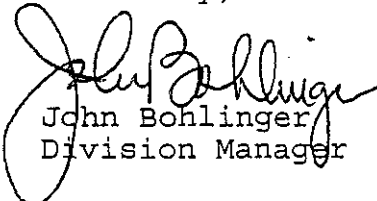
Core Mark International is a wholesale distribution company doing approximately \$200,000,000. of sales annually from Portland, Oregon. Our only business is the sale and distribution of consumer products to retail stores. The products we sell and distribute are; food, beverages, personal care products, household and commercial chemicals and other consumer commodities packaged in "rigid plastics" containers.

The control and regulations mandated by Oregon's "Rigid Plastic Container Law" will have a devastating effect on our ability to continue doing business in the state of Oregon. The products regulated by this law equal approximately 25% or more of our total volume. We employ more than 250 people in the state of Oregon that would also be severely impacted by the regulations of this law.

We ask that you consider these items and not implement this legislation. I would also request any future information and/or schedules of public hearing regarding this matter.

Thanks for your consideration.

Sincerely,

  
John Bohlinger  
Division Manager





UNION CARBIDE CORPORATION 38 OLD RIDGEBURY ROAD, DANBURY, CT 06817-0001

September 6, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, OR 97204

Subject: Comments on Rule making Proposal/SB 66

Dear Sir:

This letter is to confirm the oral testimony which I provided to the DEQ at the public hearing in Portland on September 1, 1994.

Union Carbide is a manufacturer of virgin polyethylene and also a reclaimer of post consumer PET and polyethylene. We operate a reclamation plant in Piscataway, NJ whose annual capacity is 50 million pounds. While we are concerned about a number of issues in the proposed regulations that trouble our customers; such as the one time exemption for source reduction, the potential for retroactive enforcement, and the lack of corporate averaging, we feel that we can best serve the state of Oregon by commenting on the regulations from our prospective as a plastics reclaimer.

Plastics recycling is an industry that is still in its infancy, a state marked by low levels of technology and high costs. Union Carbide and others have mounted a massive effort to develop technology that will increase productivity, reduce costs, and move the quality of the reclaimed plastic towards that of virgin resin. The number one need in this business is to reduce costs in the total chain, that is the chain that starts at the curb and extends through the MRF and reclaimer to the fabricator of a new article of commerce. It is in that context that I would like to comment on the two alternatives for the definition of a rigid plastic container. As a reclaimer, Union Carbide supports alternative B for the following reasons:

- 2 -

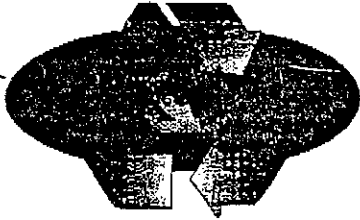
- While not perfect, alternative B focuses most closely on rigid plastic containers and the types of containers that current technology allows to be readily recycled.
- The packaging articles included in alternative A but excluded in B will have almost no effect on the diversion of recyclables from the solid waste stream in Oregon.
- Alternative B is the least ambiguous for all parties concerned, the product manufacturer, the house holder, the reclaimer, and the regulator; yielding the following benefits:
  - Product manufacturers have a clearer understanding as to whether a given product is in or out.
  - The DEQ is burdened by fewer questions and issues to resolve.
  - Waste composition studies are simplified, making the process faster and less costly. On the assumption that a comprehensive waste comp study will be made every year, the annual savings could be an important element of plans to control state spending.
  - The amount of contaminants including articles that are not currently being recycled will be reduced decreasing unnecessary costs for all links in the chain, the hauler, the community/house holder, the MRF, and the reclaimer.

One other area we would like to comment on is the potential for a letter of no objection from USFDA to allow for the use of polyethylene PCR in food applications. Using a protocol developed by SPI and NFPA, Union Carbide and several of our customers are actively seeking to develop test data to submit to USFDA in hopes of being awarded a letter of no objection for several specific food contact uses. It is too early to say whether we will be successful, however, assuming success, such a letter does not absolve the reclaimer, the package manufacturer, or the consumer product company from future liability and thus requires a very high level of due diligence and product stewardship. In this litigious society, Union Carbide will be extremely cautious in participating in any food contact uses and may in deed choose not to participate at all if the reward is not commensurate with the risks.

Sincerely,



W. Keith Atkins  
Director  
Solid Waste Management



## KW Plastics Recycling Division

P.O. Drawer 707 • Troy, Alabama 36081 • (205) 566-1563 • (800) 633-8744

Department Of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

September 2, 1994

Dear Members of The Rigid Plastic Container Task Forces,

I am writing in response to reading your proposal for Oregon's Rigid Plastic Container Law. We are concerned particularly with the Bill requiring 25% recycled content in rigid food containers. Our concerns are as follows;

1. The primary raw material source for our operation is Natural HDPE Bottles recovered from the waste stream. These include milk, water, vinegar, and juice Containers. We believe that the companies that sell these products will be very concerned about including recycled content in their containers due to the potential for contamination and the potential litigation that might arise.

We are concerned that the legislation which forces consumer products companies to have recycled content may create a situation where new containers would be developed with barrier layers that are not compatible with the HDPE reclamation process, and would therefore destroy what is now a viable business.

2. Another concern is that by including reclaimed HDPE in Natural containers the properties that make Natural HDPE containers attractive would be adversely affected. The color and translucency of the containers would degrade because it is currently not possible to regain the clarity of Post-consumer HDPE when compounded with virgin resin.

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Page Two:

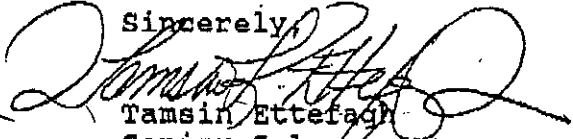
3. The current market conditions are such that the supply of Post-consumer HDPE can not meet the demand. This is the situation even though there are no FDA applications currently using recycled HDPE. We feel that legislation is not necessary for these containers because there is a very high demand for Natural HDPE containers presently, and all that are collected will be recycled. We would like to see dramatic increases in the collection efforts.

We suggest that Oregon Senate Bill 66 holds off implementing recycled content in food containers and concentrates on collection until we can find a better solution for Food Grade bottles. Blow molders for Consumer Products Companies have been on allocation recently from their suppliers with current legislation that exists. After reading a recent article in the Plastics Recycling Update I saw that over 2 million pounds per month of Polyethylene is being exported. Since the molders can not purchase enough recycled resin to keep from being penalized, I would like to see something implemented to encourage collectors to sell to US Plastics Recycling Facilities.

In regards to the section that does not allow corporate averaging, we feel that averaging is a good way to alleviate some of the complications we currently have in the development of markets for recycled resins. For example; Companies that are not set up to run recycled content on all of their molders can at least use more than 25% on the molds that they are currently set up for. All in all our true goal is to keep plastic bottles from making their way into a landfill.

Please do not hesitate to call me if there are any comments concerning my response. (800) 633-8744.

Sincerely,



Tamsin Ettefagh  
Senior Salesperson  
KW Plastics Recycling

/tke

# Procter & Gamble

The Procter & Gamble Company  
State & Local Government Relations  
1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315

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September 2, 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Ms. Pat Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, OR 97204

Dear Pat:

On behalf of Procter & Gamble, I offer the following comments on the Department of Environmental Quality (DEQ)'s proposed rules to implement Oregon's rigid plastic law.

First and foremost, I commend you and your colleagues at DEQ for the tremendous effort you have put into understanding the complex issues associated with this law, and your consistent and patient commitment to an open and productive dialog with all affected and interested parties. I've greatly appreciated the opportunity to participate in the Task Force processes, and believe this approach has proved effective in creating consensus on a large number of issues. However, there are a few key issues on which consensus has not been reached, and on which I would like to reinforce the views of Procter & Gamble, consistent with our participation to date.

Container Definition The DEQ has provided two alternative definitions of rigid plastic containers, for consideration by the public. I reiterate P&G's support for alternative "B," which we believe more closely mirrors the "common sense" understanding of a rigid plastic container. In particular, we believe it is important to clarify that in no instance is a flexible tube considered to be a rigid plastic container. Further, we believe the concept of "completely containing" a product is integral to the term "container." Finally, with respect to labeled volume versus volumetric capacity, we believe that the regulations should provide flexibility to manufacturers, similar to the California regulations. The DEQ's assertion that labeled volume is essential to conducting an adequate waste composition study falls apart when confronted with containers whose labels have been removed or rendered illegible. Additionally, these containers at the margin will never be measured with the same degree of accuracy in the recycling stream. Consequently, we recommend an approach under which the DEQ develops default criteria for purposes of the waste composition study, while continuing to provide manufacturers with the flexibility contained under option "B."

Source Reduction As we've previously stated, we do not believe that either option for defining source reduction adequately captures the importance of this concept -- consequently minimizing the incentive for manufacturers to pursue what is in fact the top priority in Oregon's waste management hierarchy. While we do not necessarily concur with the Attorney General's opinion on this issue, we understand that further statutory change will be required to resolve this issue in a manner consistent with the state's overall solid waste policy. As an interim, albeit unsatisfying, approach, we recommend that DEQ adopt option "B."

In closing, I'd like to reemphasize P&G's support for two remaining critical concepts which are not addressed in these regulations -- corporate averaging, which provides important compliance flexibility for manufacturers without detracting from the law's overall purpose and effect; and provision of a limited waiver for new products or packages introduced into the stream of commerce. We continue to believe that each of these approaches is consistent with the intent behind SB 66, and urge the DEQ to continue to explore these concepts in that light.

Again, I appreciate the opportunity to provide these comments, and am available at your convenience to provide additional information or suggestions that would be helpful to you.

Sincerely,

*K.A. Vollbrecht/m/p*

Kimberlee A. Vollbrecht  
Regional Manager

1901 North Moore Street  
Suite 1111  
Arlington, VA 22209  
703-527-7505  
703-527-7512 FAX

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Waste Management & Cleanup Division  
Department of Environmental Quality

September 6, 1994

Ms. Deanna Mueller-Crispin  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

RE: Comments on the July 22, 1994 Oregon Rigid Plastic Container Regulations

Dear Ms. Mueller-Crispin:

FPI is the national, material-neutral trade association representing the manufacturers of single-service paper, plastic and aluminum foodservice containers and their suppliers and distributors. Sales of plastic point-of-sale foodservice containers in Oregon are estimated at \$12 million a year. Approximately 10,000 point-of-sale retail foodservice establishments fill foodservice containers for sale in Oregon. Plastic foodservice containers are estimated to be 0.26% of the Oregon solid wastestream. A list of FPI members is attached.

Regulations to implement the Rigid Plastic Container Law, ORS 459A.650 through 459A.685, by the Oregon Department of Environmental Quality are not written for point-of-sale foodservice containers and are unworkable for the retail foodservice establishments and the container manufacturers who must comply with these regulations.

There are inherent differences between point-of-sale foodservice containers and other containers regulated by the law. Point-of-sale containers move through commerce differently than other regulated containers and are generally not associated with a particular product. These differences create problems that make it impossible for the manufacturers of point-of-sale containers, as well as the point-of-sale foodservice establishments, to comply with the regulations.

### THE NATURE OF THE POINT-OF-SALE FOODSERVICE INDUSTRY PREVENTS COMPLIANCE WITH THE RPC REGULATIONS

Point-of-sale foodservice containers are different from other regulated containers. Point-of-sale foodservice containers move through commerce differently than other regulated containers and they are not associated with a particular product.

Unlike companies that are commonly regarded as product manufacturers, i.e., companies that actually manufacture a product and then contract with a container manufacturer for a specific type of container, most point-of-sale foodservice establishments and container manufacturers do not have direct relationships. Many point-of-sale retailers, as well as small food processors, purchase off-the-shelf, generic containers from a third party such as a broker, distributor and/or warehouse club. Additionally, manufacturers of point-of-sale containers do not know which point-of-sale establishments purchase and ultimately sell their stock (generic) containers, nor do they know in which states these containers are sold.

The draft RPC regulations are written for product manufacturers and container manufacturers that have direct relationships. For example, the source reduction exemption is the responsibility of the product manufacturer. In the case of the point-of-sale foodservice container, the product manufacturer would be the delicatessen, restaurant or other retail establishment. To prove compliance, a retail store must request source reduction information from the respective manufacturer of each of its regulated containers (which could change from week to week depending on price and availability).

Since most retail establishments do not have direct relationships with container manufacturers, it would be difficult, if not impossible, for retail food establishments to communicate with container manufacturers to obtain the necessary compliance data. Therefore, it would be impossible for the food establishment or food processor to correlate the data to a specific "option." It would be next to impossible for a container manufacturer to reconfigure its business relationships and manufacturing processes to deal directly with point-of-sale retail entities.

The second major difference between point-of-sale food containers and other containers regulated by the law is that point-of-sale containers are often generic and are not associated with a particular product. However, it appears that there is the underlying assumption that regulated containers are associated with a particular product or type of product. For example, the formula to meet the source reduction option is based on "container-to-product ratios."

These ratios cannot be determined for point-of-sale generic containers. A generic, stock cup is not associated with a product and could not be compared to the same container, used for the same product, used five years earlier by the same product manufacturer. A generic cup could contain soup, yogurt, a hot or cold beverage or ice cream. The cup is not associated with a particular product or even a specific type of product, such as detergent or ketchup or beverages. The contents of the cup could differ from store to store depending on the needs of the retailer.

No "options" exist for point-of-sale foodservice containers. The differences discussed above, as well as the nature of single-use food containers, create problems when attempting to apply the RPC regulations to the point-of-sale foodservice industry.



At the very heart of the Rigid Plastic Container law and the implementing regulations is the assumption that there is at least one "option" a company or an industry can choose to comply with the RPC rules. Theoretically, retail foodservice establishments and container manufacturers might be able to meet one of the compliance "options." Realistically, however, the incompatibility of the regulations to the point-of-sale foodservice industry leaves no compliance options for foodservice container manufacturers and their customers. For example:

**Reuse or refilling:** The requirement that a container be used at least five times for the same or substantially similar use is not an option for single-use, sanitary, point-of-sale foodservice containers. The federal Food Code prohibits the reuse of single-service tableware, carry-out utensils and other items that are designed and constructed for one-time, one-person use.<sup>1</sup>

**Recycled Content:** Using postconsumer plastic resin in point-of-sale foodservice containers is a very limited option for manufacturers of point-of-sale food containers. Food contact materials are regulated under the federal Food, Drug and Cosmetics Act and Food Additives Amendment. Under these provisions a food additive, including materials used to manufacture food packaging, may not be marketed without prior FDA approval.<sup>2</sup>

Before FDA will approve materials for use with food, manufacturers must submit scientific and technical data to the FDA through a formal petition process. The data that must be submitted includes proposed conditions of use, the intended technical effect on the food package, the quantity of the additives required to produce such effect, the method of analysis of the additive, migration-testing data under expected conditions of use and toxicity data.

Since foodservice containers are manufactured for multiple-uses (meaning a cup could hold acidic tomato juice or a carbonated beverage or water and a tray could hold meat or fruit or cookies), the manufacturer of the cup must ensure that the recycled materials do not adulterate any food or beverage held by the container.

To incorporate postconsumer content in a deli container, for example, testing would have to be done for a variety of foods, at a variety of different temperatures, for a variety of different uses. Extensive testing would have to be conducted because the manufacturer does not know what food product the container will ultimately hold. Manufacturers of food containers must consider the potential health, safety and liability issues that could result from incorporating recycled content into generic food containers.

As recommended by the FDA through the "no objection process," there are four types of situations the FDA considers when making its recycled content decisions. They are: chemical recycling of plastic material, functional barriers between recycled materials and

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<sup>1</sup>Federal Food Code, U.S. Public Health Service, Food and Drug Administration, U.S. Department of Health and Human Services, 1993, Section 4-502.13, p. 89-90.

<sup>2</sup>"Facts About Recycled Content in Food Packaging," Foodservice & Packaging Institute, 1994. A copy is attached.

food, controlled collection of plastic materials and limited food-contact use (such as short-term contact and cool temperatures). The controlled collection of the material is important to the FDA because it is imperative that the material be clean and that contaminants be removed from the material.

In the few instances FPI members have voluntarily incorporated recycled materials into their food containers, the application of the process is very limited and can only be used on a case-by-case basis. For example, Dolco Packaging Corporation incorporates recycled content into school lunch trays; however, they must have complete control of the source of the postconsumer material and the material can only be used for these specific lunch trays. The customer who purchases the lunch trays had to make a specific commitment to the process and subsidize the additional costs, which are significant.

This type of customer/supplier relationship does not exist between most manufacturers of generic, single-use containers and their customers. This relationship is *critical* to control the quality and supply of the postconsumer material.

Another problem with the recycled content option and point-of-sale containers is that the regulatory language is not applicable to point-of-sale containers. For example, how would a container manufacturer determine a "production run" for a generic container? What is a production run? Would a container manufacturer have to know who was purchasing the generic containers in order to determine recycled content?

**Recycling Rate:** Meeting an industry-wide 25 percent aggregate recycling rate might be possible. FPI members are attempting to work with the plastics industry towards that goal. However, individual companies cannot be sure the aggregate rate will be met; therefore, we have to focus on the other "options."

**Source reduction exemption:** As discussed in the previous section, the source reduction exemption is measured by a container-to-product ratio. This measurement is not relevant to point-of-sale foodservice containers. The container manufacturer does not know what products are placed in a generic, multi-use container. The product would differ from customer to customer and from day to day.

However, source reduction has been an integral business practice in the container industry for years. Many FPI members source reduced their containers in the early 1980's and certainly would make additional reductions if at all possible. However, many container manufacturers cannot further source reduce their containers and maintain product integrity. Further reductions could impact a container's functionality, which could impact product integrity, safety and liability.

Although it makes economic sense to reduce the amount of materials required to manufacture a package to save money on purchases of raw materials, there is an end-point to source reduction techniques such as lightweighting. Products require a certain weight and substance to fulfill their purpose.

No options exist for point-of-sale retail foodservice establishments. Often there is no direct relationship between point-of-sale retailers, small food processors and the manufacturers of point-of-sale containers. Many retailers and food processors purchase off-the-shelf, generic containers from third parties such as brokers, distributors and/or club warehouses. Therefore, it would be impossible for such retailers to: 1) obtain the necessary compliance data and 2) to correlate the data to a specific "option."

A retailer does not have the ability to ensure that an aggregate 25 percent recycling rate is met. If a retailer attempts to comply using the specified-type recycling rate "option," the retailer would face many obstacles to compliance. For example, how would a delicatessen calculate a specified type recycling rate? At most, the retailer could only determine the amount of materials *collected* for recycling, but would not be able to calculate a recycling rate for a specific material or product. Collection is not recycling.

Moreover, if a "collection/recycling" rate is approved by the DEQ, the retailer would be required to establish and maintain the collection program(s), arrange for storage and processing capacity for the collected material and find transportation to end-use markets. A retailer would also have to document that it has met the 25 percent rate. This would require a retailer to prepare and maintain detailed records for three years in case of audit; communicate with the DEQ; complete DEQ product manufacturer forms when requested and file the requested information within the specified time periods. Meeting the rate for one year is no guarantee that the rate will be met in the following years.

It is also possible that the DEQ has underestimated the costs the retail community may incur when attempting to comply with these regulations. Contrary to cost estimates provided in the DEQ's Fiscal and Economic Impact Analysis (p. D-12), costs to retailers to change suppliers and materials will be prohibitive (see Fiscal and Economic Impact Section below).

## **FISCAL AND ECONOMIC IMPACT FOR FOODSERVICE CONTAINERS**

The Fiscal and Economic Impact Statement contains several significant errors that could mislead one to believe that implementation of this law would have no significant fiscal or economic impact on point-of-sale retailers and container manufacturers. Our concerns include the following:

1. The components of a recycling infrastructure, as outlined on page D-4, do not include labor or insurance -- both are critical cost items. It is also unusual that the DEQ uses statistics provided by the Glass Packaging Institute in the chart describing the overall costs of recycling plastics. It is unclear why the DEQ cited figures from the glass industry since GPI does not collect, process or sell plastic materials.
2. FPI questions the validity of the chart on p. D-12 of the Fiscal and Economic Impact Statement, given Portland's ban on foam products. It is likely that the costs provided to DEQ were not of comparable products.

3. The DEQ estimates negligible recordkeeping costs to container manufacturers for tracking and reporting their use of postconsumer content and providing a certificate of compliance to the appropriate product manufacturer. This conclusion based on a finding that container manufacturers normally track the resins they use. This is an oversimplification of a complex business environment.

To make such a statement presumes that container manufacturers know, at the time of production, which containers will ultimately be used by point-of-sale packagers in Oregon. The producer of the generic container, including most single-service food containers, have no such knowledge. A container manufacturer willing to provide a certification to the packaging distributor faces several challenges: 1) How to control distribution of the certificate; 2) How to know the end-holder (product manufacturer) actually purchases that manufacturer's containers; and 3) How to relate the two when there is no direct business relationship.

The cost to manufacturers of generic, point-of-sale containers is not "negligible." It may not even be definable as it goes beyond computers and mailings to heart of the way business is conducted.

## CONCLUSION

To conclude, FPI would like to acknowledge the recent directive issued by Fred Hansen, director of the Oregon Department of Environmental Quality, regarding the effective and enforcement dates of these rules. The clarification of the enforcement date enables our industry and our customers to continue to work with the entire plastics industry and the people of Oregon toward meeting the 25 percent aggregate recycling rate. However, because of the problems which I have just described we believe that food containers should be excluded from this law and the implementing regulations.

Sincerely,



Marla M. Donahue  
Vice President, Public Affairs



Laura L. Snyder  
Director of Government Relations

Attachments: 4

cc: Pat Vernon, Manager, Solid Waste Policy & Programs  
Bill Bree, Project Manager, Solid Waste Policy & Programs

1901 North Moore Street  
Suite 1111  
Arlington, VA 22209  
703-527-7505  
703-527-7512 FAX

## FOODSERVICE & PACKAGING INSTITUTE COMMENTS

BEFORE

### THE OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY ON THE RIGID PLASTIC CONTAINER REGULATIONS

September 1, 1994

My name is Tim Mowry and I am the regional sales manager for Dolco Packaging Corporation in Wenatchee, Washington. Dolco is a national manufacturer of point-of-sale foodservice containers and is a member of the Foodservice & Packaging Institute. I am commenting today on behalf of FPI and its members.

FPI is the national, material-neutral trade association representing the manufacturers of single-service paper, plastic and aluminum foodservice containers and packaging. FPI also represents the companies who supply and distribute foodservice containers and packaging.

There are approximately 10,000 point-of-sale foodservice establishments in Oregon that fill foodservice containers for sale to the consumer. Sales of plastic point-of-sale foodservice containers in Oregon are estimated at \$12 million a year and plastic foodservice containers are estimated to be 0.26% of the Oregon solid wastestream.

FPI will be submitting detailed written comments for the record -- in my comments today, I'd like to briefly describe some of the problems the point-of-sale foodservice industry, and others who use generic food containers, such as the small food processors, will face if the July 22, 1994 Rigid Plastic Container Regulations are implemented.

First, I'd like to point out that there are inherent differences between these and other containers regulated by this law. Second, these differences create problems that will make it impossible for container manufacturers, as well as the product manufacturers who use these containers, to comply.

At the very heart of the Rigid Plastic Container law and the implementing regulations is the assumption that there is at least one "option" a company or an industry can choose to comply with the regulations.

Theoretically, retail foodservice establishments, food processors and container manufacturers might be able to meet one of the compliance "options." Realistically, however, the incompatibility of the regulations to the foodservice industry leaves no compliance options for foodservice container manufacturers and their customers.

I'd like to explain why point-of-sale foodservice containers and generic food containers are different from other regulated containers. There are two very important differences: 1) the containers move through commerce differently and 2) they are not associated with a particular food product or type of product.

Retail stores and small food processors often purchase generic containers "off-the-shelf" from a third party such as a broker, distributor and/or warehouse club, and not directly from a container manufacturer. Because the containers are purchased through a third party, manufacturers often don't know who purchases the generic containers, and they also don't know where those stock containers are sold. In these cases, the point-of-sale foodservice establishments and small food processors do not have direct relationships with container manufacturers.

The absence of direct relationships precludes compliance. It would be difficult, if not impossible, for retailers, food processors and container manufacturers to communicate and obtain the necessary compliance data. Therefore, it would be impossible to correlate the data to a specific "option."

As I mentioned, these containers are often generic and are not associated with a particular product. However, it appears that there is the underlying assumption that regulated containers are associated with a particular product or type of product.

For example, the formula to meet the source reduction option is based on "container to product ratios." These cannot be determined for point-of-sale or generic containers. A generic, stock cup isn't associated with a product and couldn't be compared to the same container, used *for the same product*, used five years earlier by the same product manufacturer. A generic foam cup could contain soup, a hot or cold beverage, ice cream or yogurt, depending on the specific needs of the retailer or processor who purchased the generic container -- and a retailers' or processors' needs could change overnight if items are added or deleted from the menu or if portion sizes change.

My second major point is that these differences, as well as the nature of generic and single-use food containers, create problems when attempting to apply the RPC regulations to the point-of-sale foodservice industry. When considering compliance "options," point-of-sale and generic food containers are severely disadvantaged when compared to the options available to other regulated containers. There are no realworld "options" for point-of-sale and generic food containers.

I'd like to briefly run through the "options" and explain what I mean.

First, reusing or refilling single-use foodservice containers is not an "option." Single-use containers are sanitary and reuse is prohibited by the federal Food Code.

Second, incorporating 25 percent recycled content into each production run for each container is not an "option" for point-of-sale and generic food containers. Although Dolco has, and is, voluntarily incorporating postconsumer recycled content into certain food containers, specifically egg cartons and school lunch trays, recycled content is not an "option" that would be available across-the-board.

The application of the process is very limited and can only be used on a case-by-case basis. For example, for Dolco to incorporate recycled content into school lunch trays, we must have complete control of the source of the postconsumer material and it can only be used for these specific lunch trays. The customer, Los Angeles Unified School District, had to make a specific commitment to the process and subsidize the additional costs which are significant.

This type of customer/supplier relationship does not exist between most point-of-sale foodservice customers or processors who purchase generic containers and the container manufacturer. This relationship is critical to control the quality and supply of the postconsumer material.

Food contact materials are regulated under the federal Food, Drug and Cosmetics Act and Food Additives Amendment. Under these provisions a food additive, including materials used to manufacture food packaging, may not be marketed without prior FDA approval.

FDA may issue a letter of "no-objection" for use of recycled content in food-contact packaging on a case-by-case basis. To receive a letter of "no-objection" manufacturers have to submit scientific and technical data to the FDA through a formal petition process. The



data includes the proposed conditions of use of the postconsumer material, the intended technical effect on the food package, the quantity of the additives required to produce such effect, the method of analysis of the additive, migration-testing data under expected conditions of use and toxicity data.

Since many of the containers I have described are manufactured for multiple-uses (meaning a cup could hold acidic tomato juice or a carbonated beverage or water and a tray could hold meat or fruit or cookies), a manufacturer must ensure that the recycled content won't adulterate any food or beverage held by the container.

To incorporate postconsumer content in a deli container, for example, testing would have to be done for a variety of food, at a variety of different temperatures for a variety of different uses. Extensive testing would have to be conducted because the manufacturer doesn't know what food product the container will ultimately hold. Manufacturers of food containers must consider the potential health and safety issues that could result from incorporating recycled content into generic food containers.

Dolco's experience with FDA is that the process took over 18 months, with significant costs, to receive the letter of "no-objection" for the egg carton. In this case, the egg shell was considered a natural barrier. FPI's written comments will include further discussion of the FDA process.

Third, meeting an industry-wide 25 percent aggregate recycling rate might be possible. FPI members are attempting to work with the plastics industry towards that goal. However, individual companies cannot be sure the aggregate rate will be met; therefore, we have to focus on the other "options."

Fourth, the source reduction exemption is, as I said earlier, not an "option" for our industry because it is measured by a container-to-product ratio and this ratio is not relevant to generic and point-of-sale foodservice containers. The container manufacturer doesn't know what products are placed in generic, multi-use containers. The product would differ from customer to customer and from day to day.

To conclude, FPI would like to acknowledge the recent directive issued by Fred Hansen, director of the Oregon Department of Environmental Quality, regarding the effective and enforcement dates of these rules. The clarification of the enforcement date enables our industry and our customers to continue to work with the entire plastics industry and the people of Oregon toward meeting the 25 percent aggregate recycling rate. However, because of the problems which I have just described we believe that food containers should be excluded from this law and the implementing regulations.

1901 North Moore Street  
Suite 1111  
Arlington, VA 22209  
703-527-7505  
703-527-7512 FAX

**FOODSERVICE & PACKAGING INSTITUTE  
1994 MEMBER COMPANIES**

Alfred Bleyer & Company, Inc.  
Amoco Chemical Company  
Amoco Foam Products Company  
Bagcraft Corporation of America  
BASF Corporation  
Cascades Inc.\*  
Chevron Chemical Company  
CKF Inc.\*  
Clear Shield National, Inc.  
Creative Industries, Inc.  
Detroit Forming, Inc.  
Dolco Packaging Corporation  
Dow Chemical USA  
Du Pont Chemicals  
Dyne-A-Pak, Inc.\*  
Earthshell Container Corporation  
Elm Packaging Company  
Federal Paperboard-Imperial Bondware  
Fina Oil and Chemical Company  
The Fonda Group, Inc.  
FP Corporation\*\*\*  
Fripp Fibre Forms Inc.\*  
Genpak Corporation  
Georgia-Pacific Corporation

W.R. Grace & Company  
Huntsman Chemical Corporation  
James River Corporation  
Keyes Fibre Company  
Kidder-Stacy Company  
LINPAC Plastics Group  
Mobil Chemical Company  
Novacor Chemicals, Inc.  
Packaging Corporation of America  
Packsa, S.A. de C.V.\*\*  
Paper Machinery Corporation  
Peerless Machine & Tool Corp.  
The Perseco Company  
Polar Plastics Manufacturing Ltd.\*  
Potlatch Corporation  
Prairie Packaging Inc.  
Reynolds Metals Company  
Scott Polymers, Inc.  
Shell Chemical Company  
Smith-Lee Company  
Sweetheart Cup Company Inc.  
Willow Plastics, Inc.  
WinCup

\* Canadian member

\*\* Mexican member

\*\*\* Japanese member



1901 North Moore Street  
Suite 1111  
Arlington, VA 22209  
703-527-7505  
703-527-7512 FAX

## ***FOODSERVICE & PACKAGING INSTITUTE***

Founded in 1933, FPI is the material-neutral trade association for manufacturers, raw material suppliers, machinery suppliers, and distributors of foodservice disposable products. These products consist of single-use cups, plates, bowls, bags, cutlery, trays, egg cartons, nested dairy and salad containers and other paper, plastic and aluminum items.

FPI's mission is to promote the sanitary, safety, functional, economic and environmental benefits of foodservice disposables. FPI supports the environmentally responsible manufacture, distribution, use and disposal of these products.

Indispensable to today's consumers, foodservice disposables are typically used at home; in commercial foodservice, including fast-food, convenience store, take-out, home-delivery and concession operations; and in institutional settings, such as cafeterias in schools, hospitals, corporations, nursing homes and correctional facilities. FPI members manufacture products in North America.

1901 North Moore Street  
Suite 1111  
Arlington, VA 22209  
703-527-7505  
703-527-7512 FAX

## FACTS ABOUT RECYCLED CONTENT IN FOODSERVICE PACKAGING\*

The foodservice and packaging industry is continually working toward developing improved methods of solid-waste management including source reduction, recycling and the use of recycled content. The industry has made significant strides in source reduction and recycling efforts. However, while recycled content is viable for many products, there are certain products which, due to public health issues, require special consideration with regard to the use of recycled content.

Many foodservice packaging products such as cups, plates, bowls and hinged-lid food containers are among the products which require special evaluation and consideration. This overview describes the potential for the use of recycled content in foodservice packaging and the concerns associated with its use. It also describes the Food and Drug Administration's requirements and process for including recycled content in food-contact materials.

### Recycled Content Must Not Compromise Food Safety

The potential for use of recycled content in foodservice packaging is greatly misunderstood. There are some food-contact packages that do contain recycled material. However, due to current technology, understanding and changing streams of recovered materials, as well as the enormous variety of end-use requirements, some products cannot utilize recycled materials today. A food-contact package manufacturer's ability to safely include recycled content depends upon the cleanliness of the recycled material, the type of food which the package will contact, the highest temperature at which this contact will occur and the presence of any barrier material separating the recycled-content material from the food. The packaging material decisions made by food processors and producers are not arbitrary. These decisions are highly technical and rooted in public health and safety. The incorporation of recycled materials must not compromise the capability of a package to

\*Reviewed for technical accuracy by  
Dr. Helen Thorsheim, FDA.



protect and preserve the food it contains and the package materials should in no way compromise the product. Moreover, the use of recycled material in foodservice packaging must comply with FDA regulations and must not cause the adulteration of the food contained by the package. Food safety must not be jeopardized through the use of recycled content.

FDA does not usually test and approve individual packaging. It is solely the responsibility of the food packaging manufacturer to be certain that under the intended conditions of use, the packaging material will not contaminate or adulterate the food which it contains. "Although, in general, FDA supports the recycling and reuse of food packaging materials, it must ensure that recycled material satisfy. . . basic legal and safety requirements."<sup>1</sup> Thus, the recycled-content package must, as does any virgin-materials package, permit delivery to the end user of acceptably wholesome food which is free from adulteration.

### **FDA Requirements**

Materials that come into contact with food are regulated under the Federal Food, Drug and Cosmetics Act and Food Additives Amendment. Under these provisions a food additive, including materials used to manufacture food-contact packaging, may not be marketed without prior FDA approval. Before FDA will approve materials manufacturers must submit scientific and technical data through a formal petition process. The data that must be submitted includes proposed conditions of use, the intended technical effect on the food package, the quantity of the additives required to produce such effect, the method of analysis of the additive, migration testing data under expected conditions of use and toxicity data. Any food package that is not in compliance with food-additive regulations will be viewed by the FDA as adulterating the food which it contains.

In addition, all food-contact materials must adhere to FDA's regulations relating to good manufacturing practices which require that any substance used as a component of a food-contact article be suitably pure for its intended use.

FDA provides separate guidelines for each food-contact packaging material containing recycled materials.

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<sup>1</sup>FDA Statement for the Record, Subcommittee on Hazardous Materials and Transportation Committee on Energy and Commerce. U.S. House of Representatives, March 10, 1992.

### Glass, Steel, and Aluminum

These materials generally are impervious to contaminants and easily purified and sanitized by the high temperatures involved in the recycling process. Therefore they are more readily able to be recycled<sup>2</sup> than paper or plastic.

### Paper

FDA regulations which permit the use of reclaimed fiber for paper food-contact packaging require that the material not contain any poisonous or deleterious substance which is retained in the recovered pulp and which could migrate to the food in levels above those deemed safe by the FDA.

### Plastics

A significant percentage of food-contact packaging is made of plastic and there are currently no specific FDA regulations for the use of recycled plastics in food-contact packaging. In May 1992, FDA issued "informal guidance" for the use of recycled plastics in food packaging which principally highlight chemistry issues. FDA has three major considerations for the use of recycled plastics in food packaging: polymer type, additive levels and cleanliness. In the case where a virgin-plastic material has received a food additive approval, a plastic packaging manufacturer should request a letter of "no objection" from the FDA for the use of that same material if it has been recycled. The letter of "no objection" is also the only process available for recycled-plastic food-contact packaging manufacturers to receive government acknowledgement that they are legally fulfilling health and safety requirements.

Under the Food, Drug and Cosmetic Act, FDA considers petitions for the use of direct and indirect food additives (food packaging is an indirect additive) and if approval is given, issues a regulation based on the petition. FDA also may issue a letter of "no objection" for use of recycled content in food-contact packaging on a case-by-case basis.

FDA, on October 12, 1993, issued a proposed rule on "Food Additives: Threshold of Regulations for Substances Used in Food Contact Articles" which will apply to all packaging, including recycled-content packaging. This proposal would establish a process for determining when the likelihood (or extent) of migration to food of a substance used in a

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<sup>2</sup>FDA Statement for the Record, Subcommittee on Hazardous Materials and Transportation Committee on Energy and Commerce, U.S. House of Representatives. March 10, 1992.

food-contact article is so trivial that it does not require regulation as a food additive. To make this determination FDA will require: 1) information on the chemical composition of the substance, 2) conditions of use of the substance, 3) the basis for the request for exemption, 4) data on the estimated daily dietary concentration resulting from the proposed use, 5) a literature search for toxicological data on the substance, and 6) information on the environmental impact resulting from the proposed use. FDA is unclear on when these regulations may be finalized.

### **FDA No-Objection Process**

The FDA issues "no-objection" letters for the use of recycled content in food-contact materials. This practice, used only in specific situations, permits FDA review of potential food additives without the resource-intensive complete evaluation needed for a petition. These letters mean that the agency has, based on the information provided, no objection to the specific situation described, and the specific company's use of recycled content in that situation only. Any extrapolation beyond that specific situation could result in a violation of the FD&C Act. A "no-objection" letter does not carry the force of law.

The process for obtaining a "no-objection" letter is not formal, and there is no set checklist of items to be addressed. Although FDA staff is reluctant to describe specific requirements for obtaining "no objection," there are certain considerations which the FDA appears to weigh in making their decisions with regard to the use of recycled plastics. FDA will consider four types of situations: chemical recycling of plastic material, functional barriers between recycled materials and food, controlled collection of plastic materials and limited food-contact use (such as short-term contact and cool temperatures). They consider controlled collection in order to ensure cleanliness of the plastic feedstock, the ability of the recycling process to remove potential contaminants and the proposed uses of the finished product.<sup>3</sup>

Historically, it has taken as long as two years to receive a "no-objection" letter from the FDA. However, FDA believes they may now be able to process a request in as little as five months. This estimate will change dramatically if FDA receives more than the few requests they currently process each year.

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<sup>3</sup>FDA Statement for the Record, Subcommittee on Hazardous Materials and Transportation Committee on Energy and Commerce, U.S. House of Representatives, March 10, 1992.



## FDA Concerns with Recycled Materials

Dr. Helen Thorsheim, a consumer safety officer with FDA, during a recent Foodservice & Packaging Institute meeting on recycled content in food packaging said, "The FDA concern with the possibility of contamination (in recycled-content food packaging) has to be acknowledged."

Potential contaminants in recycled materials can include:

- Contamination resulting from packaging sources (e.g. packaging for hazardous chemicals such as pesticides or lawn fertilizers);
- Contamination resulting from consumer "misuse" of original material (e.g. wastepaper that may have been in contact with oil or grease; beverage containers which may have been improperly used to store household chemicals);
- Additives which may not be FDA approved because the original material was not intended for food-contact use (e.g. printing inks in newspaper or office paper); and
- Microorganisms or dirt.

## Plastic Food-Contact Packaging that Contains Recycled Materials

To the Foodservice & Packaging Institute's knowledge, FDA has issued 10 "no-objection" letters on company-specific case-by-case bases. These "no objections" fall into the following limited categories:

- Polyethylene terephthalate (PET) depolymerized to the monomers from which it was formed (chemical recycling). These monomers are purified and reacted to reform the PET which can be molded into food-contact articles. PET is currently the only type of polymer that FDA has considered for processing in this fashion.
- The origin of the "post-consumer" waste is certain and controlled (controlled collection). An example is foodservice products that have been collected from cafeterias and restaurants under specified carefully controlled conditions, then have been washed, dried, melted and extruded into pellets using specific procedures, and finally used to manufacture fruit and vegetable containers, foodservice clamshells and poultry and meat trays.

- Protective coatings such as multilayer polystyrene foam packages with recycled post-consumer polystyrene between two layers of virgin polystyrene foam (functional barrier).
- A specific use such as an egg carton where the shell of the eggs acts as a barrier between the recycled-content packaging and the edible food (functional barrier).

## Conclusion

There are many health and safety, legal and practical factors to consider in determining whether recycled content in food-contact packaging is a viable option to assist in the reduction of solid waste. Industry continues to work toward technology that will reduce solid waste through recycling where it is technically and economically feasible and where public health remains protected.

A major reason for the existence of disposable foodservice items is their ability to improve sanitary conditions for dispensing food in both the home and institutional food service establishments. If the inclusion of recycled material in foodservice items is to be accomplished, it must be done in a manner that improves the environment and preserves the health benefits of these foodservice packaging products and does not jeopardize the safety of food.

## NESTLÉ USA, INC.

1133 CONNECTICUT AVENUE  
SUITE 310  
WASHINGTON, DC 20038  
TEL (202) 298-4100  
FAX (202) 298-8555

September 6, 1994

CHANNING W. RIGGS  
MANAGER, STATE GOVERNMENT RELATIONS

Mr. Fred Hansen  
Oregon Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Dear Mr. Hansen:

As a processor of many food and beverage products, Nestlé is concerned with the current regulatory language implementing Senate Bill 66.

Our products are regulated by the FDA and other federal product safety standards. As such, there are limitations in our ability to use post-consumer recycled content in direct contact food packaging. At this time, Nestlé's only means of compliance with Senate Bill 66 is through source reduction.


Of the two options listed in the most recent regulations, **Alternative B** provides more opportunity for Nestlé to meet the requirements of the law. Also, **Alternative B** is a more accurate assessment of whether a particular rigid plastic container falls within the scope of the law;

However, the current regulations are not sufficient. We urge you to:

- ◆ Recognize source reduction as a permanent compliance option, not a temporary exemption;
- ◆ Develop a workable mechanism for introduction of new products and the use of source reduction.

Nestlé supports efforts to address solid waste issues and to examine the minor role food packaging plays in the broader environmental picture. However, our company's first priority is to ensure the quality and safety of our products. We will continue to explore new packaging technologies that both meet federal food safety standards and maintain the integrity of our products.

Please feel free to contact me if I can provide you with any additional information.

Sincerely,  
  
Channing W. Riggs

**BUTCHERS**

RECEIVED  
SEP 7 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

September 6, 1994

Ms. Deanna Mueller-Crispin  
Oregon Department of Environmental Quality  
811 S. W. Sixth Avenue  
Portland, OR 97204

Dear Ms. Mueller-Crispin:

Our company is a manufacturer of specialty cleaning products for the industrial, commercial and institutional markets, with manufacturing facilities in the Commonwealth of Massachusetts and the State of California. We sell our products, primarily in the United States through various distributors, such as our partner in distribution in Oregon, Paulsen and Roles Lab. located in Portland, Oregon.

We support the Oregon Legislature and the Department of Environmental Quality for their work in encouraging recycling in the state through the Rigid Plastic Container Law. While this is a worthwhile goal, there are requirements in the law that may be impossible to regulate at this time due to conflicting federal regulations.

The first point that I would like to make is that the US Department of Transportation requires that all hazardous substances be shipped in virgin plastic. Our packaging supplier have informed us that it will be impossible to place our products in each of the seven packaging sizes we sell which are DOT hazardous substances, in 25% post-consumer content packaging as of January 1, 1995. To our knowledge DOT has presently exempted only one container size (55 gallon drums), from this requirement. At this time I would request that you exempt DOT hazardous substances from these regulations until January 1, 1996. As you may know, the California Integrated Waste Management Board has taken this approach in implementing their Rigid Plastic Packaging Container Program. At this time we are at the mercy of our packaging suppliers, who are not able to provide us a 25% post-consumer recycled content package in all of the packaging sizes that we offer to our customers in Oregon. Our suppliers indicate that we will be able to meet this requirement by January 1, 1996, especially when you take into consideration the market forces that will spur packaging suppliers to meet the need of both the Oregon and California markets. While regulation is at times required for progress to take place, market forces can at times be a more potent measure to assure a goal will be met.

My second point is to reinforce the requirements of another federal regulation, which seems to be at odds with the Oregon law. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)

**The Butcher Company**  
120 Bartlett Street  
Marlborough, MA 01752-3013  
508-481-5700



regulates among other things, disinfectants, which are a primary product category for The Butcher Company. FIFRA mandates stringent requirements for the manufacture, packaging and use settings, including hospitals, homes and schools. FIFRA also mandates that the end user of these products properly dispose of the packaging after use, recycling or reuse of these packages is strictly prohibited. This federal requirement clearly conflicts with Oregon's intent to recycle nearly all rigid plastic containers.

An additional point is that we were one of the first firms to introduce a dilution control system nationwide. With this system, we ship concentrated cleaning chemicals through distribution, to our end users. Through a dilution control hardware system the end user safely and responsibly adds tap water to the concentrate, supplying a ready-to-use (diluted) product to the user. This approach, while market driven, has greatly reduced the amount of packaging used by our customers, who are primarily based in the industrial, commercial and institutional markets. For example, with this dilution control system, one case (two bottles, each containing 1.5 gallons of liquid) of our glass cleaner product now replaces 33 cases (12 bottles, each containing one quart of liquid). In this case, 2 plastic bottles replaces 396 plastic bottles. The Oregon Rigid Plastic Container Law does not credit or consider this valuable effort in the reduction of rigid plastic containers in the market place.

I would like to thank you for considering these points, as the Oregon Legislature and the Oregon DEQ move towards responsible recycling in the State of Oregon.

Sincerely,

Paul McLaughlin  
President and Chief Operating Officer  
The Butcher Company

cc: Grant Watkinson  
Paulsen and Roles  
1836 N.E. 7th Avenue  
Portland, OR 97212



**NORTHWEST**

RECEIVED  
SEP 06

September 6, 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Department of Environmental Quality  
Waste Management & Cleanup Division  
811 SW 6th Avenue  
Portland, Or 97204

Dear Sirs:

Here are my written comments which I indicated I would forward to you during the public comment portion of the "Rulemaking Proposal - Implementing Oregon's Rigid Plastic Container Law" held on September 1, 1994. I will be addressing two sections of the proposed rules:

- 1) "Product Associated Containers" - Page A-3, Item #12
- 2) "Specified Type" - Page A-15, Item #2

It is important that you know a little about what AJP NORTHWEST is and what it does so the comments are relevant.

#### BACKGROUND

AJP NORTHWEST is a distributor of food service packaging. We sell and distribute products manufactured from paper, aluminum and plastics.

In our role as a distributor, we purchase from the manufacturer, or converter, various products, warehouse and deliver as needed to our customer base. Our customer base is what you call the product manufacturer - deli's, schools, cafeterias and other food-related businesses.

In the case of plastic containers we fit in between the container manufacturer (our supplier) and the product manufacturer (our customer). Much testimony has been given about the ability of the plastic industry's ability to meet the recycled content standards of the law. However, AJP NORTHWEST, has taken a different route by developing its own plastic recycling program. It has operated successfully for over a year. Called "We're Recycling Here", it meets, and exceeds, the 25% recovery rate desired. It is designed to handle large users of product, ie. schools, in-plant feeders, sporting and community events.

#### WE'RE RECYCLING HERE

This program is built around the sale, use, retrieval, processing and recycling of #6 polystyrene food service grade material. All forms of this material, expanded, oriented or molded, can be used, collected and recycled. In addition it works well regardless of manufacturer. This allows for a wide selection of products to choose from and thus higher level of recycling for all products can be obtained.

The highlights of our program are:

- 1) It allows the end user the opportunity to recycle
- 2) Material is recycled - the infrastructure is in place to assure the material will be reprocessed and recycled.
- 3) Reduces amount of material destined to the landfill
- 4) Recycling rate in excess of 25% is assured
- 5) Easy to access as AJP NORTHWEST has developed a turnkey polystyrene recycling program that reduces the amount of effort necessary to establish such a program

AJP NORTHWEST has committed its resources in developing a complete polystyrene recycling program. We are proud of our "We're Recycling Here" program and see it as having caught the spirit of Senate Bill 66. We can make recycling work!

#### THE ISSUES IN QUESTION

Attachment A - Page A-3, Item #12

"Product-associated container means a brand-specific rigid plastic container . . ."

Because my type of polystyrene recycling program allows for containers from many container manufacturers, the wording "brand-specific" will cause me a great many problems. Currently no one manufacturer of containers makes all the items necessary to meet the needs of my customer base (product packager). Example: one container manufacturer may make only cups and lids while another makes squat deli-style containers; both carry their own brand and both are made from #6 polystyrene.

Is it possible to change the wording to allow for various brands to be used? Containers manufacturers currently show on the exterior of the container package the base material.

Certification that a particular product is made from a specific type of material should be easily accessible.

Which leads me to my second concern:

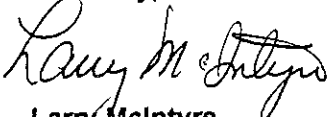
Attachment A - Page A-15 - OAR 340-90-370 Recycling Rate Compliance - Item #2

We are somewhat confused in the wording of this section. It allows for the use of a specific type material is the "Aggregate of that type of container is recycled at 25% or better". The question is, does this mean that recycling programs such as ours will not be available to the product packager until the aggregate of that material (ie. polystyrene) is meeting the 25% rate? Or does it mean that programs like "We're Recycling Here" must meet a minimum of 25% recycled? Or none of the above?

We have worked hard to develop a positive polystyrene recycling program that meets the spirit of Senate Bill 66 for recycling. We support the concept that recycling should be part of a comprehensive program. We want to be able to offer to our customers the opportunity to comply with the law by offering both a recycled content product and a recycling program.

Should you have questions on my comments please contact me.

Sincerely,



Larry McIntyre  
President

Handwritten notes in the right margin: "OAS 1/11/02" and "1/11/02".



Western Agricultural Chemicals Association

#81  
3835 N. Freeway Blvd., Suite 140  
Sacramento, CA 95834  
(916) 568-3660  
FAX (916) 565-0113

September 6, 1994

Oregon Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

**RE: Proposed Rules on Oregon's Rigid Plastic Container Law**

Dear Sirs:

The Western Agricultural Chemicals Association (WACA) appreciates the opportunity to comment on the rule package referenced above. WACA is a not-for-profit trade association representing manufacturers, distributors, formulators and retailers of crop protection products in nine western states, including Oregon. WACA members believe that there are many conditions specific to agricultural chemicals and their packaging which merit special consideration apart from the proposed regulations. A discussion of those points follows below.

WACA applauds the voluntary container recycling program which the Oregon Agricultural Chemicals and Fertilizer Association (OACFA) has been conducting in conjunction with your Department for over ten years. Hundreds of thousands of pesticide containers have been chipped and recycled as a result of this program. In fact, the Oregon pesticide container recycling program was among the first of its kind in the country and has served as a model for others. During 1994 alone, over 33,000 pounds of high density polyethylene plastic pesticide containers have been collected and chipped and projections are for nearly double that amount before the year's end. According to this estimate, these numbers comply with the 25% recycling rate presented as an option in the proposed rule. More importantly, the goal of the OACFA program is to continually increase the number of pesticide containers collected in Oregon. The intent of the recycling law and the proposed regulations is to reduce the amount of solid waste going to Oregon landfills, and our industry has clearly been a leader in that arena.

Packaging of agricultural chemicals is regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the federal Department of Transportation (DOT). Current DOT regulations covering packaging of hazardous materials (CFR 49 Part 178.509) require that agricultural chemicals be packaged in UN packages that meet certain performance-oriented criteria and prohibit the use of "used" materials in the manufacture of single outer packages. Furthermore, US DOT and global transportation regulations strictly prohibit the use of post-consumer resin for DOT/UN marked containers. It is important to note that our industry has an ongoing research effort focused on developing methods of increasing the structural integrity of agricultural chemical containers. However, as federal regulations are currently written, the restrictions mentioned above, rule out the option of mixing recycled material with virgin resin for the packaging of some agricultural chemicals.

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Waste Management and Cleanup Division



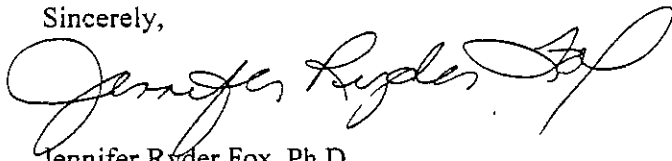
Under current FIFRA regulations, USEPA forbids the refilling of containers smaller than 56 gallons. If the proposed container regulations under FIFRA 88 are adopted, this situation will change; however, adoption of these regulations is several years away. Because of the nature of agricultural production in Oregon, i.e., a wide array of specialty crops grown on small acreage, most crop protection chemicals used in Oregon come in containers ranging in size from 8 ounces - 5 gallons, containers which cannot be refilled. Therefore, the "reuse" option in Oregon's proposed regulations is closed to many agricultural chemicals sold in Oregon.

Another issue is in regard to the need for consistency in packaging regulations from state to state. Other states with recycling regulations have exempted FIFRA regulated products for many of the reasons stated above. Adoption of Oregon's proposed regulations will create a logistical problem leading to non-compliance because of confusion about Oregon's requirements. WACA believes that there are interstate commerce implications and consequences associated with this rule package which the Department may not have fully considered.

Finally, we want to raise the point about our industry's substantial financial investment in pesticide container recycling on a national basis. Most of the major manufacturers and distributors of agricultural chemicals in the United States belong to the Agricultural Container Research Council (ACRC). The specific mission of this group is to investigate ways to reuse recycled material obtained from pesticide container collection programs nationally. ACRC has identified several potential end-uses for recycled pesticide containers but continues its research to guarantee the safety of such products. Another ACRC priority is to prevent the use of recycled pesticide containers in the manufacture of goods for general consumer consumption.

For the reasons discussed above, especially considering the fact that Oregon already has a successful pesticide container recycling program, WACA strongly urges the Department of Environmental Quality to grant an exemption for agricultural chemical containers. Please feel free to call me at the number shown at the top of this letter if you wish further clarification of our position.

Sincerely,



Jennifer Ryder Fox, Ph.D.

Director

Regulatory and Environmental Affairs



MARTIN R. IMBLER  
PRESIDENT & CHIEF EXECUTIVE OFFICER

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SEP 01 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

September 1, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
State of Oregon  
811 S.W. 6th Avenue  
Portland, OR 97204

RE: Comments; OAR 340-90-310/430 Rigid Plastic Container Recycling Law

Gentlemen:

This letter is in response to your request for public comments on two alternative versions of revisions proposed to the Oregon Rigid Plastic Container Recycling Law. Berry Plastics Corporation, a multi-plant manufacturer of rigid plastic containers, appreciates this opportunity to support Alternative "B".

Alternative "B" is narrower in scope, provides a clearer definition of a "container", and specifically excludes certain other plastic packaging products that the Rigid Container Law is not intended to include. Alternative "B" should also be easier to implement and should reduce confusion in the compilation of waste reduction studies.

Sincerely,

A handwritten signature in cursive script that reads "M. R. Imbler".

M. R. Imbler  
President & CEO

MRI/an

DowElanco  
Western Regional Office  
3835 North Freeway Boulevard, Suite 240  
Sacramento, California 95834  
(916) 921-0380  
(916) 921-0584 - Fax

SACRAMENTO, CA  
September 1, 1994



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SEP 01 1994

Oregon Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

**SUBJECT: RULEMAKING PROPOSAL - IMPLEMENTING RIGID PLASTIC  
CONTAINER LAW**

On behalf of DowElanco, I am taking this opportunity to comment on the proposed rule implementing Oregon's Rigid Plastic Container Law. DowElanco is one of the largest agricultural, forestry and specialty products companies in the world and it is committed to environmental stewardship.

The pest management industry aggressively pursues a reduce/reuse/recycle strategy. Identification of product chemistry and formulations effective at low rates of application, increased use of bulk handling technologies, and substantive support for recycling programs have resulted in significant progress in reducing industry related plastic containers being disposed of in Oregon. A pesticide container management program instituted by the Oregon Agricultural Chemicals and Fertilizers Association has dramatically increased the number of containers recycled over the past five years. Collection efforts associated with programs administered by the Agricultural Container Research Council (ACRC) is expected to increase from 1.2 million pounds collected in 1992 to an estimated 5 million pounds in 1994, nationwide.

At the same time, the industry is committing substantial resources to identify processes and technologies to reduce container disposal needs. These efforts include research conducted by individual companies and general industry funding through groups such as the ACRC.

Pest management products are stringently regulated by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which speaks specifically to labeling and packaging authority in Section 24(b). Included in the FIFRA regulations is a prohibition of refilling containers less than 56 gallons, unless they are refilled by the registrant. The logistics and economics for refilling pesticide containers less than 5 gallons make this an impractical alternative. Recognizing these confounding circumstances, California, which also has a plastic recycling law (SB 235) provides an exemption for materials regulated under FIFRA.

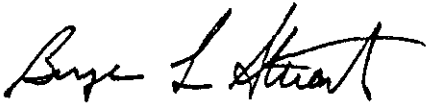
In addition, criteria for packaging of some pest management products are restricted by Department of Transportation Hazardous Materials Regulations prohibiting the use of post-consumer resins. This restriction can also be found in global transportation regulations.

Oregon Department of Environmental Quality  
September 2, 1994  
Page Two

The Department of Environmental Quality memo to Interested and Affected Public (July 22, 1994) identifies three compliance "options." Due to conflicting regulatory requirements between the proposed Oregon rule and existing requirements at the federal level, there are no practical options for many pest management products important to Oregon.

The July 22, 1994 DEQ memo recognizes that the unique requirements by the law may lead to the loss of availability of some products in Oregon and an increased cost to the public and business for other products. This negative impact on the state's economy is inappropriate and unnecessary for pest management products, considering the existing regulatory infrastructure provided by FIFRA and the substantial investment and commitment by this industry to achieve the purpose of the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan L. Stuart". The signature is written in a cursive style with a prominent, sweeping flourish at the end.

Bryan L. Stuart, Ph.D.  
Government Affairs Manager  
Western Region



Oregonians for  
Food and Shelter

Serving Oregon Since 1980  
567 Union Street N.E.  
Salem, OR 97301  
(503) 370-8092  
FAX: (503) 370-8565

Terry Witt, Executive Director  
Paulette Pyle, Grass Roots Director  
Sandra Schukar, Office Manager

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Agripac, Inc.  
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Dick Stonex  
Longview Fibre

Bob Wix  
Du Pont Agricultural Products

## OREGONIANS FOR FOOD AND SHELTER

A coalition to promote the efficient production of food and fiber, and protection of human health, personal property and the environment, through the integrated responsible use of pesticides and fertilizers.

September 2, 1994

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SEP 0 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW Sixth Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

### Re: Comments on Proposed Rules for Oregon's Rigid Plastic Container Law

Dear Sir:

Please enter into the record the following comments by Oregonians for Food and Shelter on the proposed rules for Oregon's Rigid Plastic Container Law. I am also requesting that my name be placed on the DEQ/EQC "rulemaking mailing list" to receive notice of all subsequent action and communications regarding this issue.

Oregonians for Food and Shelter (OFS) represents over 10,000 end-users, dealers, distributors and manufacturers of pesticides and fertilizers. The proposed rules regulate the primary package used by the pesticide industry -- rigid plastic containers holding from eight ounces to five gallons of product. As such, these rules could have serious, direct impact on virtually every farmer, forester and pest control professional using pesticides in Oregon, ultimately effecting the end consumer and Oregon's agribusiness economy which both benefit from the responsible use of pesticides.

While OFS members are concerned about some aspects of this law, we strongly support efforts to solve the problems associated with increased use of plastic containers and landfill disposal. This is not merely lip service, but a belief that is put into practice through pesticide container collection programs at the state level by the Oregon Agricultural Chemicals and Fertilizers Association and at the national level by the Agricultural Container Research Center. Oregon's voluntary collection program started in 1984, continues to grow and will likely collect 80,000 containers this year.

The proposed rules which specify how rigid plastic containers shall comply with recycling standards beginning January 1, 1995, however, are overly ambitious and in several instances are in direct conflict with Federal laws having primacy in these matters.

## DEQ - Rigid Plastic Container Recycling Rules

September 2, 1994

Page 2

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which governs the registration, sale and use of all pesticides in this country, clearly limits the authority of states in Section 24(b) on Uniformity: "Such State shall not impose or continue in effect any requirements for labelling or packaging in addition to or different from those required under this subchapter."

It is my understanding that DEQ does not dispute that FIFRA expressly prohibits a state from imposing pesticide packaging requirements. DEQ instead argues that giving manufacturers a choice of meeting any of the three options (recycling rate, recycled content, or reuse) does not make it a "packaging requirement" that is in conflict with the federal law.

Setting aside the strong believe that this argument could not withstand a legal challenge in court, the real outcome of the proposed requirements is that most pesticide manufacturers would have only one way to comply with both this state act and federal laws --- that is to hope the recycling rate for rigid plastic containers in Oregon is calculated, more than a year after the fact, to be at least 25 percent. This is true since the second and third options dealing with recycled content and reusable/refillable containers are expressly forbidden by federal law for many pesticides and therefore not an equal option to all manufacturers.

This problem is compounded by the fact that the manufacture has no way of knowing what the recycle rates will be for all rigid plastic containers in the aggregate, nor for the specific type of plastic resin they use, until calculations are made by DEQ using DEQ data more than one year after the date when a manufacturer could be charged with a violation. This is further complicated by the fact that even if the rate were known, a manufacturer could not appeal that calculated number until after an enforcement action has been initiated by DEQ. The Attorney General's discussion of the appeal process on page 15 of the DEQ memo of July 22, 1994, which accompanied the proposed rules, was summarized as follows:

"...that a recycling rate would not be established as an Order, and therefore could not be challenged per se, as an appeal can only be made to a 'final order' of the Department or Commission. A rate could be challenged at the point of enforcement. That is, if the Department issues a Notice of Violation against a product manufacturer relying on a recycling rate (calculated by the Department to be less than the necessary 25%), this is a final order and can be appealed."

Approximately one-third of all pesticides are classified as hazardous material. Under U.S. Department of Transportation (DOT) and global transportation regulations, these pesticides must be packaged in DOT/UN containers that meet stringent performance criteria. Post consumer resin or "used" materials are strictly prohibited in the manufacture of single outer packaging for DOT/UN marked containers for hazardous materials. While significant research and testing are in progress, there currently are inadequate data to ensure that pesticide containers, either one-way and multiple trip, containing 25 percentage post consumer resin will meet the standards expected by the public. DOT/UN performance

standards have been developed to help protect the environment, product shippers and handlers, and the public from unnecessary exposures ranging from small leaks to catastrophic container failures.

The use of post consumer resin in containers which must maintain product purity also raises many unanswered questions. How much residue remains in a post consumer resin (PCR) from container which previously held a toxic material, does the residue migrate from the PCR into the new product, and at what percentage of PCR in a container does the contamination reach a measurable level or one of potential risk? Who will share the liability when someone files suit over environmental impacts, human health effects or product damage claims? With today's litigious mentality, it is a given that this will happen!

The option of using reusable/refillable containers represents a second FIFRA conflict over what is commonly called the "56 Gallon Rule." This current EPA policy forbids the refilling of pesticide containers smaller than 56 gallons by anyone other than the registrant. Because of the predominance of minor crops in Oregon agriculture and the trend toward lower rates of product being applied per acre, the quantity of a given pesticide needed for an application most often will not justify using returnable bulk/mini-bulk containers. It must also be noted that the typical small volume, plastic pesticide containers regulated are designed exclusively as one-way packages to minimize the amount of plastic which ultimately must be recycled or disposed of while still maintaining container integrity.

A most unfortunate outcome which could result due to pesticide manufacturers dropping minor crop registrations for small volume products in Oregon, is end users going back to the purchase of large volume containers of pesticides -- generating partially used containers stored for multiple years on sites throughout Oregon. The practice of purchasing more material than is needed for one season leads to increased risk of environmental contamination from container failure and hazardous waste disposal problems when the usefulness of old product becomes questionable. The DEQ has spent nearly a million dollars over several years to help eliminate unwanted and unusable pesticides from Oregon. Regulators must carefully examine and weigh the negative consequence of such indirect impacts from the proposed container law changes before making their final decision.

A similar question must also be asked concerning the decision to count, for purposes of calculating recycle rates, only rigid plastic containers which are recycled into new products, excluding energy recover and fuel products. This is inconsistent with the statutory definition given in ORS 459A.650 (6), which reads, "*Recycled material means a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle.*" If the purpose of recycling is to find better options for managing waste than long term, solid waste storage (i.e. landfilling), then pyrolysis to produce both liquid hydrocarbons and energy sources should be included. The pounds of plastic "recycled" via this option could be controlled by DEQ and incrementally reduced over time as new markets for PCR increase. With current demand for PCR falling far short of the supply this law will generate, we would be merely substituting one form of solid waste landfill for another, by calling the mountains of unused, recycled containers "a raw material stockpile."

DEQ - Rigid Plastic Container Recycling Rules  
September 2, 1994  
Page 4

While it is doubtful whether DEQ and the Environmental Quality Commission (EQC) has the authority to fix the problem by simply adding another "exemption" for FIFRA regulated products to those already in statute, OFS does believe they do have the ability to add clarifying language to OAR 340-90-350 Compliance Standards. Section (1) could be modified to read:

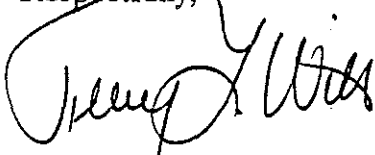
"Except as provided in OAR 340-90-340, or when expressly preempted by federal law, by January 1, 1995 any rigid plastic container sold, offered for sale, or used ... in Oregon shall comply with one of the following:"

This would eliminate potential conflict with federal laws and eliminate the dilemma manufactures will face. If changes are not made, many must choose between being in violation of Oregon law or Federal laws, or whether to remove their product from the Oregon marketplace altogether.

If this recommended change is not accepted, I am formally requesting that all information regarding rigid plastic pesticide containers submitted by the FIFRA regulated community in response to these rules be added as an addendum to the Department's Report to the 1995 Oregon Legislature as information in support of a statutory change for a FIFRA exemption.

OFS maintains this request would be in line with recommendations made by the Recycling Task Force members who "supported having Oregon requirements be consistent with California's whenever possible to facilitate compliance for product manufacturers selling in both states." It should be noted that California's Plastic Packaging Law (SB 235) exempts FIFRA regulated product containers.

Respectfully,



Terry L. Witt  
Executive Director





PENNZOIL PLACE • P.O. BOX 2967 • HOUSTON, TEXAS 77252-2967 • (713) 548-8516

SAROSH J. H. MANEKSHAW  
Director  
Environmental, Safety  
and Health Affairs

September 2, 1994

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SEP 02 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

RE: Rulemaking Proposal - *Implementing Oregon's Rigid Plastic  
Container Law*  
July 22, 1994

Dear Sir or Madam:

Pennzoil Company is a natural resources company engaged, with its subsidiaries, in the exploration, production, refining, and marketing of petroleum products; the operation of quick lube facilities; and the mining and sales of sulphur. Pennzoil contributes to the economy of Oregon through the operation of a lubricant blending and packaging plant, two warehouse distribution facilities and several Jiffy Lube stores.

The products we market include motor oil and other lubricants and fluids for consumer, commercial and industrial use. Many of these products are sold in rigid plastic containers. Pennzoil is being significantly affected by rigid plastic container laws and regulations that are being developed by states such as Oregon and California. As part of the regulated community that will be impacted by this rulemaking, we are expressing our concerns with the proposed rulemaking in these comments. We appreciate this opportunity to provide our comments and hope the Department of Environmental Quality (DEQ) gives them full consideration.

The proposed rules would implement the Oregon's rigid plastic container law which requires that any rigid plastic container sold or offered for sale in Oregon must comply with one of the recycling, recycled content or reuse standards by January 1, 1995. The proposed rules clarify the statute and provide guidance to the regulated community for compliance with the law. The proposed rules would set policy, compliance and exemption standards, methodologies for calculating rigid plastic container recycling rates, recordkeeping requirements, reporting responsibilities, and enforcement provisions.

**Averaging for Recycled Content Compliance**

Pennzoil requests that the DEQ add a provision rule that adds flexibility to the rule by allowing a product manufacturer to average the recycled content for all rigid plastic container materials and sizes to achieve compliance with the recycled content standard. This has been referred to by some as "corporate" averaging during the rule development phase. We prefer the company-wide/multiple packaging line averaging term used in the March 7, 1994 discussion paper. We refer to this as "recycled content averaging" in these comments. We consider

Oregon Rigid Plastic Container Rule  
September 2, 1994  
Page 2

recycled content averaging as the most important issue to Pennzoil. Implementation and compliance with rigid plastic container requirements for different states is improved when the states' requirements are similar. We ask that Oregon's requirements be consistent with those developed in California and Florida by including recycled content averaging in their rulemaking.

The recycled content option is the most viable means for Pennzoil to achieve compliance with the law and forthcoming regulation. This option fits in with our pro-active recycling efforts to incorporate, where possible, recycled content into our rigid plastic containers. This is a nationwide effort that includes Oregon. Also, we believe utilizing recycled content in the rigid plastic containers used for our products is the best way Pennzoil can promote recycling. Currently, several of our rigid plastic containers utilize at least 25 percent recycled content including our quart motor oil bottles which are our highest volume containers. The technology is available to incorporate more than 25 percent recycled content in these types of containers.

We expect to have some container categories which may not be able to meet the statutory deadline of January 1, 1995 for the recycled content standard because of technological and supply constraints. These containers are sold in relatively low volumes when compared to the number of our containers that already have recycled content in them. A strong effort is being made to accelerate the development of technology necessary to include recycled content in our remaining rigid plastic containers. Unfortunately, the proposed recycling rate and reuse compliance options do not fit our national strategy and are not practicable for achieving compliance for these containers. Also, because of the nature of the product it is not possible to convert to a plastic material that is more readily recyclable. As a result, packaging for the affected products would either have to be changed to a non-plastic material or removed from the marketplace. We would prefer not to have to resort to these options because they are not as cost effective as utilizing recycled content averaging. Like Pennzoil, many companies have invested large amounts of money on research and product development to come up with the best container for a product. The container is evaluated for many requirements including safety and environmental concerns. We believe it is unreasonable and unfair to have to forfeit this investment because a product cannot be sold in its best container. Furthermore, we do not believe that the law intended to eliminate plastics from the spectrum of container materials.

We have been monitoring the discussions regarding the averaging issue and would like to address a several of the concerns raised regarding its inclusion in the rule. We dispute the argument that because the averaging option was not specifically identified in the law that it cannot be allowed in the rule. Laws are generally frameworks for the development of regulations, not a blueprint for them. If the argument that averaging is not allowed in any form in the law is accepted, then there is no practical way for any manufacturer to demonstrate that an individual rigid plastic container is in compliance with the law under the recycled content option. In the manufacturing of rigid plastic containers with recycled content, virgin and recycled (at least 25 percent) resin are mixed together to make a batch of containers. Each container is considered in compliance with the law and rule based on the presumption that each container will have the same percentage of recycled resin as the original mix. This may not be

true. Actually, each container is considered to be in compliance under the presumption that on average each container will reflect the recycled resin percentage of the mix. Therefore, the use of averaging is implied in the law. The intent of the law is to advance recycling as much as possible. We feel that the law gives the DEQ the flexibility to promulgate regulations that achieve this including recycled content averaging.

Also, we consider the argument that small manufacturers will be at a disadvantage in the marketplace if averaging is allowed to be faulty. To the contrary, if we presume that small manufacturers will be able to comply with the options as they exist in the law and the proposed rule, it will be those manufacturers who must use different types of plastics for their products who will be dealing with an "unlevel playing field." It is a general rule of economics that large companies have an advantage over smaller ones because of the benefits of economies of scale. This rule should not attempt to compensate small manufacturers for this effect through the exclusion of recycled content averaging.

Another argument against adoption of averaging is that it must be applied to all compliance standards as a condition of being adopted into the rule. We have not evaluated if averaging can be utilized for the recycling rate and reuse standards. However, we do not believe that recycled content averaging must be useful to all three standards to be adopted. In California, averaging is only beneficial for meeting its recycled content standard. Therefore, we request that the DEQ evaluate the benefits of averaging on a standard-by-standard basis. By using this approach, if averaging proves beneficial under the recycled content standard and not for the other two standards, then it can still be adopted into the rule.

The regulation of rigid plastic containers is in its formative stage which is demonstrated by the fact that only two states, California and Florida, have final rules on this issue. Unlike California and Oregon, Florida is not mandating recycling but rather using market forces to stimulate recycling. At this point in time, regulators and the regulated community are just starting to learn the best methods of achieving the public's recycling goals. These proposed rigid regulatory requirements will not allow Oregon's recycling program the freedom to change as recycling technology is created and improved. In order to ease the implementation of the recycling requirements we urge the DEQ to include as much flexibility in the rule as possible. Adoption of recycled content averaging would add significant and much needed flexibility to the proposed rule. Additionally, recycling rates would be stimulated for those containers which can be recycled since greater than 25 percent recycled content will have to be used. Product manufacturers will have no incentive to increase recycled content greater than the 25 percent required in the rule if recycled content averaging is not included. The development of technology will also be stifled.

Should the DEQ decide not to allow recycled content averaging as a compliance option, we ask that it at least be offered as an exemption for a minimum of five years. The exemption would allow a product manufacturer with some rigid plastic containers that cannot meet the 25 percent recycle content requirement to continue sell these containers in Oregon as long as the recycled content rate for all of its containers is at least 25 percent. The exemption period would

allow manufacturers the time to plan and develop the technology needed to incorporate 25 percent recycle content in the containers. If the technology cannot be developed, this time will allow manufacturers to develop alternative packaging for the product.

We offer the following specific comments on each regulatory section:

**OAR 340-90-320 Definitions**

We support adoption of Alternative B for the definition of a "rigid plastic container." We believe that Alternative B provides more clarification and flexibility regarding the definition of a rigid plastic container than Alternative A.

**OAR 340-90-345 Exempt Rigid Plastic Containers**

We support adoption of Alternative B for the requirements that a reduced container must meet to receive an exemption. Unfortunately, even Alternative B cannot provide relief to a situation that probably is not exclusive to Pennzoil. This situation is when a container for a new product is evaluated for lightweighting before initial product introduction. In this case, this container cannot be further reduced. This is an example where our pro-activeness has hurt rather than helped us. A manufacturer who did not make this consideration up front has the ability to take advantage of this exemption. We request that the DEQ allow an exemption for those containers which have been previously reduced as part of the product development process. A demonstration of this would have to be provided to the DEQ by the product manufacturer before granting the exemption. This potential exemption could be restricted by only allowing its use if no other recycling standard or exemption could be used by the product manufacturer.

**OAR 340-90-380 Recycling Rate Calculation**

We ask that the aggregate recycling rate be required to be calculated by the DEQ on an annual basis. Unlike the requirements on the regulated community, there is no mention in this section of how often the DEQ must calculate this rate. The aggregate recycling rate will increase as the recycling regulations are implemented. The rate serves as an important measuring stick for the progress of the recycling program and should be available to the public and the regulated community. Reaching the 25 percent aggregate rate will be a significant event for the regulated community and will affect their business planning. The information will be used to make adjustments to optimize a manufacturer's strategy for use of packaging for current and new products.

**OAR 340-90-410 Responsibilities of a Container Manufacturer**

We ask that the DEQ include a provision that requires a container manufacturer to provide copies of all documentation supporting its Certificate of Compliance upon request by a product manufacturer to which it supplies containers. The burden of achieving compliance has been placed on product manufacturers. We believe the information provided in a container manufacturer's Certificate of Compliance may not be sufficient for a product manufacturer to

PENNZOIL COMPANY

Oregon Rigid Plastic Container Rule  
September 2, 1994  
Page 5

demonstrate compliance. Therefore, all information necessary to demonstrate compliance must be available to the product manufacturer.

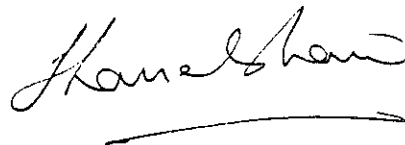
**Conclusion**

Again we appreciate the opportunity to provide input on the regulations to implement Oregon's rigid plastic container law. In summary, Pennzoil requests that the DEQ revise the rule through the following:

- 1) Allowing a product manufacturer to meet compliance with the recycled content standard by averaging recycled content across all of its rigid plastic containers. This would include containers of different sizes and those made of different plastic materials.
- 2) If 1) is not adopted, allowing a product manufacturer to obtain an exemption, of at least five years, for those containers which cannot meet the 25 percent recycled content standard by averaging recycled content across all of its rigid plastic containers. This would include containers of different sizes and those made of different plastic materials.
- 3) Adopting Alternative B for the definition of a "rigid plastic container."
- 4) Adopting Alternative B for the qualifications of a "reduced container."
- 5) Adding an exemption for those containers which have been weight reduced as part of the product development process.
- 6) Requiring the DEQ to perform an annual calculation of the aggregate recycling rate.
- 7) Requiring a container manufacturer to provide copies of all documentation supporting its Certificate of Compliance upon request by a product manufacturer to which it supplies containers.

Please contact me if you have any questions. We would be happy to meet with the DEQ to further discuss our concerns with the rule.

Sincerely,



*Hansel Shaw*

**ELM PACKAGING COMPANY**

2300 Raymer Ave.  
Fullerton, CA 92633  
Phone (714)870-6880  
Fax (714)870-0658

Plant Locations:

Fullerton, CA  
Memphis, TN  
Troy, OH

September 2, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Ave.  
Portland, OR 97204

RECEIVED  
SEP 11 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Ref: Oregon Rigid Container Regulations

ELM Packaging Company produces a wide variety of food and industrial packaging for the Oregon market. ELM has been an active leader in developing technology to enable use of post-consumer materials in food packaging and food service applications. We have carefully reviewed the most current draft regulation under consideration by DEQ and submit the following comments:

Clarity in the regulations has been our ongoing concern. The rigid container issue is, by its nature, far more complex than it superficially appears. We support and urge narrowing the scope of the regulation to provide reasonable implementation and monitoring by fair minded people. The recent work nearing completion by California's Integrated Waste Management Board in the implementation of SB235 is a clear indication of the difficulties in promulgating workable and enforceable regulations with respect to post-consumer content materials in rigid plastic containers. The broad definitions included in "Alternative A" of the DEQ draft regulation invites confusion about exactly what a rigid container is and who is responsible for compliance. While "Alternative B" does not address all of the loose ends in "Alternative A," implementation of the regulation by DEQ, METRO, and other regulating agencies is significantly simplified.

As a manufacturer serving the the 50 states and Canada, our ongoing concern is inconsistency in rigid packaging laws between the various states making compliance impractical. We worked closely with Integrated Waste in California to adopt workable and sensible regulations; particularly in the definition of a rigid container. Although we recommend DEQ adopt "Alternative B" over "Alternative A," we request that DEQ consider the language, or some iteration of such, used in the most recent draft of Integrated Waste's regulation regarding definition of a rigid container.

Sincerely,



Allen R. Kidd  
Vice President Western Region

ARK/hsk

# Monsanto

FRANK PLESCIA  
Manager, Government Affairs  
Western U.S.

THE AGRICULTURAL GROUP  
2240 Douglas Blvd., Suite 260  
Roseville, California 95661  
Bus: (916) 784-1746  
Fax: (916) 784-1878

RECEIVED  
SEP 01 1994

September 2, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Sir or Madam:

The Agricultural Group of the Monsanto Company is pleased to submit its comments regarding the rulemaking proposal of the Oregon Department of Environmental Quality concerning rigid plastic containers.

The Agricultural Group of Monsanto is a major supplier of agricultural and household-use pesticides in the US and around the world. Monsanto is committed to providing safe, effective and environmentally sound products to its customers. Our commitment to environmental quality extends to the packaging that we use for our products. Monsanto was among the first in our industry to make a significant commitment to the use of refillable containers for agricultural chemical products. Our adoption of reusable containers has resulted in a dramatic reduction in our use of single trip containers. Monsanto was the first in our industry to provide household-use pesticides in containers manufactured, in part, from "post consumer" plastic. We continue to expend significant resources in the development of environmentally friendly packaging systems (eg. water soluble packaging, residue free packaging, etc.). Monsanto has also played a leadership role in the efforts of the National Agricultural Chemical Association, the Agricultural Container Research Council and the OACFA to reduce the environmental impact of agricultural chemical containers via container collection/recycling programs in Oregon and elsewhere. These voluntary, industry-sponsored programs have proven to be very successful at removing agricultural chemical containers from the environment. The number of containers collected each year is increasing dramatically. The recovery rate is estimated to be about 25% both in Oregon and nationwide.

We believe that our efforts in the past make it clear that we agree that plastic container recycling / reuse is a crucial component of our environmental stewardship efforts. However, we have some areas of concern with the Oregon DEQ's approach to this issue in your

proposed rules. These will be addressed in the remainder of this submission.

#### A. Conflict with Existing Federal Laws

The proposed rule provides three options for compliance--recycling rate, recycled content and reuse. DOT HM181 specifically prohibits the use of "used" materials in the manufacture of some containers that are used for DOT regulated products. While many pesticides are not regulated by DOT or are not packaged in the sort of containers for which recycled content is prohibited, the DOT's rules will foreclose the "recycled content" option for many products. This reduction in the available options, of course, makes compliance with the Oregon rule more difficult to achieve.

Section 24(b) of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) specifically prohibits the states from creating any requirements regarding pesticide packaging and labeling which are "in addition to, or different from" those contained in FIFRA. We believe that the proposed rulemaking, in fact, creates new regulations for pesticide packaging and thus is in direct conflict with this provision of FIFRA.

In addition, existing Federal EPA policy makes it illegal to repackage pesticides in refillable containers which have a capacity less than fifty-six gallons except at the producer's plant. This prohibition by the EPA makes it impossible for our industry to expand the use of refillable containers to the smaller sizes covered by this rulemaking. So-called "minor crops" are extremely important to the agricultural economy of Oregon. Growers of these minor crops do not use large volumes of individual pesticides. Therefore the bulk/minibulk delivery technology that has become so important in the mid-west has little applicability in Oregon. Until existing Federal policy is changed, compliance with the Oregon rules via reusable containers is not possible. Thus another option for compliance by our industry is foreclosed.

#### B. Lack of Consistency with Other State Regulations

The State of Oregon has chosen to adopt packaging regulations which are different, in several significant ways, from those of enacted in California and Wisconsin and from those proposed in model legislation developed by the Coalition of Northeastern Governors (CONEG). The very existence of differing and conflicting laws in the various states is very burdensome to industry. They make it extremely difficult and expensive for suppliers of products with national or regional distribution to



operate. By eliminating its differences with the California regulations, Oregon could substantially reduce the burdens imposed by its regulations without significantly reducing their beneficial impact on the environment.

Monsanto is particularly opposed to the inclusion of pesticide packages among those covered by the rules, and to the fact that "averaging" of compliance data across a manufacturer's packages is not allowed. Both of these provisions are inconsistent with California rules.

Monsanto also finds it very difficult to understand why the Oregon rules do not give greater weight to source reduction by packagers. The State's goal is to reduce the amount of material entering the solid waste stream. If one accepts the premise that 100% recovery/recycling is not achievable in the foreseeable future, one must agree that source reduction is an important tool in meeting the State's objective. In fact, source reduction is at the top of the hierarchy of the packaging improvement alternatives proposed by CONEG. To grant only a temporary exemption for source reduced packages is not reasonable.

#### C. Technical Issues

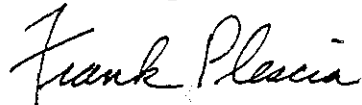
The use of recycled material in the manufacture of containers is in its infancy. Many issues regarding the quality and reliability of containers using PCR remain to be addressed. Monsanto believes that packaging for potentially hazardous materials like pesticides should be of the highest quality. The quality and performance of pesticide containers should not be jeopardized by rushing into the use of PCR without extensive testing. The timelines for the Oregon rule do not allow for this sort of testing.

It is generally understood that the walls of a plastic container may absorb, over time, a small amount of the products which it contains. In the case of pesticides, these residues might present an exposure risk during recycling operations and/or when they are incorporated in objects manufactured with plastic from recycled pesticide containers. For this reason the Agricultural Container Research Council has undertaken a comprehensive investigation to determine the amount of residue retained and the risk posed by these residues. Until this study is complete, we believe that it is inappropriate for pesticide containers to enter the general plastics recycling stream. We further believe that outlets for recycled plastic from our industry's containers should be chosen with care. ACRC has also undertaken a program to develop end uses for recycled plastic which are appropriate to the nature of the materials involved.

Until these studies are complete and the results evaluated, we cannot fully endorse the recycling of our containers.

Monsanto shares with the Oregon Department of Environmental Quality a concern for the reducing the impact of packaging on the environment. We are prepared to cooperate with the Department as it reviews the comments regarding its proposed rules. If you have any questions regarding these comments please contact me at 916-784-1746.

Sincerely,



Frank Plescia  
Manager, Government Affairs  
Western U.S.

cc. Terry Witt / OFS



**RUSSELL STANLEY CORP.**  
*Manufacturers of Industrial Containers*

230 Half Mile Road, Red Bank, New Jersey 07701 • TEL. (908) 741-6366  
FAX (908) 741-4913

EARL V. LIND  
Corporate Technical Manager

September 2, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

RECEIVED  
SEP 4 1994

Subject: Rulemaking Proposal - Implementing Oregon's Rigid Plastic Container Law  
Proposed Rules: OAR 340-90-310 through 340-90-439 and OAR 3440-12-065

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Sir / Madam,

I am writing in response to your request for comments on the proposed rulemaking cited above. Russell - Stanley Corp., 230 Half Mile Road, Red Bank, NJ 07701 is a manufacturer of steel and plastic containers primarily made to comply with the performance requirements for the shipment of hazardous materials regulated by the United States Department of Transportation (DOT) under the regulations set forth in Title 49 Code of Federal Regulations (49 CFR).

Russell - Stanley Corp. manufactures five (5) gallon polyethylene containers at its subsidiary, Russell - Stanley West, Inc., 9449 Santa Anita Avenue, Rancho Cucamonga, CA 91730 which meet the definition of rigid plastic containers in OAR 340-90-33- of the proposed law. These containers are made to comply with the DOT regulations cited above, specifically 49 CFR § 178.509 (a)(3) for hazardous materials transportation. Subparagraph (b)(1) of this part specifically prohibits the use of post consumer recycled material to be used in containers intended for hazardous materials transportation.

Since Russell - Stanley Corp. does not necessarily know whether or not a specific customer is using the containers for hazardous or non-hazardous materials when it is sold or even when filled it will be shipped to Oregon it would be virtually impossible to comply with the proposed Oregon law in with respect to recycle content.

The recycling of post industrial container material into new plastic containers subject to DOT regulations is just now being studied experimentally. Safety, when reprocessing recycle from containers previously used for hazardous chemicals is a major question that must be answered. There is also the question of segregation of these materials from virgin resins to prevent their being used for containers destined for food service.

Comments to Proposed Rulemaking (cont.)

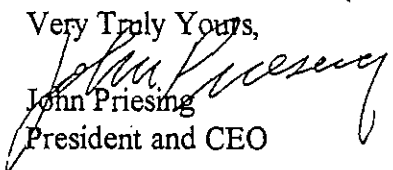
While it may theoretically be possible to source reduce as allowed under OAR 340-90-340(5) the problem of inventory control and scheduling to make different versions of the same container would be difficult. It is likely that this would be necessary because a reduction in weight of 10% may reduce the ability of a container intended for hazardous materials to meet the applicable performance standards.

The plastic containers made by Russell - Stanley Corp. to comply with DOT regulations are capable of being reused in accordance with the Oregon compliance standard proposed in OAR 340-90-350)1)(c), however, this is an area that must be monitored by the user(s) of the container and should not be a responsibility of the container manufacturer.

Russell - Stanley Corp. supports Alternative B of OAR 340-90-330 however requests that the proposed rulemaking be amended to exempt from the proposed law containers made and marked to comply with DOT regulations.

If you have any questions regarding these comments, please do not hesitate to contact us. Thank you for your consideration of our comments.

Very Truly Yours,

  
John Priesing  
President and CEO



Earl V. Lind  
Corporate Technical Manager

September 2, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Ave.  
Portland, OR

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SEP 01 1994

Dear DEQ Staff:

On behalf of Quintex Corporation, I would like to comment on the Rigid Plastic Container Law; Oregon Senate Bill 66. I hope my concerns are appropriate to the proposed rules you will be addressing shortly. Most all my questions have been satisfied on or before the Public Hearing held in Portland, OR September 1, 1994.

Waste Management & Cleanup Division  
Department of Environmental Quality

Quintex Corporation is an out of state manufacture of plastic containers, (1oz to 1gallon), also plastic caps and lids, serving a wide range of industries from three plant locations.

My current concern revolves around the packaging of hazardous materials. In the past containers used for packaging hazardous materials fell into the standards set by the Department of Transportation (CFR 49). However, as of October 1, 1994 containers manufactured after this date must meet the DOT adoption of the United Nations (HM 181) recommendations for Performance Oriented Packages (POP). Under these guidelines a total package with all components taken into consideration must now meet a greater degree of performance testing. The HM 181, POP is for shipment of hazardous materials around the country and the world.

Three years ago Quintex in response to our customers request for a lower product price started decreasing the resin weights in many of our containers.

Quintex has been working with a number of customers in Oregon using HDPE blow molded containers over the last year to develop containers manufactured, to their specification, bottles made with 100% PCR material. Over this time we have processed PCR HDPE in percentages ranging from 10% to 100%. These test products were evaluated by our PCR HDPE supplier for container strength and integrity and by our customers for product compatibility. Test results from our PCR HDPE supplier shows that as the percent of PCR material is increased the container strength decreases. Thus the above mentioned customers have had to increase the weight of the container to off set this and problems from other areas.

Another problem we have been faced with is receiving blow mold grades of PCR HDPE material mixed with other grades of HDPE ie. rotational, injection, thermoformed, etc. Processing grades of HDPE other than for blow molding can be difficult, sometimes impossible and usually resulting in poor quality, increased scrap rates and higher production costs. At this time we have limited our PCR HDPE material from sources that can assure us of a blow mold grade PCR material. This PCR HDPE is recycled milk jugs, which is a homopolymer HDPE, which takes us to the next problem.

Most plastic processers, injection or blow mold, use for their customers in industries such as chemical, ink, paint, fertilizers, etc. a copolymer HDPE material which has a better chemical resistance to these types of products.

(3)

In preparing for the 10/1/94 UN HM181 compliance of POP, Quintex has had to increase the corrugated over pack for our bottles and increase the bottle weight by 25% to meet these new requirements.

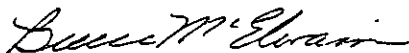
Thus I see potential problems with SB66, UN HM181 and containers manufactured under these requirements:

- 1) Containers are needing to be made heavier not lighter.
- 2) Containers need to be kept in a non contaminated copolymer HDPE.
- 3) Containers strength and integrity are compromised by the use of PCR material.

I ask that this committee consider an exemption on regulated containers for the safety of the greater public.

Thank you for your time.

Sincerely,

  
Bruce McElwain

Sales Representative

90

DuPont Agricultural Products  
Registration & Regulatory Affairs  
Walker's Mill, Barley Mill Plaza  
P. O. Box 80038  
Wilmington, DE 19880-0038  
Fax: (302) 992-6470



## DuPont Agricultural Products

September 1, 1994

The Oregon Department of Environmental Quality  
Waste Management & Cleanup Division  
811 Southwest 6th Avenue  
Portland, OR 97204

RECEIVED  
SEP 01 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

**Subject:** Comments by DuPont Agricultural Products on the  
Proposed Rigid Plastic Container Rules.

Dear Sir:

The DuPont Company, the state of Oregon, and the agricultural chemical industry all recognize and agree with the need to reduce the waste plastic load on the environment. Toward this end, both DuPont and the agricultural chemical industry understand the motivation behind the Oregon Legislature when they passed the Rigid Plastic Container law in 1991.

We would like to note that the national ag chemical industry initiated a nationwide voluntary pesticide container recycling program in 1989. By 1993, thirty eight (38) states were participating in the national collection program, collecting 2.3 million pounds of containers at state approved sites. That's almost double the 1992 total of 1.3 million pounds. Up to 5 million pounds may be collected in 1994. This is about 20% of the total of one-way plastic pesticide containers used nationwide.

The Oregon agchemical industry has a very successful recycling program. It started in 1984 and may have been the first in the country. An estimated 75,000 to 80,000 containers will be collected in 1994. This represents over 25% of Oregon's plastic pesticide containers.

With regard to the proposed regulations implementing the Rigid Plastic Container law, DuPont is concerned that the law may have been a bit over ambitious. As a result, there are portions of the proposed rules where it may be very difficult, if not impossible, for us to reach the recycling performance benchmarks within the time frame allowed. Our specific concerns are as follows:

The proposed rules permit three options to meet the Law's recycling requirements.

- 1) Package must contain 25% recycled content.
- 2) Package must be made of plastic recycled in Oregon.
- 3) Package must be reusable.



The Oregon Department of Environmental Quality  
Waste Management & Cleanup Division  
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With regard to the first item, FIFRA, and the US EPA hold pesticide manufacturers to exceptionally high standards for product quality. It is the current EPA policy that the presence of any detectable material that is not listed on the product's confidential statement of formula constitutes product adulteration, and misbranding. While research is still ongoing, at this point in time DuPont and the agricultural chemical industry in general are still working to prove that detectable amounts of foreign material will not leach from the recycled portion of a container containing 25% recycled material. While any residue that may leach from the recyclable resin would be trivial in nature, and would not affect product performance, such leaching would constitute adulteration and misbranding under FIFRA, and would be illegal.

Furthermore, there is unfortunately a great deal of public skepticism about the safety of pesticides. Therefore, DuPont has a clear obligation to the public to only sell its product in containers with the highest degree of integrity. While the research is ongoing, DuPont has yet to determine if a 25% recycled container will provide adequate protection to the product it contains. We are certain that the Oregon Legislature never intended by their legislation to require potentially hazardous products to be sold in less than adequate and protective containers. If the Oregon Department of Environmental Quality is aware of any testing that demonstrates the adequacy, with an acceptable margin of safety, of a 25% recycled container to contain hazardous material, we would be pleased to learn of it.

With regard to the second of the required recycling options, Both DuPont and the agricultural chemical industry, in general, are very concerned with how the recycled resin from empty plastic pesticide containers may be used. Because of the intense public focus on pesticides, we insist on tightly controlling the recycle stream from recycled pesticide containers in order to insure that the recycled plastic never makes its way into food containers or into items with a high human contact potential.

As mentioned earlier in these comments, research is ongoing, but it is not possible at this point in time to assure that pesticide material will not leach out of the recycled resin. Given the large number of pesticide products packaged in plastic containers, the number of tests that must be run to gain this assurance for each and every pesticide is enormous. We do not believe it was the intention of the Oregon Legislature to permit hazardous material containers to be recycled into human infant contact items or food containers without the adequate assurances of safety that we are currently trying to develop. Once again, if the Oregon Department of Environmental Quality is aware of any test data that demonstrates the safety of recycled plastic containers, we would be very pleased to learn of it.

The Oregon Department of Environmental Quality  
Waste Management & Cleanup Division  
Page three  
September 1, 1994

As for the third recycling option provided by the proposal, reuse, we are pleased to note that bulk repackaging has eliminated the need for many smaller individual pesticide containers for a number of the high volume crops in the state. Unfortunately, bulk repackaging does not lend itself well to all cropping situations, or to a number of the relatively low pesticide use volume speciality crops in Oregon. In addition, current EPA policy (the 56 Gallon Rule) prohibits repackaging into containers smaller than 56 gallons liquid, or 100 pounds dry capacity. The Oregon proposal thus may unfairly discriminate against the smaller speciality use markets.

Perhaps one of our greatest disappointments with the proposed rule is that it fails to recognize or reward the tremendous strides that the agricultural chemical industry has made in container recycling through the efforts and support of the Agricultural Container Research Council (ACRC). As previously mentioned, the ACRC has reached almost the 20% level for collecting and recycling plastic pesticide containers. The ACRC is well into a rigorous research effort to identify safe and socially acceptable markets for the collected recycled resin. Fence posts, agricultural drainage tile, shipping pallets, and hazardous waste recovery drums currently look like viable candidates for the collected recycled resin. However, until those uses can be certified to our industry's and the public's satisfaction, the resin has few after-market uses beyond that as a clean burning and efficient source of fuel.

We are also concerned that the proposed rules will tend to stifle innovation in agricultural product container design and product delivery. For example, there does not seem to be any place in the proposed rule for rigid water soluble or biodegradable containers. Such containers would meet the goal of the law in that they would not be destined for solid waste disposal, and would not take up room in landfills.

In addition, our industry is currently awaiting the final EPA Phase II Container Regulations. These regulations were proposed on February 11, 1994, and final comments were taken on July 12. It seems unwise for the state to proceed with regulations regarding pesticide containers until after the Federal EPA has published their final rules in this same area. Otherwise the state may be inviting conflict with new Federal rules.

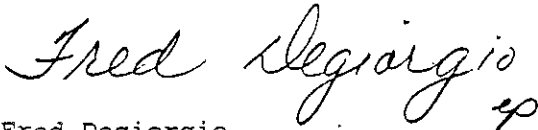
Our last point of concern is that the proposed rule appears to be in direct contravention of FIFRA section 24(b) which pre-empts state authority to levy labeling or packaging requirements. This is a serious concern. Section 24(b) of FIFRA was designed to pre-empt the states from each individually imposing their own unique labeling or packaging

The Oregon Department of Environmental Quality  
Waste Management & Cleanup Division  
Page four  
September 1, 1994

requirements. Given the dynamics of American agriculture, it would be virtually impossible to package product on a state by state basis. In the simplest of terms, the current rulemaking proposal contains packaging requirements that are unique to the state of Oregon, and therefore appear to be illegal under FIFRA.

DuPont would like to suggest that pesticides be given an exemption to the Oregon Recycle Law. The voluntary AgChemical recycling program is progressing rapidly. We will meet the goals set by Oregon on a national basis. This is a national issue with a nationally coordinated voluntary solution. Also, Oregon taxpayer funds can be spent on other more pressing needs.

Sincerely,

A handwritten signature in cursive script that reads "Fred Degiorgio" with a small flourish at the end.

Fred Degiorgio  
Regulatory & Environmental Issues Manager

NEALE & ASSOCIATES  
GOVERNMENT & PUBLIC AFFAIRS  
33709 LAKESHORE BOULEVARD  
LAKELINE, OHIO 44095

RECEIVED  
SEP 01 1994

DEBORAH L. NEALE  
PRESIDENT

Waste Management & Cleanup Division  
Department of Environmental Quality  
PORTLAND, OREGON  
(216) 946-6189

FAX:  
(216) 946-6713

August 31, 1994

Hearing Officer  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

RE: Rulemaking Proposal Implementing Oregon's Rigid Plastic  
Container Law

Dear Hearing Officer.

These comments are submitted on behalf of The Geon Company, a leading producer of vinyl (PVC) plastic resins and compounds associated with infrastructure development, automotive, building, durable and medical products and consumer goods.

The Geon Company supports the goals of the Oregon legislature in attempting to resolve the issue of solid waste disposal, but is concerned that the proposed regulations do not meet the objectives of that legislation.

The Geon Company is in agreement with the comments of the American Plastics Council and would like to underscore the following:

1. We understand that the purpose of solid waste legislation is to establish a hierarchy of disposal options with landfill diversion being the main thrust for recycling. Therefore, pyrolysis or other technology-based recovery mechanisms should be included toward the 25% recycling rate. Definition (17) on page A-3 states "recycled material" means a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle. To exclude pyrolysis is illogical and counterproductive to the stated societal goal of the legislation.

2. Definition of a rigid plastic container should be Alternative B: the law applies to rigid - not flexible - plastic containers. After a collection infrastructure is established by the state or other appropriate government jurisdiction, then flexible and other types of materials can be incrementally added. Compliance with the law will only be achieved in an effective fashion if the regulations can be implemented in a clear and concise fashion. The gray areas of Alternative A would make the law extremely difficult to comply with and defeat the goals of the legislation.

3. The failure of the Regulations to exclude food applications creates a "Catch-22" situation for those companies who manufacture food containers. There is a clear conflict in the fact that food cannot currently be packaged in recycled content containers. This means that those packagers of food products are subjected to a separate standard in the state: Due to a federal government regulation they cannot use the recycled content option and thus are subjected to an unfair application of a state government law.

4. The Rules fail to acknowledge that plastics can be recycled into non-container applications. Recycled content applies to only packaging. A true recycling system would allow for recycling from a container into another application. For example, vinyl containers will soon be able to be included as an inner layer in large diameter sewer pipe - an application that diverts a temporary material into a long-term application and out of the solid waste stream. If landfill diversion really is the intent of this legislation, then the proposed rules should allow and encourage this practical and viable recycled content application to qualify for compliance.

We hope that the DEQ would consider the overall goal of the legislation and provide a regulatory framework that allows flexibility and technology in accomplishing practical, logical, economical and efficient solid waste disposal.

Thank you for your attention.

Sincerely,



Deborah L. Neale  
For The Geon Company

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SEP 11 1994

September 6, 1994

**ROPAK**  
CORPORATION

Department of Environmental Quality Waste Management & Cleanup Division  
Waste Management and Cleanup Division Department of Environmental Quality

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

Subject: Public Comments  
Rulemaking Proposal- Implementing Oregon's Rigid Plastic container Law

Thank you for the opportunity to comment on Oregon's Rigid Plastic Container Law. Ropak Corporation manufactures plastic shipping containers in one through 8.5 gallon capacities from high density polyethylene (HDPE). These containers are originally used to package and sell a host of industrial and consumer products.

With respect to the implementation of SB66, if the true intent of such legislation is to have a positive impact on the volume of waste that ultimately ends up in a landfill, there are several points that Ropak Corporation would like for you to consider.

1. It is Ropak's opinion that a permanent exemption should be extended to packagers of food products. The risk associated with the use of "Post Consumer Materials" (PCR resin) for food packaging, in our opinion, does not justify including these packages in the law. The U.S. food processing industry has extended great efforts over the years to increase food safety. These efforts have produced, without question, the safest food supply world wide. Given the questionable volume of landfill savings associated with rigid plastic food containers, does this law really do justice to the consumer when considering risks and benefits? We think not. We must reasonably consider the costs and risks associated with including food packaging in this law.

2. Ropak opposes the thought that in order for recycling to occur, the material must be made into a new plastic product. It is our opinion that recovering plastic packaging, and thus diverting it from the landfill, and subsequently utilizing such a material for energy recovery and/or fuel products, should be considered as recycling. Valuable energy value can be removed from plastic in waste-to-energy plants. Much plastic material, like the high density polyethylene we use to make containers, burns very hot ( its BTU content is second to fuel oil) and very cleanly. So it can be used as fuel to burn garbage and other solid waste in plants that make electric energy. Used in this way, you could say that we've borrowed natural gas to make useful plastic products, and when their lives are over, these products can be burned to return energy to the environment in the form of low-cost, high-value clean fuel.

3. Rigid plastic containers are being impacted by recycling laws, such as Oregon's Senate Bill 66, yet they are also being impacted nation wide because of their "second life" re-use by consumers. This re-use should be considered and should have some influence on a flexible and reasonable implementation of SB66. There exists strong evidence that rigid plastic containers are re-used by consumers for a variety of industrial

**Corporate Office**  
660 S. State College Blvd.  
Fullerton, CA 92631-5138  
714-870-9757  
FAX: 714-447-3871

and consumer applications, which may or may not include the storage of the original product.

Evidence of re-use is provided as per the activities of Consumers Union, National Safe Kids and Consumer Federation in seeking state and federal legislation to safety label plastic buckets warning against an infant drowning hazard that may occur during re-use in or about the home.

Evidence of re-use is provided as per the activities of the U.S. Consumer Product Safety Commission, which has resulted in the commitment by the plastic pail industry to voluntarily safety label commencing January 1, 1995.

Evidence of re-use is provided as per the containers being sold without covers and containing no products by retail outlets and home centers.

Evidence of re-use is visible to each of us as individuals if we simply observe our fellow man in the pursuit of his public and private life for such things as mop buckets, cleaning buckets, car wash buckets, storage buckets, fish bait buckets, tool buckets, paint buckets, mixing buckets, etc.

With respect to the **alternative definitions of a "rigid plastic container"** in the proposed rules, **Ropak strongly favors definition alternative "B"**.

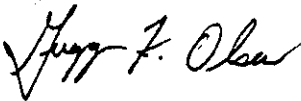
In addition, with respect to a **"Reduced Container"**, **Ropak favors definition "B"** which recognizes the dynamics of the business marketplace. It is unfair to exclude a companies packages from this provision based only on the reason that the product packaging has existed in the marketplace for less than 5 years.

In conclusion, as we become increasingly critical of plastics, let us not forget the tremendous advantages already being experienced through their use, such as savings in energy costs, reduction in food waste, elimination of corrosion and spoilage, reduced loss of contents by eliminating breakage and denting, as well as sanitary advantages.

Ropak Corporation is currently recycling, and offering PCR content containers, and is readily willing to do our fair share. But we resist the notion, based on much mis-information, that plastic packaging is the culprit of the solid waste disposal challenge.

Sincerely,

ROPAK CORPORATION



Gregg F. Olsen  
Recycling Product Manager

GFO



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## Castrol North America

### Automotive Division

240 Centennial Avenue  
Piscataway NJ 08854

Telephone (908) 980 9100  
Fax (908) 980 9519

September 2, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon, 97204

Re: Comments on Proposed-Rules OAR 340 through 340-90-430 Rigid  
Plastic Container Law

Castrol North America is pleased to submit the following comments on the above proposed rules. As a user of plastic bottles to market our lubricant products and directly affected by these rules, we sincerely hope that our comments will be taken under serious consideration.

In general, this law and these rules are somewhat more difficult to comply with than a similar law and proposed rules in California. By not allowing exemption for containers subject to federal regulations such as F&DA, FIFRA, and DOT, plastics containers that have significant other environmental advantages compared with their alternatives are threatened in Oregon. By not allowing more options for compliance such as corporate averaging which would not change the recycling and waste reduction goals, plastic containers that have other positive environmental affects are threatened in Oregon. We believe that these rules need to increase our flexibility and our options for compliance wherever possible.

Enclosed are our suggestions on changes to the specific rules.

Thank you for your consideration of the Castrol North America comments.

Sincerely,

Roger L. Smith  
Packaging Engineer

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SEP 01 1994

Waste Management & Cleanup Division  
Department of Environmental Quality



OAR-340-90-340(5) Exempt Rigid Plastic Containers-Reduced Containers

Castrol urges the adoption of alternative B because it recognizes and then addresses more of the real world situations and gives products manufacturers more options to comply with the law. These options will not dilute the objectives of the law, but will increase the effectiveness of the law by increasing efforts toward source reduction. Castrol has several new products which have been on the market less than five years. Castrol has active programs in place to reduce the plastic weight of these containers. If Alternative B is not adopted our options for compliance are reduced.

Corporate Averaging

Castrol strongly supports corporate averaging as a method for complying with the Law. This option is currently included in the California law. Castrol has some products which are not compatible with the use of 25% PCR. As an example, Castrol's brake fluid if contaminated with even small amounts of mineral oil or water could cause brake system failures. Using corporate averaging we would use 29% PCR in our major product lines where higher content can be use and use virgin resins for our products sensitive to contaminates that cold be introduced by PCR. This in no way diminishes the objectives of the law.

Consistency with California

Castrol agrees with Task Force members who support having Oregon requirements be consistent whenever possible to facilitate compliance for product manufacturers selling products in both states.



S.C. Johnson & Son, Inc.  
 1525 Howe Street  
 Racine, WI 53403-5011  
 Phone: (414) 631-2000  
*Via Federal Express*

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 SEP 01 1994

September 2, 1994

Rigid Plastic Container Rules Hearing  
 Oregon Department of Environmental Quality  
 Waste Management and Clean-up Division  
 811 S.W. 6th Avenue  
 Portland, Oregon 97204

Waste Management & Cleanup Division  
 Department of Environmental Quality

To Whom It May Concern:

S.C. Johnson & Son, Inc. (SCJ) is a worldwide manufacturer of consumer and institutional products, and markets products in Oregon covered under the proposed rules on rigid plastic containers. SC Johnson's products include Raid® insecticides, Off!® repellants, Pledge® furniture products, Windex® and Vanish® cleaners and Future® floor care products, as well as cleaning, disinfecting and floor care products for the industrial and institutional (I&I) market.

SC Johnson supports, in principle, the solid waste reduction goals of the State of Oregon. SCJ itself has established ambitious source reduction and recycled content goals and has made substantial progress against those goals. Using 1990 as a benchmark, we are committed to reducing the amount of virgin material in our packaging components worldwide as a ratio to formula by 20% by the end of 1995. Through 1993, we have reduced virgin packaging material by 14.3% worldwide, and by 30% in the U.S. and Canada.

As a North American marketer of products, however, we believe that states should exercise restraint in imposing restrictions on products or containers, and thereby erecting barriers to the free flow of commerce. In general, therefore, we urge Oregon to harmonize its requirements as nearly as possible to California. This is a point which has been made by the Grocery Manufacturers of America (GMA) and the Soap and Detergent Association (SDA). SC Johnson is a member of GMA and SDA and supports the comments of those organizations.

SC Johnson also believes that Oregon should recognize that not all product containers serve the same function and purpose, and that some product contents necessitate special requirements for the container. Because of this, SC Johnson would especially urge the DEQ to adopt exemptions for two special categories of products - pesticides and hazardous products. We believe that health and safety factors are important for the State of Oregon to consider regarding these products. Although the Oregon legislature did not grant specific exemptions for these categories, the DEQ should recognize the intent and requirements of federal law in this area.

**Pesticides**

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA, 7 U.S.C. 136-136y) sets out a comprehensive scheme for the regulation of pesticides. In general, FIFRA establishes a shared federal/state regulatory structure for pesticides. However, in the area of labeling and packaging, FIFRA limits the authority of states. Section 24(b) states:

"(b) Uniformity - Such state shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." (emphasis added).

Congress, therefore, has clearly and expressly preempted state regulation of pesticide packaging.



Section 19 of FIFRA, as amended in 1988, expands and strengthens EPA's authority in the area of pesticide storage, transportation, and disposal of pesticide containers. Section 19(e) states:

"(e) Not later than three years after the effective date of this subsection, the Administrator shall, in consultation with the heads of other interested Federal agencies, promulgate regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides."

U.S. EPA is moving forward in response to this congressional directive. After a lengthy study, on February 11, 1994 EPA published proposed rules in the Federal Register with requirements for container design for both refillable and non refillable pesticide containers. (Federal Register, p. 6712, 2/11/94, proposing amendments to 40 CFR 156 and 165). The comment period for the proposed regulation ended July 11, 1994.

For certain registered pesticide products, SCJ and other manufacturers may, in fact, be able to utilize refillable containers or incorporate recycled content in containers, consistent with the overall goals of the Oregon statute. But FIFRA and EPA requirements may preclude this for other products. In such cases, the legal obligations of a pesticide registrant to meet the requirements of federal law and regulation under FIFRA are unambiguous in light of Section 24(b).

Some would argue that the Oregon DEQ, without specific legislative direction, cannot grant an exemption for FIFRA products. SCJ believes that to the contrary, federal law requires it.

Based on the foregoing, SCJ urges an exemption for FIFRA products at OAR 340-90-340(2).

#### Hazardous Material Exemption

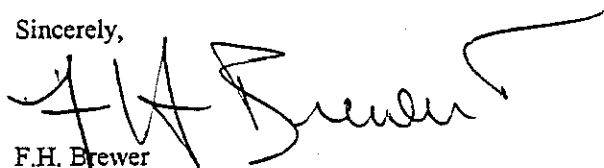
Containers used in the shipment of hazardous materials are regulated by the U.S. Department of Transportation (U.S. DOT) under Title 49 of the Code of Federal Regulations (CFR) and the United Nations Transport of Dangerous Goods Code. Over the past several years, nations have worked cooperatively to create a harmonized set of regulations intended to both facilitate world trade, and to ensure public safety.

For safety reasons, these regulations require packages containing hazardous materials to meet tests ensuring stability and strength. In some cases, the regulations specify that the container may contain no recycled material other than production residues or regrind [49 CFR Section 178.509(b)(1)].

Because of the comprehensive nature of this international scheme covering the transport and shipment of hazardous materials, and because the proposed DEQ regulations conflict with the U.S. DOT and UN specifications, SCJ urges the DEQ to grant an exemption at OAR 340-90-340 for all "packages containing hazardous materials in rigid plastic as specified in U.S. Code of Federal Regulations, Title 49 and/or the United Nations Transport of Dangerous Goods Code." While Oregon has an acknowledged interest in reducing solid waste, we believe any DEQ regulation should responsibly deal with safety issues.

SCJ appreciates the opportunity to comment on the proposed regulations regarding rigid plastic containers. We would be pleased to work with the Department of Environmental Quality in developing an effective regulation which addresses both worthy environmental goals and important health and safety concerns.

Sincerely,



F.H. Brewer  
Director of Government Relations



Amway Corporation, 7575 Fulton Street East, Ada, Michigan 49355-0001  
Legal Division

September 1, 1994

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SEP 01 1994

Mr. William W. Wessinger, Chair  
Environmental Quality Commission  
121 S.W. Salmon, Suite 1100  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

**Subject: Corporate Averaging / Proposed Rule - Rigid Plastic Containers**

Dear Chairman Wessinger:

We write on behalf of Amway Corporation and its thousands of independent Oregon Amway distributors who market and sell Amway products throughout Oregon. We are extremely concerned with a number of areas of the Proposed Rule to implement Oregon's Rigid Plastic Container Law and on behalf of these Oregon citizens, Amway wishes to submit comment.

Amway Corporation is a national manufacturer and marketer of a wide variety of home care and personal care products which are sold by thousands of independent distributors in all 50 states and 60 countries and territories. Small, but successful, Amway distributors sell Amway products throughout Oregon to supplement their family incomes. These distributors live and work not only in the large cities of Eugene, Portland and Salem but also in small towns and villages throughout the state such as Corvallis and Pendleton.

Amway is considered to be an environmentally conscious company, having pioneered in the areas of biodegradable ingredients and concentrated products (which use less packaging) and taken great strides in the use of recycled materials in our packaging. For its efforts, Amway has been awarded the United Nations Environmental Programme Achievement Award, the National Wildlife Federation Achievement Award and the UNESCO TRANSPOLAR Medal.

Amway Corporation has focused considerable human and monetary resources and technology towards meeting packaging goals similar to those put forth in the California and Oregon rigid plastic container laws. As a manufacturer and marketer of over 400 Amway brand-name products and another 5,000 through our catalogs, this is a complicated process and the technical requirements involved in meeting the demands of the laws differ widely and likely conflict with FDA requirements as set out by the U.S. Food, Drug and Cosmetic Act.

By way of background, Amway blow-molds most of its packaging on-site in Ada - using primarily high density polyethylene - and must design product packages that can withstand the

extremes of our global distribution system as well as the increased demands of concentrated products. These concentrated products are designed to be diluted with water and, therefore, use less packaging than ready-to-use products. Concentrated products offer excellent (perhaps the best) source reduction. However, concentrated products by their more aggressive nature pose significant technical challenges to the use of post-consumer recycled resin in their packaging. Due to these challenges, it is extremely important that Oregon allow manufacturers the flexibility to comply with the rigid plastic container law through corporate averaging of PCR content.

**Corporate Averaging:** It is especially important that Amway be given the flexibility to average the use of PCR across our lines. Ironically, since Amway has led in the area of concentration/source reduction for 35 years (since its inception) we are effectively denied the source reduction compliance alternative of Senate Bill 66 due to the chosen base year of 1990. This realistically leaves only the mandatory content option open to us, which can only be met through company-wide averaging.

Company-wide averaging would allow Amway a workable avenue to meet the goals of the law in a way that satisfies its legislative intent. In fact, corporate averaging will probably produce greater rates of compliance by granting manufacturers both the flexibility and incentive to use greater percentages of post-consumer recycled content in specific packaging lines where possible (keeping at least the same amount of plastic out of the landfills as an across-the-board figure of 25%). Amway strongly supports including a mechanism for corporate averaging in the law. Without it, packaging that cannot support a 25% PCR level because of technical impossibilities will probably be banned unnecessarily.

**Cosmetics and Food Exclusion:** We suggest that the proposed rule exclude cosmetics and food from coverage. Requiring cosmetic and food packaging to contain PCR raises serious health and safety issues; the California rules have recognized this problem and already granted a two-year exclusion from coverage while the matter receives serious study. Health and safety issues are inherent in PCR contact with food and cosmetics and have already been highlighted by the FDA. The mandated use of PCR in this packaging (forced by Oregon law due to the effective denial of the source reduction option and company-wide averaging), **could place companies in direct violation of the Federal Food, Drug and Cosmetic Act** and require companies to prove the impossible - that there is not a potential adulteration hazard. Bottom line: the safety issue is paramount to industry and should be paramount to the state.

**Concentrated Products:** Amway also believes that the rule should recognize and exclude "concentrated products." This category would define a concentrated product as: "a product sold in a concentrate form that is one-half or less of the volume of the product in its intended use form." Such a category would encourage the marketing of concentrated products - which must be diluted with water before use - meaning significantly less packaging would be used. (See "Source Reduction").

September 1, 1994

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Recognizing "concentrated products" as a major form of source reduction would underscore what should be Oregon's primary concern - reducing the total amount of waste going into Oregon's landfills.

**Definition of Rigid Plastic Container (OAR 340-90-330:** Amway supports proposed **Alternative B's** "rigid plastic container" definition. This language more accurately tracks the California definition and will bring consistency to the two laws. We also believe that "tubes" should be completely excluded from the rule both because they are not rigid in nature plus coverage would create serious compliance and enforcement difficulties due to the subjective nature of what constitutes a "tube."

Further, Amway also suggests that the definition include criteria for "multiple reclosure." This capability is an important component of rigid plastic containers and building it into the definition will provide an accurate criterion for determining a container's true status.

**Source Reduction [OAR 340-90-340(5):** Amway believes that both Alternatives A and B for "reduced containers" proposed by OAR 340-90-340(5) have serious problems. First, as stated above, the source reduction provision is so tightly drawn in each alternative that it disenfranchises a company like Amway, which has led the field in concentrated products and accompanying packaging reduction literally for three and a half decades! In a nutshell, good actors like Amway are being punished for their good work (through the denial of an important compliance option) while other, more recalcitrant players are actually being rewarded for failing to act (by given access to the source reduction option).

Both alternatives are flawed because they: (1) use a base line of 1990; (2) allow companies to only source reduce a single time; and (3) fail to give credit to those companies which have effectively source-reduced by selling concentrated products. Amway would again urge that the source reduction language include factors granting source reduction credit to companies which have effectively achieved it by developing and marketing concentrated products.

Finally, we urge that the Oregon packaging law be made as consistent as possible with the California packaging law. If the two differ significantly in compliance options, companies such as Amway could be forced to produce "Oregon-only" products or not allow some products to be sold in the state at all. The first scenario would dramatically raise consumer prices (i.e., a single wheel-type blow molding machine costs approximately \$2 million, increased warehousing and shipping costs would be substantial, and these costs would have to be passed on to Oregon consumers); the second scenario would mean that Oregon consumers would be hurt through product bans and Oregon Amway distributors hurt through loss of income from fewer sales (with less sales tax monies flowing to the state).

September 1, 1994

Page 4

In summary, Amway Corporation respectfully requests that the proposed rule provide for the flexibility we have outlined. Without this flexibility - **which is consistent with the goals and legislative intent of the law** - many Amway products will likely be banned outright in the state. Oregon Amway distributors may be unable to sell a number of quality home care and personal care products to their Oregon customers - products which are now available in all 50 states. In short, the continued smooth flow of interstate commerce depends on the positive steps we have described. Compliance flexibility is also critical due to the looming national shortage of PCR available for reuse.

Thank you for your attention to Amway's concerns. If you have any questions or wish to discuss further, please feel free to contact us.

Very truly yours,



Dirk C. Bloemendaal  
Counsel, Corporate Government Affairs  
(616) 676-7010



Mike Schmidt, Director  
Package Engineering R & D  
(616) 676-6512

cc: Mr. William Bree, DEQ  
Mr. Fred Hansen, DEQ  
Members of Environmental Quality Commission

# SUNBEAM PLASTICS

SUNBEAM PLASTICS  
3245 Kansas Road  
Evansville, IN 47711-9611  
Fax 812-867-6861  
Telephone 812-867-6671

September 7, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th ave.  
Portland, Oregon 97204

RE: Comments on Proposed-Rules OAR 34 through 340-90-430 Rigid Plastic Container Law

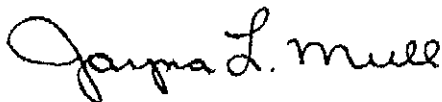
Sunbeam Plastics, a Rexham Company, is pleased to submit the following comments on the above proposed rules. Sunbeam Plastics develops and produces plastic closure systems for use on consumer products using rigid plastic containers.

Although Sunbeam produces primarily plastic closures for the rigid plastic container the total package is directly affected by these proposed rules. In addition, our rigid container division, Rexham Containers, produces plastic bottles used in several markets which are not compatible with post consumer resin such as brake fluid.

Currently there is not a reliable source of post consumer injection grade polypropylene suitable for use with threaded closures nor is there a post consumer resin material that is compatible with brake fluid therefore we deem it necessary to submit the following suggestions for changes to the specific rules.

Sunbeam Plastics, a Rexham Company, supports changes to the specific rules submitted under separate copy and attached from Castrol North America.

Regards,



Jayna L. Mull  
Manager, Market Development  
Automotive

A REXHAM COMPANY



QAR-340-20-340(5) Exempt Rigid Plastic Containers-Reduced Containers

Castrol urges the adoption of alternative B because it recognizes and then addresses more of the real world situations and gives products manufacturers more options to comply with the law. These options will not dilute the objectives of the law, but will increase the effectiveness of the law by increasing efforts toward source reduction. Castrol has several new products which have been on the market less than five years. Castrol has active programs in place to reduce the plastic weight of these containers. If Alternative B is not adopted our options for compliance are reduced.

Corporate Averaging

Castrol strongly supports corporate averaging as a method for complying with the law. This option is currently included in the California law. Castrol has some products which are not compatible with the use of 25% PCR. As an example, Castrol's brake fluid if contaminated with even small amounts of mineral oil or water could cause brake system failures. Using corporate averaging we would use 29% PCR in our major product lines where higher content can be used and use virgin resins for our products sensitive to contaminants that could be introduced by PCR. This in no way diminishes the objectives of the law.

Consistency with California

Castrol agrees with Task Force members who support having Oregon requirements be consistent whenever possible to facilitate compliance for product manufacturers selling products in both states.



# Griffin BROS., Inc.

POLYMER FLOOR FINISHES  
FLOOR WAXES ★ CLEANERS  
DETERGENTS ★ SPECIALTIES  
SANITIZERS ★ DISINFECTANTS

1806 SOUTHEAST HOLGATE BLVD. P. O. BOX 42194 PORTLAND, OREGON 97242-0194 (503) 236-4167 — (800) 456-4743

September 6, 1994

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SEP 01 1994

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR. 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

RE: Rulemaking Proposal - Implementing Oregon's Rigid Plastic Container Law, OAR 340-90-310 through 340-90-430 and OAR 340-12-065.

To Whom It May Concern:

Griffin Bros. is a 60 year old Oregon company. We manufacture institutional cleaning products, disinfectants and sanitizers. Our products are used by hospitals, nursing homes, schools, restaurants and many other public and private businesses.

Griffin Bros. sells these products in plastic containers of various sizes. We are concerned that the new Rigid Plastic Container Law OAR 340-90-310 through 340-90-430 and OAR 340-12-065 may adversely effect us economically and could cause the loss of income and jobs at our facility.

Following are some of our major concerns:

- 1.) Presently some of the items Griffin Bros, manufactures are disinfectants and sanitizers. These products are classified by the EPA as pesticides and are subject to regulations under FIFRA. Currently, we are not allowed to package products in containers which may contain "recycled plastic" as the containers do not meet FIFRA standards. These products are very useful in their applications for controlling bacteria and infectious organisms in hospitals, nursing homes and restaurants. Furthermore the sales from these products represent approximately 15% of our gross income. Elimination of this product line would obviously adversely effect Griffin Bros.
- 2.) In 1993 HM181 came into law. HM181 falls under DOT regulation and effects the transporting, loading, unloading and all handling of hazardous products and materials. We manufacture products which fall under these regulations, such as toilet bowl cleaners, tub, tile and shower cleaners and oven/grill cleaners. Under HM181 all packaging (box, tape, labels, caps and "plastic") must comply with the new "safer" guidelines to ensure safety for all those who may handle the products.

cont.

*Manufacturers of Sanitary Maintenance Products*

Our understanding is that containers with recycled plastic may not be able to meet DOT's stringent guidelines and it would therefore be illegal to ship these products. We have already spent a considerable amount of time and money to comply with HM181. We find it confusing that we may be told by the State to use containers which may not comply and pose a potential hazard to anyone who handles the products.

These products all have a use. Acid based products are best for properly maintaining the cleanliness of toilets, showers and restrooms. High alkaline products are very useful for cleaning ovens, grills, heavy grease and dirt. These products are more environmentally friendly than the solvents they replaced. Elimination of these products would decrease our gross income by approximately 20%.

- 3.) We have been informed that the recycled resin used in the new containers may not be compatible with surfactants. Surfactants are used in most cleaning products and disinfectants to enhance their cleaning ability, hold products together and replace less environmentally friendly ingredients. Surfactants are necessary to maintain the quality and efficiency of sanitary maintenance products. If it is true that surfactants may not be compatible with these resins then over 90% of our products may be effected. Reformulating without surfactants is virtually impossible. If there is a limit to the amount of recycled resin to the amount of surfactant that are compatible then this limit should be established before any percentages are set. We have been told by our plastic suppliers that the amount of recycled resin may not meet demand and that the cost of the new container could increase dramatically. The shortage in supply of containers will cause delays in shipments resulting in a loss of business for Griffin Bros.
- 4.) As an Oregon based company over 90% of our business is done in state. Some of our out-of-state competitors do 20% or less of their business in Oregon. This being the case, our company will suffer a greater financial burden. Their ability to absorb the impact of this regulation will put them at a competitive advantage. It seems unfair to put us in a situation in which we cannot fairly compete with out-of-state companies.

We have other concerns, but these are the main ones. The products we manufacture are needed for proper sanitary maintenance of facilities such as hospitals, nursing homes, schools, restaurants and businesses of all sorts. We need to know who to answer to regarding products regulated by the EPA and DOT.

If Griffin Bros. is forced to reformulate to accommodate the recycled resin requirements, then we will need time to ensure the quality and efficacy of the new products.

cont.

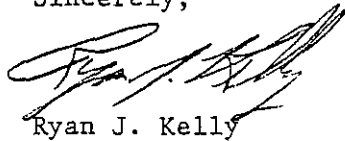
Page 3

If this process is necessary, this will be extremely costly and could cause the loss of business, loss of income and loss of jobs. Griffin Bros. prides itself on the fact that wages and benefits are above average and wish to maintain this privilege for our employees.

We started in Oregon in 1934 and have been growing since that time. With the economy in Oregon diversifying and growing we see growth for us as well. Our industry is vital and important in that Griffin Bros. provides products that are used in maintaining a sanitary workplace for both public and private industry.

If you would like to discuss any of these issues please call 1-800-456-4743.

Sincerely;

A handwritten signature in black ink, appearing to read "Ryan J. Kelly", written over a horizontal line.

Ryan J. Kelly  
General Manager

RJK/lbc

# C T F A

THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION

RECEIVED  
SEP 7 1994

September 6, 1994

E. EDWARD KAVANAUGH  
P R E S I D E N T

Waste Management & Cleanup Division  
Department of Environmental Quality  
Rigid Plastic Container Rules Hearing  
Waste Management and Cleanup Division  
Department of Environmental Quality  
811 S.W. Sixth Avenue  
Portland, Oregon 97204

RE: Comments on Proposed Rules for Implementation of Oregon Rigid Plastic Container Law, ORS 459A.650-680.

Dear Hearing Officer and DEQ Staff:

On behalf of the Cosmetic, Toiletry, and Fragrance Association (CTFA),<sup>1</sup> we submit the following comments on the proposed rules implementing the Oregon rigid plastic packaging container (RPPC) law, ORS 459A.650-680. Over the past several months, CTFA and individual member companies of the association have attended the meetings of the three task forces charged with developing a rule to implement the RPPC program. Our main focus has been on the Implementation Task Force because that group drafted the proposed rule in large part.

During the task force meetings, preliminary decisions have been made regarding several topics and whether they would be included in the proposed rule. Areas of interest and comment to our members include corporate averaging as a means of compliance, the definition of "rigid plastic container," the treatment of FDA-regulated products and the scope of the source reduction option. As the rule currently is drafted, certain personal care products may not be available to Oregon consumers because of the excessively stringent requirements of this regulation. Therefore, CTFA makes the following comments and suggestions about the rule:

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<sup>1</sup>The Cosmetic, Toiletry, and Fragrance Association is the national trade association for the personal care products industry. Founded in 1894, CTFA has an active membership of approximately 240 companies that manufacture or distribute the vast majority of finished personal care products marketed in the United States. CTFA also includes approximately 280 associate member companies, including manufacturers of raw materials, trade and consumer magazines, and related industries.

### **Definition of "Rigid Plastic Container" - Section 340-90-330**

CTFA supports the proposed rule's Alternative B definition of "rigid plastic container" because it more accurately reflects technically what makes a container "rigid." In particular, CTFA supports the exclusion of "tubes which can be easily folded, flexed, and twisted without damage to the container" from the RPPC definition. Although CTFA prefers Alternative B to Alternative A, CTFA's position is that tubes should not be considered "rigid plastic containers." Neither flexible tubes or those that can keep their shape when empty are "rigid." The Oregon rule needs a bright line for the agency and the manufacturer to know what packages are subject to the law - because the current standards could be subject to misinterpretation. Also, this bright line approach to whether a tube is a "rigid plastic container" is important when the agency does the waste composition study to determine the statewide recycling rate. In California's regulation for its RPPC law, "tubes" are excluded from regulation. Likewise, the regulations for Florida's advance disposal fee on packaging expressly exclude "tubes" from their definition of "container."

CTFA also supports the language exempting "bag...used to cover or contain a product or a rigid plastic container" because it exempts the flexible refill pouches that clearly are not rigid and should not be subject to the "rigid plastic container" definition. Those containers already make a significant contribution to source reduction. Alternative B's approach to rigid plastic containers is consistent with the California proposed RPPC rule which excludes pouches and tubes from the rule. CTFA also supports the proposed rule's exclusion of blister packs from both Alternative A and B's RPPC definitions. Other jurisdictions have excluded blister packs from their "rates and dates" laws because they are not rigid, generally not recycled and contribute minimal waste. (California, Wisconsin). The definition should also include the requirement for multiple reclosure.

### **Source Reduction - Section OAR 340-90-340(5)**

The agency urges the public to choose between the approach taken in Alternative A and Alternative B for "source reduction." Both options are seriously flawed and do not make source reduction an accessible compliance option for manufacturers of products sold in Oregon. Such treatment of the source reduction option ignores the importance of not producing waste in the first place. This law is not only a recycling law. Source reduction is still a compliance option and is EPA's top priority in its solid waste hierarchy.

The source reduction option is critically important to industry because of acute problems with the recycled content option. For example, because of the recognized problems of using 25 percent PCR in food and cosmetic packaging, companies subject to FDA's packaging "non-adulteration" standard require a reasonable, useful source reduction option. Another reason for revising the proposed rule's source reduction section is because the supply of usable, high quality postconsumer resin

material is markedly diminishing. Many companies that have incorporated 25 percent PCR into their packages have done so for all their bottles because they are national marketers. However, those companies are experiencing or foresee in the near future an acute shortage of PCR, regardless of price considerations, to use to meet the law. For the above reasons, DEQ should adopt the approach to source reduction taken under California's RPPC rule. Without uniformity, a situation exists where a manufacturer can use source reduction in California, but not Oregon, to comply with essentially identical laws. That result is economically inefficient and a huge obstacle for companies that market nationally. The California rule is flexible enough to deal with new packages and does not penalize a company that made significant reductions prior to 1990.

CTFA disagrees that just because the original statute does not expressly contain language dealing with new products and the source reduction option, DEQ cannot draft a provision to deal with the new product situation in the rule. The commercial reality whether there is explicit language in the statute or not is that new products will be introduced that must comply with the RPPC law and not all those packages will be able to incorporate recycled content. Also, the EQC should consider a recommendation extending the source reduction beyond a one-time exemption. Of concern as well is the current 1990 baseline for comparing source reduction. That date penalizes progressive companies that reduced packaging prior to 1990. Therefore, they should be able to look to source reduction as a compliance option. The California rule accounts for new packages in their treatment of source reduction.

#### **Exempt Rigid Plastic Containers - Section OAR 340-90-340 (1)-(4)**

##### **Treatment of FDA-regulated products: Cosmetics**

Although the issue of treatment of packaging for products regulated by the U.S. Food and Drug Administration (FDA) has been debated since passage of the rigid plastic packaging law in 1991, realities continue to exist that necessitate reexamination of the issue.

First, the "cosmetic" products affected by the law are not just makeup preparations. Products affected include a broad variety of personal care products, including mouthwashes; hand, face and body lotions; shampoos; hair conditioners; hairsprays; baby lotions and shampoos; liquid soaps; bath oils and bath gels; fragrance splashes and any cosmetic in refill or "warehouse" sizes." Several of these personal care products are regulated as over-the-counter drugs by the FDA. Cosmetic products are applied to the skin, hair and eye area; others such as mouthwash may incidentally be swallowed. Cosmetic manufacturers cannot compromise the safety of their products when FDA's safety requirements conflict with Oregon's stringent packaging standards.

In the original rigid plastic packaging container (RPPC) statute, there is a provision that required the Department of Environmental Quality to report to the Legislature on whether to grant an exemption for RPPCs that "cannot meet the recycled content criterion and remain in compliance with U.S. Food and Drug Administration regulations." In the DEQ/Environmental Quality Commission report to the Legislature issued in January 1993, there were no recommendations for extensions of the compliance deadline or additional exemptions for FDA-regulated products. One of the justifications for not granting an extension or exemption was because the law is technology-forcing and industry needed incentives to meet the law.

Eighteen months later, FDA-regulated product packaging and their unique compliance issues deserve revisiting by DEQ and EQC. Since the issuance of the DEQ/EQC Report on Exemptions, the Director of U.S. FDA's Office of Cosmetics and Colors issued a statement in March 1993 on the use of recycled materials in personal care product packaging. The FDA warned that "[a]ny mandated requirement that drives current packaging technology beyond what can reasonably be accomplished in a specified period could be in direct conflict with the Food, Drug, and Cosmetic Act." See Appendix A (attached).

In the FDA letter to the cosmetics industry, no guidelines applicable specifically to cosmetic packaging were included. FDA has not released, nor is it certain whether they ever will release, guidelines for use of recycled content in cosmetics. Therefore, over the past few years, cosmetic manufacturers and packagers have had to develop standards and exhaustively test the interactions between their packaging with post-consumer resin and the personal care product it holds.

The cosmetic industry has limited experience with recycling technologies, but there have been successes. However, the DEQ and EQC must keep in mind that the successes of certain companies have not and will not translate into unanimous across-the-board compliance by January 1, 1995. There are varying bottle producing technologies, formulas, resins, colors and degrees of expertise among companies and therefore, competitive advantages among companies.

With the 1995 date approaching, many companies may face the situation that they will be unable to sell certain products in Oregon. That means that those products will not be available to many retailers and to CTFA members that are direct sellers of products in Oregon. Product bans are possible because many personal care products that cannot comply with the law also cannot change from plastic to another material. Such products are used in bathrooms where glass containers shatter on hard surfaces. CTFA submits that this is counter to the goal of the original statute, Senate Bill 66, which was to create markets for postconsumer plastic, not to limit Oregonians' choice of products packaged in plastic.

The proposed rule currently does not include an exemption or extension for cosmetics or foods. However, during the recent meetings of the DEQ-appointed



Implementation Task Force, the group concluded that there are still outstanding issues to be resolved regarding FDA-regulated products. The question is, absent a legislative or regulatory provision exempting cosmetics, what can DEQ do regarding CTFA members' products? First, DEQ is correct in reexamining its enforcement approach for our products as recently indicated by the agency's Director. Directive to Division Administrators from DEQ Director Fred Hansen (August 26, 1994) The effect of this enforcement deferral has been confusing to many companies and the issue of retroactive enforcement has been a concern. After January 1, 1996, when enforcing the law, DEQ should consider whether there is substantial compliance among a company's other products if an individual FDA-regulated product cannot meet the law or regulations.

### Corporate Averaging

Although there is not a provision covering corporate averaging in the draft rule, it is CTFA's position that a corporate averaging provision in the rule is vital to compliance with the RPPC law. There have been arguments that averaging disadvantages industries that must comply with the Oregon law and the federal Food, Drug, and Cosmetic Act. However, CTFA members that manufacture and distribute the majority of personal care products and also are subject to FDA regulation endorse corporate averaging. These FDA-regulated companies recognize the need for averaging in light of their regulatory status because each individual package does not lend itself to using PCR or source reduction.

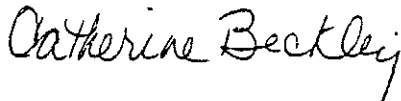
CTFA is disappointed to see the retreat at the Task Force - and agency-level from the initial recognition that it was within the discretion of DEQ as an administrative agency to allow corporate averaging. The explanation for the omission was that, based on a narrow reading of the statute, averaging is not specifically mentioned, and therefore is not permitted. Absent an express prohibition of averaging, the agency has the discretion to adopt it so long as it does not thwart the goals of the original statute. We submit that it does not. Averaging will meet the waste reduction goals of the RPPC law by assuring that companies will use the same amount of recycled material across product lines as they would on an individual package-by-package basis.

It is unfortunate such opposition ultimately will hamper the compliance efforts of national companies that market their products in Oregon. Virtually all of our members market their products throughout the United States and without corporate averaging, many of those products may not be able to be sold in Oregon. In conclusion, CTFA urges the agency to rethink its position and include a provision allowing averaging that is parallel to the provision in California's RPPC rule. California's law is almost identical to Oregon's and they recognized the importance of averaging.

## Conclusion

Although the proposed rule has gone through several drafts at the advisory committee level, the rule that emerged is not final or a consensus document in many respects. Many problems remain with the proposed rule. During this formal notice and comment period, DEQ and the EQC have the opportunity to make the rule workable for industry and still fulfill Oregonians' desire for environmentally-improved packaging. The personal care products industry is making good faith efforts to comply with the January 1, 1995 effective date. However, as the rule is currently proposed, manufacturers cannot comply for all their packages. Oregon may have different solid waste needs than California, but they have almost identical laws to tackle the same issue - solid waste management. Therefore, CTFA urges the agency to strive for uniformity between the two states in its rule. CTFA looks forward to working with the agency in the coming months, and hopes that the important issues raised above and at the September 1 public hearing can be resolved.

Respectfully submitted,



Catherine Beckley  
Legal & Regulatory Counsel



March 24, 1993

Mr. Thomas J. Donegan, Jr.  
Vice President & General Counsel  
The Cosmetic, Toiletry, and Fragrance Association  
1101 17th Street, N.W.  
Suite 300  
Washington, D.C. 20036-4702

Dear Mr. Donegan:

This responds to your letter dated November 23, 1992 on behalf of the Cosmetic, Toiletry, and Fragrance Association (CTFA). Your letter requests that the Food and Drug Administration (FDA) issue a policy statement regarding the use of recycled materials in cosmetics and personal care product packaging. Specifically, you ask that FDA issue a statement that cosmetic manufacturers should not be forced to incorporate recycled material in personal care product packaging prematurely, without allowing sufficient time to address safe packaging concerns.

In your letter, you mention that FDA, in testifying before the House Subcommittee on Hazardous Materials and Transportation on March 10, 1992, expressed its concerns that mandated use of recycled materials in food packaging could be premature and in many cases, more testing is required. You note that cosmetic manufacturers and packagers have similar concerns with respect to the use of recycled materials in cosmetic products.

FDA recognizes that many different government bodies, both at the federal and state level, are concerned about environmental damage that may occur because of the large amount of waste material generated from consumer packaging. As you point out, several states have either enacted or are contemplating the introduction of legislation that would make the use of recycled material in product containers mandatory. FDA stated in its testimony concerning food packaging, that it supports cost-effective efforts to divert materials from the solid waste stream but that such efforts must be consistent with the Agency's statutory responsibilities to protect public health.

Under the Federal Food, Drug, and Cosmetic Act (the Act), FDA is charged with ensuring that cosmetic products are safe and properly labeled. The Act states in Section 601(a) that a cosmetic is adulterated -

"If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof..."

Page 2 - Mr. Thomas J. Donegan, Jr.

The Act also states in 601(d) that a cosmetic is adulterated -

"If its container is composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health."

The packaging portion of the adulteration provisions of the Act reflects the importance that containers play in delivering safe products to the consumer. Cosmetic products are used on the eyes, hair, lips and skin and, depending on the type of product, cosmetic packaging serves very specific and important functions in the maintenance of product safety and quality. If a cosmetic package fails to perform its protective function, the safety of the product inside may be jeopardized, and the cosmetic could become adulterated within the meaning of the Act. This can occur even though the product itself may be completely safe before introduction into the container. As with foods, the purpose of cosmetic packaging is to maintain the integrity of the product while, at the same time, prolonging its usable life. It does so by acting as a barrier to undesirable elements, including microbes (both pathogenic and spoilage-inducing); light, which may cause adverse chemical reactions such as oxidation of ingredients or fading of added coloring; volatile substances that may cause off-odors and flavors; and other contaminants that could enter the cosmetic during transportation, distribution, and storage. These functions are accomplished successfully only when the packaging materials are suited to the specific type of cosmetic product.

Cosmetic product packaging differs significantly from food packaging in that it plays an important role, not only in terms of product integrity, but also in product aesthetics. Generally, the shelf-life of a cosmetic product must be considerably longer than the shelf-life for foods. The agency recognizes that development of safe and suitable packaging for the wide variety of cosmetic products marketed today is a complex and challenging endeavor. Packaging for the many different types of cosmetic products requires considerable development time and investment before a manufacturer can be sure that it will meet the legal requirements of the Act as well as aesthetic marketing standards.

FDA issued a technical document in April, 1992, that addresses the factors that should be considered in the development of food packaging using recycled materials (copy enclosed). Many of the issues that apply to food also apply to cosmetic packaging. These include possible migration of detergents and solvents used in the recycling process; whether process temperatures are high enough to kill sporulators and toxins; whether recycled packages can withstand processing, transportation and shelf storage over the time that cosmetics are likely to remain in containers; and whether recycled paper, inks and optical brighteners may be

Page 3 - Mr. Thomas J. Donegan, Jr.

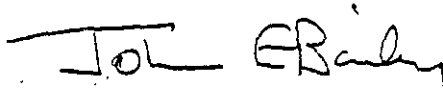
difficult to remove and may cause adulteration with heavy metals. Your letter also mentions that cosmetic marketers are concerned about avoiding the use of containers previously used for motor oil, pesticides, paints and solvents because of the fear that leaching occurred while the product was in the packaging and accurately measuring the extent of any migration of contaminants in cosmetic packaging.

Cosmetic packaging, including packaging that contains recycled materials, must comply with adulteration provisions of the Act. If product packaging is not effective in protecting the contents from harmful contaminants, allows the product to decompose or become contaminated with microorganisms or fails to maintain product integrity over the expected lifetime, then the product may become "injurious to the user" and be in violation of the adulteration provisions of the Act. Any mandated requirement that drives current technology beyond what can reasonably be accomplished in a specified time period, could be in direct conflict with the Act. Any consideration of legislation mandating the use of recycled material should carefully consider the impact on commodities regulated by the FDA and the availability of technology that will allow industry to comply with applicable safety regulations.

In summary, FDA supports the cosmetic industry's efforts to reduce the amount of waste generated from its products as well as to incorporate recycled packaging material in the manufacture of product containers. However, cosmetic packaging, including packaging that contains recycled materials, must comply with the adulteration provisions of the Act. In mandating use levels for recycled material in product packaging, sufficient time must be granted to ensure that these new and increased uses of recycled materials do not introduce potential health hazards.

I trust that this adequately expresses the agency's position on the use of recycled material in cosmetic product packaging. If I can be of further assistance, please feel free to contact me.

Sincerely,



John E. Bailey, Ph.D.  
Acting Director  
Office of Cosmetics and Colors

# NATIONAL FOOD PROCESSORS ASSOCIATION

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1401 New York Avenue, N.W.  
Washington, D.C. 20005  
202/639-5900  
FAX: 202/639-5932

VIA FACSIMILE

September 6, 1994

Ms. Deanna Mueller-Crispin  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

RECEIVED  
SEP 10 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

RE: OREGON PROPOSED RULES OAR 340-90-310 THROUGH 340-90-430  
AND OAR 340-12-065

Dear Ms. Crispin:

The National Food Processors Association (NFPA) respectfully submits the following comments concerning the proposed rules to implement Oregon's Rigid Plastic Container Law. NFPA is the scientific voice of the food industry, focusing exclusively on food issues. The Association's three food science laboratories serve NFPA's 500 member companies, manufacturers of the nation's processed-packaged fruits and vegetables, meat and poultry, seafood, juices and drinks and specialty products. Many of our member companies offer products in the State of Oregon and have a significant interest in regulatory requirements related to packaging. We appreciate the opportunity to comment on this issue.

## BACKGROUND

NFPA is strongly supportive of public policy measures which represent sound environmental approaches to improve solid waste management in the states. We believe that market incentives and community-based voluntary programs provide the most efficient,

Ms. Deanna Mueller-Crispin  
September 6, 1994  
Page 2

workable and economical programs. We have stated our objections to Oregon's approach on the record in numerous legislative and regulatory forums over the past two years. We believe that the underlying statute enacted in 1991, as amended in 1993, (ORS 459A.025, ORS 459A.650 through .685, ORS 468.020) is overly restrictive and does not recognize the unique requirements of food packaging. Moreover, the law does not acknowledge that there are numerous technical obstacles associated with assuring that recycled materials will not compromise the safety and wholesomeness of the food contained in the packaging.

With respect to the so-called compliance options provided by statute, food processors have no control over a statewide recycling rate for all types of rigid plastic containers. Reuse of packaging and incorporation of recycled content, except in limited uses, may pose dangers to the safety of the food product. While source reduction may provide a temporary exemption for some existing packaging, many manufacturers cannot further reduce packaging sizes and weights without compromising integrity. Moreover, as proposed, new products would not be eligible for this type of exemption.

Unfortunately, any rules emanating from this statute cannot compensate for the underlying policy defects. The food industry has participated in good faith in the regulatory process with a goal to create a better understanding within the community about the safety and technical issues associated with food packaging. While we recognize that the statute directs the Department of Environmental Quality (DEQ) to promulgate rules, we had also hoped that, at a minimum, the rules would be consistent with a similar regulatory scheme

being developed in the neighboring state of California. Neither of those goals were achieved. Over the long term, it is unlikely that the food processing industry will find ways in which to comply with the law, short of limiting product selection or distribution.

Nevertheless, in the interest of abiding by the spirit of the law, we offer comments on the proposed rules.

#### DISCUSSION

1. Definition of "Rigid Plastic Container," OAR 340-90-330 (pp. A-5 through A-7).

Throughout the Implementation Task Force meetings in 1994, food industry representatives have maintained that the definition of "rigid plastic container" should be drafted to be consistent with California's current definition. That definition evolved through the consensus of a technical committee that carefully crafted language to capture the majority of packaging containers, but not create barriers to equitable enforcement. Obviously, we recognize Oregon's sovereign right to make its own laws; however, if compliance is to be achieved among companies with products in interstate commerce, states cannot impose significantly different requirements on packaging. If either of the proposed definitions is adopted, food companies would have difficulty remaining in compliance simultaneously with laws in California and Oregon.

Therefore, we urge you to reject both Alternatives A and B and adopt language that is compatible with the California definition as follows:

"Rigid Plastic Container" means any plastic package having a



relatively inflexible finite shape or form, with a minimum capacity of eight fluid ounces or its equivalent volume and a maximum capacity of five fluid gallons or its equivalent volume, that is capable of maintaining its shape while holding other products, including, but not limited to, bottles, cartons, and other receptacles for sale or distribution in the state.

- (a) Rigid plastic containers are capable of multiple re-closure, are sold holding a product, and are composed entirely of plastic with the exception of caps, lids, labels and other additives such as pigments, colorants, fillers, and stabilizers that are an integral part of the plastic polymer compound. Caps, lids and labels are not considered to be part of a rigid plastic packaging container.
- (b) The total volume of the closed containers will be established if the container is within the eight ounce to five gallon size requirements. For those containers measured in liquid or fluid volume, such as fluid ounce, gallon, milliliter, or liter, the

product manufacturer may use either the labeled volume or the volumetric volume. The metric equivalent for the following U.S. liquid measures is as follows: eight (8) fluid ounces is equivalent to 236.59006 milliliters, and five (5) gallons is equivalent to 18.9272 liters. Containers for products which are labeled and sold by weight or an item count must be measured for their volumetric equivalency.

California Code of Regulations, Title 14, Division 7, Chapter 4, Article 3, Section 17943(b)(30), Rigid Plastic Container Program (as proposed 6/10/94).

Note that like proposed Alternatives A and B, California would require that a rigid plastic container maintain its shape, whether empty or full. Similar to Alternative B, the California definition would allow either the labeled volume or the volumetric volume to determine if the container is a regulated size.

If DEQ determines it will not consider incorporating California's definition of rigid plastic container, we would be forced to urge adoption of Alternative B. ORS 459A 650(a) defines package as follows: "...any container used to protect, store, contain, transport, display or sell products" (Emphasis Added). In light of the statute, Alternative B would be more consistent than Alternative A with the plain meaning and intent of the law by requiring that

a rigid plastic container be "designed to completely contain a product under normal usage, without other packaging material except a lid or closure." This definition would also bear more resemblance to the California regulation. If adopted, Alternative A would lead to the absurd regulation of packages that were never contemplated by the law.

2. Definition of "Source Reduced," OAR 340-90-340(5) (pp. A-9 through A-13).

The process of reducing packaging sizes and weights is dependent upon technology and innovation. Many food packages have been dramatically reduced within the last decade and cannot sustain further reductions while still maintaining integrity and safety of the products and packages. However, some food processors view source reduction as their only opportunity to comply, at least temporarily, with the law and will continue to examine reduction opportunities.

Unlike Alternative A, Alternative B offers more flexible criteria upon which to determine source reduction. The language of Alternative B may allow some food processors to be eligible for an exemption. However, even Alternative B is seriously flawed since it omits necessary provisions to allow for the introduction of new packaging. Indeed, if source reduction is the only viable compliance option, under the proposed language, the Oregon consumer would be deprived of new products since there is no measure against which new packaging could be compared. This omission will effectively deter technological development and innovative design of packaging. Companies will have no incentive to make an investment in packaging modifications only to subject themselves to penalties.

Ms. Deanna Mueller-Crispin  
September 6, 1994  
Page 7.

California's regulations recognize this dilemma and provide for a one-year waiver for new products and packaging. We request that Oregon incorporate similar provisions into Alternative B.

CONCLUSION

We appreciate the opportunity to offer our comments on the proposed rules relating to rigid plastic container law. I cannot stress enough the affect this law will have on the way in which NFPA member companies will be able to package their products, not just in Oregon, but across the nation. Although food processors will make every effort to comply with the spirit of the law of the State of Oregon, there are many practical and technological obstacles to meeting the requirements of the law. We would welcome the opportunity to discuss this with you further. In the meantime, if you require further information, please do not hesitate to contact me at (202) 639-5919.

Sincerely,

A handwritten signature in cursive script that reads "Laurel A. Nelson".

Laurel A. Nelson  
Director and Counsel  
State Government Affairs

A Partnership Including  
Professional Corporations  
227 West Monroe Street  
Chicago, IL 60606-5096  
312-372-2000  
Facsimile 312-984-2099

Carolyn S. Hesse  
Attorney at Law  
312-984-3682

Boston  
Chicago  
Los Angeles  
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Vilnius (Lithuania)  
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Associated (Independent) Offices  
London  
Paris

MCDERMOTT, WILL & EMERY

September 6, 1994

VIA FACSIMILE AND  
FEDERAL EXPRESS

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

RECEIVED  
SEP 7 1994

Attention: Ms. Pat Vernon

Waste Management & Cleanup Division  
Department of Environmental Quality

Re: Comments On Proposed Rigid Plastic Container Rule

Dear Ms. Vernon:

On behalf of this law firm's client, the Solo Cup Company (Solo Cup or the Company), we wish to present the Oregon Department of Environmental Quality with written comments on its proposed regulations implementing the Rigid Plastic Container Law (the Law). While Solo Cup strongly supports all efforts at recycling plastic containers as well as other containers, the Company believes that there are significant problems with the rule as proposed. These problems fall within four major categories relating to (1) the feasibility of compliance, (2) the unfairness of the restrictions on compliance, (3) the retroactive application of the rule, and (4) the likelihood that the proposed rules will discourage recycling of plastics and increase the volume of solid waste going to landfills.

First, it is currently not feasible to manufacture most containers using 25 percent recycled material and meet the Food and Drug Administration requirements for food containers found at 21 CFR 177. Secondly, Solo Cup believes that it is unfair to penalize container and product manufacturers that continue to sell rigid plastic containers in Oregon, if Oregon consumers do not return a sufficient number of containers to be recycled. The third category of comments relate to the unfairness and possible unconstitutionality of retroactively penalizing a manufacturer if the Department determines in 1996 that there was non-compliance in 1995 because the 25 percent recycled rate was not met for all

rigid plastic containers or any particular category of them. Manufacturers should be allowed to know their compliance status before being forced to risk possible non-compliance and enforcement. Lastly, the proposed rule could negatively impact plastic recycling and the volume of solid waste going to landfills. Because manufacturing food containers with a 25 percent recycled plastic content is not currently feasible and because the proposed rule will not allow manufacturers to prospectively determine whether they will be in compliance with the container recycling rate, many manufacturers will choose alternative containers such as paper and glass rather than risking non-compliance. By encouraging switching to non-plastic containers, the proposed rule will undermine the opportunity to truly encourage recycling of plastics and possibly even increase rather than decrease the amount of solid waste going to landfills.

Solo Cup believes that there are other mechanisms available to meet the purpose of the Law, which is to reduce the amount of plastic disposed of in landfills. If adequate substitutes are not available, some manufacturers of food products or containers may stop selling their products in the State of Oregon if that is only way to avoid violating the proposed rule.

#### BACKGROUND

The Solo Cup Company manufactures a wide variety of containers, including containers that would fit the definition of rigid plastic container in the proposed regulations. Between 90 and 95 percent of the containers manufactured by the Company are used to hold food or food products. The Company's customers include many national and international companies that distribute a variety of prepackaged food products, restaurants that sell food to customers either for consumption on the premises or for carry out purposes, and commercial establishments such as ballparks that sell beverages to spectators.

Solo Cup has worked actively with its customers to establish recycling programs for its containers. For example, Solo Cup manufactures the plastic cups in which beverages are sold at a baseball stadium in a major city. A program to recycle these plastic cups was established approximately 3 years ago. Even with the convenience of being able to place the containers in recycling bins at the point of consumption, Solo Cup's experience has been that only 50 percent of the containers are returned for recycling. To date, this has been the most viable ongoing recycling program that Solo Cup has been able to establish. While Solo Cup does not know all the reasons for such a low recycling rate, there are at least two reasons: the consumer's use of the trash bin rather than the recycling bin, and the consumer's desire to keep the cup

as a souvenir. Nevertheless, because of the low recycling rate for post consumer containers, it is not presently possible for Solo Cup to obtain a sufficient amount of post consumer recycled plastic of a high enough quality to use for food containers.

#### CONFLICT WITH FEDERAL FOOD CONTAINER REGULATIONS

The proposed regulation's requirement that plastic food containers must have 25 percent recycled content raises two related problems: compliance with both the federal purity standards for food containers and the proposed regulation is currently not feasible and, because of this conflict between the two sets of regulations, the Oregon regulation is preempted by the federal regulations. Currently, compliance with Food and Drug Administration (FDA) and U.S. Department of Agriculture (USDA) purity standards for plastic food containers and the proposed regulation requiring 25 percent recycled content in plastic food containers is not feasible because there is an insufficient supply of post-consumer plastic which is pure enough to comply with FDA and USDA standards. While FDA and USDA do not specifically prohibit the use of post consumer recycled plastics in food packaging, they do require that all plastics used in food containers meet the same standards as virgin plastic material. In other words, residual plasticizers and colorants, as well as other contaminants from recycled plastic must not exceed the limits set for virgin plastics. Where it is impossible to comply with both federal and state regulations regarding a product, state law is preempted. Grocery Mfrs. of America, Inc. v. Gerace, 755 F.2d 993 (1985).

When an adequate supply of post consumer plastic becomes available, container manufacturers will be able to establish adequate procedures for testing recycled plastic so it can be approved for use in food containers. Procedures which must be established include, among others, a method for testing each plastic container to insure that it did not become tainted while in a consumer's possession. Unlike glass containers which can be easily cleaned, plastic has the ability to absorb various materials that could render the plastic unsafe for containing food products. For example, if a consumer used a plastic container to store a pesticide product before returning it for recycling, some of that pesticide product could remain in the plastic and taint food.

#### FAIRNESS CONSIDERATIONS

Under the proposed regulations, a rigid plastic container manufacturer must be able to certify compliance beginning January 1, 1995. The failure to certify compliance within the specified time periods would subject the container manufacturer to fines and

penalties. As stated in the proposed regulations, there are only three methods available to a rigid plastic container manufacturer for compliance:

- (a) have at least 25 percent recycled content;
- (b) be made of plastic that is being recycled in Oregon at a rate of at least 25 percent by meeting one of [three enumerated] criteria;<sup>1/</sup> or
- (c) be used at least 5 times for the same or a substantially similar use.

As discussed above, it is not possible for most food containers to meet the 25 percent recycled content requirement by January 1, 1995.

Compliance under the other two subsections is dependent upon activities that are not under the control of rigid plastic container manufacturers, such as Solo Cup. As indicated above, Solo Cup manufactures containers that it sells to businesses that use the containers to hold their food products. Solo Cup is not able to require its customers or the ultimate consumer of the food product to return the plastic container for recycling or to reuse the container. It is patently unfair and probably a violation of their substantive due process rights under the U.S. Constitution to penalize container manufacturers for activities over which they have no control.

#### RETROACTIVE APPLICATION OF ENFORCEMENT RULES

Despite the fact that the Law requires compliance by January 1, 1995, under the proposed regulations, the Department would not calculate the recycling rate for rigid plastic containers until mid-1996. If the overall recycling rate of 25 percent was not met, the Department would retroactively apply the rule to determine whether product and container manufacturers were violating the statute by selling containers which were not recycled at a rate of at least 25 percent during 1995. If the 25 percent recycling rate were not met, enforcement actions could then be brought against the manufacturers. The unfairness of this implementation scheme is obvious: it subjects the regulated community to penalties for selling containers which are not recycled at a rate of at least 25 percent even though it would be impossible to know at the time the containers are sold what the

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<sup>1/</sup> Currently, milk cartons and PETE beverage bottles are the only plastics that are returned for recycling at a rate sufficient to meet this requirement.



Department will determine the recycling rate to be. Thus, because there is no way to assure compliance with this criterion before running the risk of violation, the Department's rule effectively voids this option for compliance from the statute.

Aside from its basic unfairness, Solo Cup objects to this method of applying the recycling rate options because it simply does not comport with the plain language of the statute. The statute allows the sale of plastic containers which are made of plastic "that is being recycled in Oregon at a rate of 25 percent by January 1, 1995" ORS 459A.660(3)(1)(b) (emphasis added). There is no provision regarding recycling rates for the calendar year 1995 or any subsequent year. Clearly, the legislative intent here was not to subject product and container manufacturers to the uncertainty of enforcement based upon retroactively applied recycling rates, but to fix a date for calculating these rates which would allow manufacturers to prospectively determine their compliance with the Law in order to avoid violating it. The Department has clearly gone beyond its statutory mandate in providing for the retroactive application of enforcement rules.

#### POLICY CONSIDERATIONS

The Rigid Plastic Container Exemption Report states that "The overall purpose of this Act is to increase recovery of materials from Oregon's waste stream and to stimulate markets for recycled materials. Increased material recovery is to be achieved through improved recycling programs." Rather than encouraging increased recycling of plastic containers, the effect of the proposed regulations will be to destroy the potential market for recycled plastic. Because it is currently not feasible to produce rigid plastic food containers which comply with both the regulation as proposed and FDA requirements, such plastic containers may be withdrawn from the Oregon market. This withdrawal will not only decrease the supply of recyclable plastic, it will also diminish the demand for recyclable plastic because fewer plastic containers, whether recycled or not, will be manufactured.

In the Rigid Plastic Container Exemption Report to the Legislature, dated December 1992, the Department recognized that many product manufacturers may switch to containers other than rigid plastic containers to avoid violating the regulations developed under the Rigid Plastic Container Law. While Solo Cup acknowledges that there may be acceptable substitute containers in some circumstances, such substitution will destroy the incipient market for recyclable plastic. In addition, substitution of other types of containers will not necessarily help to reduce solid waste volume in landfills since manufacturers could substitute a container that could not be recycled and would have to be landfilled. Such substitution would result in less recycling of plastic rather

September 6, 1994

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than more, and increase the volume of waste disposed of in landfills, contrary to the goals of the law.

Solo Cup is not against container recycling. In fact Solo Cup has been investigating mechanisms to increase recycling of its containers. However, the safety of containers used to hold food is of paramount importance and cannot be compromised. Nevertheless, Solo Cup also recognizes and supports, as a matter of public policy, recycling activities. However, Solo Cup believes that there is a better approach than the one proposed by the Department.

Based on Solo Cup's experience, two things must occur to improve the recycling of plastics: the ultimate consumer of the plastic product must be educated about the benefits of recycling, and recycling must be made convenient for the consumer.

The Company believes that imposing fines and penalties on a container manufacturer if consumers do not return a sufficient number of containers for recycling will not increase return rates of plastics for recycling. Instead, Oregon should mandate, or at least strongly encourage, the placing of recycling bins at locations where products in rigid plastic containers are sold and institute curbside recycling programs. Before rigid plastic containers can be recycled into new products, they must be returned for recycling.

In conclusion, Solo Cup believes that mandating curbside recycling and requiring bins in which to place returned plastic food containers is a more logical approach to achieving the 25 percent recycling goal than requiring a company that manufactures containers to certify that the citizens of Oregon are doing their part to ensure that 25 percent of the rigid plastic containers are recycled.

Sincerely yours,



Carolyn S. Hesse

CSH/ajs

\\29482\013\55CORCEH.004



*Locations*

PORTLAND  
BEAVERTON  
ALBANY  
MEDFORD  
KLAMATH FALLS

1836 N.E. 7th Ave. • P.O. Box 12107 • Portland, OR 97212  
(503) 282-3289 • Fax No. (503) 280-1722  
*Products for Industrial and Commercial Cleaning*

September 6, 1994

RECEIVED  
SEP 6 1994

Oregon Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW. 6th Avenue  
Portland, OR 97204

Waste Management & Cleanup Division  
Department of Environmental Quality

RE: Rule Making Proposal - Implementing Oregon's  
Rigid Plastic Container Law

To Whom it May Concern:

Paulsen and Roles Laboratories is an Oregon based and owned manufacturer of commercial cleaning chemicals including cleaners, degreasers, disinfectants and floor finishes. We have been manufacturing cleaning chemicals in Oregon since 1937. Our products are packaged in rigid plastic containers (quarts, gallons and 5-gallon pails) and sold to cleaning contractors, commercial/retail property managers, healthcare facilities and public agencies including schools in Oregon and neighboring states. We employ seventy-two (72) persons, all within Oregon, in all phases of manufacturing, warehousing, distribution and sales.

I believe we can claim, at least within our industry, a leadership position in support of Oregon's Rigid Plastic Container law. For example, most of our 5-gallon pails have a 50% post consumer recycled material content and we have "source reduced" our packaging by making products much more concentrated today versus just two years ago. In aggregate terms, excluding source reduction, we can claim a recycled rate significantly in excess of 25%.

In spite of the above initiatives on our part, we still cannot comply with the proposed RCP regulations because we would be in violation of DOT Hazardous Materials regulations, specifically 49 CFR178.509 (copy attached). These regulations, as currently written, effectively prohibit a recycled content in plastic containers which are used to transport hazardous materials. Under current regulations 21.5 percent of our product mix is sufficiently corrosive to be considered DOT hazardous.

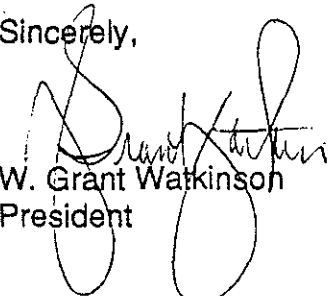
It is true that other forms of packaging are available, but the expense to acquire other technology cannot be economically justified at this time. It is not a matter of willingness; it is simply a matter of economics.

Accordingly, we specifically request that DEQ support legislative changes in Oregon's RPC statutes to: 1) grant permanent exemptions to accommodate conflict with existing federal laws and regulations and 2) expand "compliance (recycling rate) options" to permit aggregate rate measurement by manufacturers. Please do not hold us hostage to forces outside our control: federal laws/regulations and statewide recycling rates.

Last, but not least, if we in Oregon have any hope of meeting statewide aggregate recycling threshold rates we need to create a viable statewide network of recyclers. It is unfeasible for us to reuse our RPC because our customer base is so wide spread and the quantities purchased by any given "ship to" address are relatively small. Additionally, although we buy our 50% PCRC 5-gallon pails from Letica's St. Helen, Oregon plant we understand that Oregon recyclers have not always been able to supply Letica with the quality and quantity of needed PCRC resins. Accordingly, a stronger recycling infrastructure will enhance effective recycling for all of us.

Thank you for hearing our concerns and considering our recommendations.

Sincerely,



W. Grant Watkinson  
President



GRAHAM  
PACKAGING  
COMPANY

1110 East Princess Street  
P.O. Box 2618  
York, Pennsylvania 17405-2618  
(717) 849-8500  
FAX (717) 854-4269

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SEP 1 1994

September 6, 1994

Secretary of State  
Department of Environmental Quality

Department of Environmental Quality  
Waste Management & Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Dear Members of the Rigid Plastic Container Task Force:

Our company has the following concerns about Oregon's Rigid Plastic Container Law:

1. The law does not allow companies to use corporate averaging to comply with the law. Corporate averaging will allow a company that is using recycled plastic to increase the percentage in some of the bottles it sells, thereby increasing the overall use of recycled plastic. By not allowing corporate averaging, a significant opportunity to increase the use of recycled plastic will be missed.
2. Not allowing an exemption for food containers is a serious problem at this time. This requirement could cause one of the following to happen:
  - A. Companies will use a multilayer/multimaterial structure for food containers, thereby reducing the recycle value of the container.
  - B. Some companies will attempt to put recycled plastic into food containers before adequate testing has been completed which could pose a potential health problem.
  - C. Companies will switch to alternative materials. This will be expensive and disruptive to the consumer.

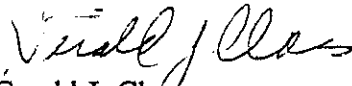
In my opinion, none of these alternatives is desirable. By giving the plastic industry time to work on the technical issues of placing recycled HDPE in food containers, the state could help everyone. While I believe that recycled HDPE plastic will be used in food containers some day, this is not something that should be done with haste. Thorough testing and evaluation need to take place before this is a commercial reality.

3. The five year weight reduction option should not apply to new containers. For containers not sold before January 1, 1990, the benchmark date should be when the container was introduced to the market place.
4. I strongly suggest that the Oregon law be modified to match the California Rigid Plastic Packaging Regulations. Both laws are very similar with only minor differences which will cause confusion and problems to those companies which are required to comply with both laws.

Graham Packaging is totally committed to using recycled plastic in the containers we manufacture. In 1993 our company used 30 million pounds of recycled plastic and in 1994 we will use over 50 million pounds of recycled plastic. The fact is that this year we would use 60 million pounds of recycled plastic if we could find the material to satisfy our needs. The supply of high quality recycled HDPE is in very short supply because not enough communities are collecting plastic at the curbside.

We support the state of Oregon's objective of increasing the amount of plastic that is recycled and are working constantly to increase the amount of recycled plastic our company uses. Please do not hesitate if you have any question concerning my response.

Sincerely,



Gerald J. Claes

Director, Environmental Programs

GJC/slu

P. O. Box 12519  
1149 Court Street NE  
Salem, OR 97309-0519

Telephone:  
Salem 503/588-0060  
Portland 503/227-5636  
Oregon 800/452-7892  
FAX 503/588-0052

Portland Office  
503/227-3730  
FAX 503/227-0115

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- Revenue & Taxation
- Transportation



September 6, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 SW 6th Avenue  
Portland, OR 97204

In 1991, Associated Oregon Industries (AOI) and its Retail Committee participated and served as an industry leader in the development of SB 66. AOI remains supportive of programs increasing the recycling rate in Oregon. Many of our members actively participate in recycling program whether they are industry leaders creating paper from recycled products to retailers participating in the collection of cans and bottles.

Oregon's retailers will encounter problems and concerns when dealing with Oregon's Rigid Plastic Container law. First and foremost, despite retailers' involvement in recycling, we do not have the ability to change the packaging decision made by multi-national manufacturers. Grocers, pharmacies, discount stores, department stores and the like are not in the recycling business and should not be forced into that position. Furthermore, retailers cannot change the demands and needs of the customers. These demands and needs are reflected in packaging following the national marketing research.

If the compliance rates contained in the Rigid Plastic Container law are not met, retailers will no longer be able to sell thousands of items demanded by Oregon's consumers. In communities like Portland . . . consumers will simply shop in Vancouver. When developing the rates governing the law, the Department should take customer needs into account, as well as the financial impacts retailers face.

AOI believes DEQ should use "definition B" for rigid plastic containers. According to Jim Whitty of our staff, this definition is closer to legislative intent. Originally, the Legislator chose to concentrate on the rigid plastic container because it is more easily recycled. Definition A's expansion of rigid would not necessarily meet the consumer's definition. In fact, it would include those items we see as "flexible" containers. These containers were not the intent of SB 66.

*Department of Environmental Quality  
Waste Management and Cleanup Division  
September 6, 1994  
Page 2...*

We also support Oregon Food Industries' suggestions: "We suggest that the DEQ do one of two things. Either: follow California's example and exempt rigid plastic containers that hold a food product for less than seven days; or postpone the enforcement of the law until the recycling rates are accurately calculated and the DEQ can tell affected businesses what types of packaging are in compliance. Further, the only alternative for deli and bakery operators is to go to some type of paper container, which will increase the amount of waste going into Oregon's landfills, while leaving unaddressed the goal of recycling these types of containers.

Finally, the Department should note that all information on Oregon's Rigid Plastic Container law should be directed to Julie Brandis, who will now be handling recycling issues for AOI's Retail Committee.



Comments of the Association of Oregon Recyclers on the Rule-making proposal to implement the Rigid Plastic Container Law  
September 6, 1994

The Association of Oregon Recyclers supports the Department's efforts to write rules to effectively implement the intent of the statute unanimously passed by the 1991 legislature. We believe Department Staff have done a good job of developing language to implement the statute, and will limit our comments to supporting alternatives offered in the proposal in those areas where the Task Forces did not reach consensus. For simplicity, we will refer directly to the alternatives.

On the definition of "Rigid Plastic Container", we support Alternative A, with the sole exception of 340-90-330(2)(b). Our preference would be to exempt tubes from the law by not listing them: since neither the public nor the processors are inclined to try to recycle tubes, their inclusion in the rules would seem to serve little purpose. The fact that tubes are seldom if ever completely emptied of their contents is more pertinent, we feel, than their relative flexibility or rigidity.

On the exemption for "reduced" containers, we support Alternative A. Alternative B, if adopted, could have the practical effect of exempting all new containers from compliance with the law. The language in Alternative B allows an easy and inexpensive way for any and all new containers a product manufacturer introduces to qualify for a five-year exemption as "reduced" containers. Since the large national brands introduce new products and new containers frequently, the availability of an exemption running five years for each introduction of a new product or container would soon result in ongoing exemption from the law of the most commonly sold and widely distributed brands, leaving the

Comments of the Association of Oregon Recyclers, page two

smaller local or regional brands to figure out how to introduce new products or containers often enough to stay exempt. A law which allowed such wholesale exemption from its provisions, available most easily to the largest producers of plastic containers, would be worse than useless. It is evidence of the tolerance and good humor of Department staff that they included Alternative B in the proposal, but if the rule is to succeed, it must have the language of Alternative A. We can, on request by the Department, provide a concise description of how and why manufacturers would exploit the provisions of Alternative B so that Department staff is not put in the awkward position of explaining to industry how it might evade the law.

We oppose a provision for corporate averaging of recycled content, on the grounds that it would seem to discriminate against local manufacturers to the advantage of out-of-state manufacturers, and we want to avoid that sort of effect from state laws.

While we understand that the "Recycling Rate in Oregon" is reflective of the sum of many parts of the recycling infrastructure, we caution the Department not to impose additional record-keeping requirements on those whose who only collect and compact material for delivery to other in-state handlers, lest the prospect of additional government paperwork influence their decisions of which materials to handle.

Thank you for your consideration of our views.

Sincerely,



Rob Guttridge

For A.O.R.

RECEIVED  
SEP 6 1992

Waste Management & Cleanup Division  
Department of Environmental Quality

**O A C F A****OREGON AGRICULTURAL CHEMICALS & FERTILIZERS ASSOCIATION**

September 6, 1994

Transmitted via facsimile  
(503) 229-6954

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, Oregon 97204

Attention: William Bree

Re: Proposed Administrative Rules (OAR 340-90-310 through 340-90-430 and 340-12-065) — Rigid Plastic Containers

On behalf of the Oregon Agricultural Chemicals and Fertilizers Association (OACFA), I would like to submit the following comments on the proposed administrative rules pertaining to Oregon's Rigid Plastic Container Law (ORS 459A.650 et seq). For a variety of factors, the Oregon Agricultural Chemicals and Fertilizers Association respectfully requests the Department of Environmental Quality, in conjunction with the Environmental Quality Commission, to incorporate a specific exemption for rigid plastic containers commonly used in production agriculture from the application of the administrative rules. The factors contributing to this requested exemption include the following:

**I.****Noncompliance with the Federal Insecticide, Fungicide,  
and Rodenticide Act (7 U.S.C., § 136 et seq.)**

Existing provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) specifically address the issue of federal jurisdiction regarding the authority of an individual state to regulate pesticides beyond that delineated in the Federal Act. Specifically, the authority of a state to regulate federally registered pesticide products is contained in 7 U.S.C., 136v, Section 24. Subsection (b) of this section provides:

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Rigid Plastic Containers  
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"Uniformity. -- Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this Act. (emphasis added)

In the event the proposed administrative rules are promulgated in a manner which provides for the inclusion of rigid plastic containers associated with pesticide products, it is apparent an issue of noncompliance with provisions of FIFRA would exist.

## II.

### Conflict with Department of Transportation Regulations (Transportation of Hazardous Materials)

Provisions contained in 49 C.F.R., § 178.509 detail standards for plastic drums and jerricans containing hazardous materials. Such standards specifically prohibit the use of recycled materials in certain containers used for hazardous materials. Subsection (1) of section 178.509 provides in part:

"The packaging must be manufactured from suitable plastic material and be of adequate strength in relation to its capacity and intended use. No used material other than production residues or regrind from the same manufacturing process may be used. (emphasis added)

Again, if rigid plastic containers used in conjunction with agricultural pesticides are not provided an exemption from the proposed administrative rules, a conflict with certain regulations promulgated by the Department of Transportation will undoubtedly arise.

## III.

### Consistency with State of California's Rigid Plastic Packaging Container Program

Although similar in nature to Oregon's Rigid Plastic Container Law, California's Rigid Plastic Packaging Container Program (Public Resources Code, Section 42300 et seq.) provides exemptions for certain types of rigid plastic

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Page 3

containers from the provisions of the law. In accordance with rules promulgated under the California law (Title 14, Division 7, Chapter 4, Article 3, Sections 17942-17949), rigid plastic containers used in conjunction with pesticide products are exempt from regulation. Section 17944.5 (Exempt Rigid Plastic Packaging Containers) provides in part:

As stated in Public Resources Code §42340, the following containers are exempt from the requirements of this Article:

"(3) Rigid plastic packaging containers that contain products regulated by the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) (emphasis added)

In addition, it should be noted that subsection (4) of Section 17944.5 also provides for a partial exemption for certain packaging material subject to the requirements of 49 C.F.R., §178.509.

#### IV.

#### Industry Sponsored Recycling Efforts

In response to a number of concerns regarding the management and ultimate disposal of agricultural pesticide containers, the industry initiated a voluntary container collection program in 1984. Since its inception, the OACFA Pesticide Container Management Program has been expanding on an annual basis. In fact, this program, one of the first voluntary collection and recycling efforts initiated by the agricultural industry, has been emulated by a number of states throughout the nation.

As previously noted, the OACFA Pesticide Container Management program has experienced a very consistent growth rate. More specifically, the program has experienced a very rapid expansion during recent years. The number of containers collected and recycled is perhaps the best example of the growth of the program. To provide an immediate example of the growth of the program, the following may prove helpful:

Proposed Administrative Rules  
Rigid Plastic Containers  
Page 4

Calendar year 1989:	28,000 containers collected & recycled
Calendar year 1990	45,000 containers collected & recycled
Calendar year 1991	57,000 containers collected & recycled
Calendar year 1992	67,000 containers collected & recycled
Calendar year 1993	67,000 (plus) containers collected & recycled

Calendar year 1994 43,000 containers collected & recycled

(\*This represents the results of the initial phase of the program during the current calendar year. The Association anticipates the collection and recycling of 75,000 to 80,000 containers during the current calendar year.)

As demonstrated through the above program results, it is apparent enhanced collection and recycling efforts are available through voluntary efforts. From preliminary estimates conducted by the Oregon Agricultural Chemicals & Fertilizers Association, the number of containers collected and recycled during the past two calendar years represents a substantial portion of all agricultural pesticide rigid plastic containers. Estimates compiled both on a national and state basis indicate the current collection and recycling program, offered through the Oregon Agricultural Chemicals & Fertilizers Association, is responsible for the collection of approximately 20-25 percent of the rigid plastic containers within the state. During the current year, the Association expects to exceed the 25 percent requirement detailed through the enabling legislation (SB 66), as well as through proposed administrative rule.

V.  
Summary

In light of the above factors, specifically the success of the voluntary collection and recycling program, the Oregon Agricultural Chemicals & Fertilizers Association respectfully requests the Department of Environmental Quality, through the Environmental Quality Commission, to incorporate a specific exemption for agricultural pesticide containers from the provisions of the proposed rules. To extend the application of the proposed rules to such

Proposed Administrative Rules  
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Page 5

containers may, in fact, hinder the long-term viability of ongoing voluntary efforts to collect and recycle agricultural pesticide containers within the state.

On behalf of the Oregon Agricultural Chemicals & Fertilizers Association, I wish to thank the Department for their consideration of our comments. In the event the Department has further questions regarding the OACFA Pesticide Container Management Program, please contact the OACFA office, located in Salem, Oregon at 370-7024.

Sincerely,

OREGON AGRICULTURAL CHEMICALS & FERTILIZERS ASSN.



Richard Kosesan  
Executive Director

/wk/hr



# plaid pantries, inc.

neighborhood convenience stores

September 6, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

RECEIVED  
SEP 8 1994

Re: Proposed Oregon Administrative Rules (OAR 340-09-310 through 340-12-430 and 340-12-065) - Rigid Plastic Containers  
Department of Environmental Quality  
Waste Management & Cleanup Division

Ladies and Gentlemen:

I am writing on behalf of Plaid Pantries, Inc., to express our strong concerns regarding the proposed administrative rules for implementing Oregon's Rigid Plastic Container Law.

At the outset, I would like to stress that we, as a company support the goals of recycling plastics within Oregon. However, there are serious constraints on our business operations in regard to the recycling standards and requirements directed through the proposed administrative rules. While remaining supportive of recycling practices, certain realities of our business simply prohibit us from obtaining "substantial" compliance with the provisions contained in the proposed rules. Strict compliance with the proposed administrative rules would severely restrict continuing business operations of Plaid Pantries, Inc., within Oregon. Because of this potential devastating impact, we are requesting that retail food establishments be provided an exemption from the application of the proposed administrative rules. The requested exemption is necessary to address the inability on the part of retail food establishments to comply with the proposed rules as they impact what may be described as point of sale rigid plastic containers. Plaid Pantries, Inc. requests this exemption for the following reasons:

1. Consistency with the State of California's Rigid Plastic Container Program.

Similar in nature to Oregon's Rigid Plastic Container Law, the State of California has specifically addressed recycling requirements for rigid plastic containers. Provisions of California regulations, as they relate to rigid plastic containers however, provide an exemption for certain point of sale containers. These California regulations specifically recognize the inherent differences between rigid plastic containers which are utilized to contain a given product from the point of original manufacturing to an end-use, and containers used to "store" a product for a limited duration.

Many retail food establishments, such as Plaid Pantries, Inc., rely on a variety of rigid plastic containers to store products for immediate use or for use within a limited time period. These types of containers include plastic containers traditionally used in deli and bakery operations, and beverage containers, among many others. A retail food establishment selling products stored in a rigid plastic



container would be considered a product manufacturer in accordance with the proposed Oregon administrative rules. This is inconsistent with the State of California's requirements and should be modified.

2. Inability for Compliance

As previously noted, the proposed rules place a retail food establishment utilizing rigid plastic containers in the position of a product manufacturer. Such retail food establishments using rigid plastic containers, however, will not be able to comply with the requirements of the proposed rules unless they discontinue selling a variety of products to their consumers. Facing a dubious position between the actual manufacturers of point of sale rigid plastic containers and the end-use consumer, the retail food establishment using such containers is nearly precluded from compliance. In the event all point of sale containers were purchased from a single container manufacturer and each type of container was used for a single product, a retail food establishment may be in a position to attain one of the methods of compliance. In practice however, retail food establishments frequently purchase their point of sale containers from a variety of manufacturers or an independent third party, such as a broker or distributor. Further, these point of sale containers are used to store a wide variety of products. For example, will a beverage container be used for coffee, hot chocolate, juice, soda, etc.? In light of the traditional uses of point of sale containers by retail food establishments, the proposed recordkeeping, documentation and auditing requirements delineated in the proposed rules eliminate any viable avenue for compliance on the part of such establishments.

3. Intent of Enabling Legislation.

While the proposed administrative rules consider a retail food establishment to represent a "product manufacturer", we do not believe this consideration was the intent of the original legislation where a "manufacturer" was originally defined as a "producer or generator of a packaged product which is sold or offered for sale in Oregon in a rigid plastic container." Following a strict interpretation of this definition, it would appear the proposed rules classify a retail food establishment as either a producer or generator of a rigid plastic container. Conversely, the original manufacturer should be considered the producer of the product, while the generator may be considered the distributor of the original container or even the end-user. Once again, retail food establishments have been placed in an untenable position through the suggestion they are to be considered the "product manufacturer" simply through use. In light of the original legislation, we encourage the Department of Environmental Quality to clarify the definition of product manufacturer through rule, thereby exempting food retailers from the provisions of the rules.

4. Absence of Viable Options.

The retail food industry is further constrained by the absence of any type of viable options to meet compliance standards as provided in the proposed rules. One option for compliance in regard to the proposed rules, as well as the enabling legislation, is a standard of reuse. Specifically, compliance may be reached in the event the container is used five or more times for the same or substantially similar use. For food products, however, the option of reuse or refilling a container is not feasible;

further, it is federally prohibited.

A second option of compliance would be to assure the container itself includes a 25 percent recycled content. Again, for food products, this option is not feasible. Concerns over any type of potential contamination from a container to the food product stored in the container obviously are to be avoided. In addition, the use of recycled content in food containers will require approval by the Federal Food & Drug Administration (FDA). At the current time, this option is generally not available to the original manufacturer of the containers, as well as food retail establishments using such containers.

An additional compliance option is that of reaching an aggregate recycling rate of 25 percent. It has been estimated point of sale food containers represent a minimal amount of the solid waste stream (less than 0.5 percent). In light of this limited impact, the "manufacturers" of point of sale containers are entirely dependent on the remaining industry for potential compliance through this option. Again, in light of the minimal contribution of point of sale containers to the waste stream, this option does not appear workable at the current time.

5. Economic Considerations


Food retailers traditionally operate within an extremely limited profit/loss margin. The loss of business as a result of the retailer's inability to market product through certain containers should not be ignored. Also, these regulations, product requirements and compliance standards would add substantial costs throughout our marketing system. These factors are especially critical for the relatively small food retail establishments, such as Plaid Pantries, Inc. While larger business operations may be able to develop certain alternatives in regard to containers, or may be in a stronger position to absorb a reduction in business operations and increases in costs, certain small retail establishments will be severely impacted in the event they are not provided an exemption from the proposed administrative rules.

6. Summary Comments.

In light of the above factors, Plaid Pantries, Inc., strongly encourages the Department of Environmental Quality and the Environmental Quality Commission to exempt point of sale rigid plastic containers from the provisions of the administrative rules.

Thank you for your consideration of our comments.

Sincerely,



William C. "Chris" Girard, Jr.  
President/CEO

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Administration	(503) 581-4472
Senior Services	(503) 354-9086
Employment Services	(503) 581-4472
Commercial Operations	(503) 581-4473
FAX (503) 581-4437	

6 September 1994 Waste Management & Cleanup Division  
Department of Environmental Quality

Comments on Rulemaking Proposal for Implementing Oregon's Rigid Plastic Container Law.

My name is John Matthews. I am employed by the Garten Foundation as Recycling Coordinator. The Garten Foundation is a private not-for-profit organization whose mission is to provide vocational and other services for persons with disabilities. In pursuit of this end Garten has been involved in the recycling business since 1976 as a collector and intermediate processor of recyclable materials. For the past 4 to 5 years Garten has handled plastic milk jugs and some films and had previously handled some plastic soda bottles. I have been active in recycling affairs in Oregon for 24 years and am a founding member and past officer of the Association of Oregon Recyclers. I am a member of the "Implementation Task Force" charged with helping the Department develop these rules.

From the time of my initial appointment to this Task Force the focus of Garten's involvement in plastics has evolved from one of general interest and advocacy and minor plastics recycler to that of the designated operator of the "Plastics Recycling Facility ("PRF") that has been developed and capitalized by the American Plastics Council ("APC").

This PRF is a direct result of the plastics' industries attempt to responsibly respond to the "Aggregate Rigid Plastic Container Recycling Rate" option of the law. Garten will incorporate APC funded equipment at its Salem facility that will automatically sort mixed rigid plastic bottles. This process will allow for the more efficient collection of plastic bottles since they will no longer be required to be separated by resin type (numbers 1-7) in order to be marketed.

However, even though my interest in plastic recycling is now more focused, my views are still basically the same in regard to the rules:

- 1) In the development of rules we need to keep 2 things in mind:
  - a) The "Purpose" as stated in OAR 340-90-310 and
  - b) The pragmatic workability of the rules.



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- 2) It is my opinion that the only realistic way that the majority of plastic containers can expect to meet the requirements of this law is through the "aggregate recycling rate" option.

With that said, the following are my specific comments and recommendations.

- 1) The "completely contained..." issue: Although this issue is of serious concern for those effected, whether or not it should be included in the law should be examined in regard to the "Purpose" and "Workability" tests mentioned above. Certainly "alternative A" better meets the "Purpose" test. And in terms of "workability", it seems it would tend to simplify waste composition surveys if lids and closures were included (assuming they otherwise met the definitions of Rigid Plastic Containers ("RPCs")). I don't see this as an issue from a recycling processor's perspective. Based on the above, I believe that "alternative A" would be the more appropriate choice.

- 2) The "rigid plastic tube" issue: The tubes excluded by alternative "B" would be difficult to recycle because they would be impossible to clean well enough to recycle without cutting the end off and washing the inside vigorously... a process that could be hazardous in doing and would be unlikely to be attempted by the majority of consumers. These tubes could easily be sorted from qualifying containers by those performing the waste composition surveys. My inclination is that alternative "B" would more closely meet the criteria of the "tests" until or unless these items could qualify under "content" provisions.

- 3) The "sidewall" issue: I believe the "Purpose" test in regard to encouraging the recyclability of such items as well as the practicality test in making for an easier decision making process during waste composition surveys would suggest a preference toward alternative "A".

- 4) The "volume determination" issue: In that I can not discern the difference between the 2 versions, I have no opinion.

- 5) The "reduced container" issue: I feel strongly that alternative "B" is inappropriate. There is ample enough encouragement for product manufacturers to "reduce" the containers they use merely to enhance their competitive advantage in shipping and material costs. Alternative "A" is still quite adequate in defining this concept as provided by law.

- 6) The "substantial investment" exemption: I strongly support the extending of the "one-time" only exemption that runs from Jan. 1, 1995 to Jan. 1 1997, to a more open ended concept.

As a plastics recycler, I can vouch that post-consumer plastics recycling is still in its infancy when compared to its more "mature" cousins (paper, metal and even glass). It can use all the "substantial investment" that can be mustered to assist in reaching the goals of this law. Any wording that can further encourage "substantial financial investment" would certainly assist in meeting the "Purpose" of the rules as stated in OAR 340-90-310.

7) The "corporate averaging" exemption: A case can be made for encouraging large companies to increase their recycled content over the minimum 25% in certain product lines. They could then use such activity to offset product lines where recycled content was not as feasible to incorporate. I feel that it would be inappropriate to promote this concept at this time as an unfair advantage over smaller manufacturers that do not have a large multiproduct base could result. Furthermore, there is not clear evidence that corporate averaging would produce the desired result of providing better markets in Oregon for post-consumer recycled plastics.

8) The "numerator" issue: As a multi-material recycler, I am frustrated that certain products (such as "printers' wastepaper" ) are not counted as "post-consumer" material. But in an industrial application where containers are being made, whether its glass, metal or paper , the term "post-consumer" is not allowed and correctly so. Plastic should be no exception. Good housekeeping and non-wasteful material usage practices are just good business and deserve no special incentive or credit under the purpose of this law or its rules.

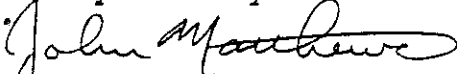
9) The "pyrolysis" issue: Th AG's opinion is consistent with how most Oregon recyclers understand the state's hierarchy of preferred solid waste management policy. Implicit in this policy is the concept of the conservation of energy investment in the manufacture of a product and the energetic advantage of using that product in a way that least wastes or destroys that energy integrity of the product. To break plastic down to its raw building blocks and then using that material as a consumable fuel does not rank as high in the maintenance of the original energy invested as using the same plastic polymer to manufacture a new product.

Propose legislative action(?):

As I mentioned in my introduction, I feel that the only practical way that the majority of affected Rigid Plastic Containers (RPCs) can meet this law is through the "aggregate RPC recycling rate". When Garten's Plastic Recycling Facility sorting system comes on-line, the ability to recycle mixed rigid plastic bottles will become fact. What is not yet fact is the these containers are not yet collected so they can become recycled. If, for some reason, major municipalities

were unwilling to facilitate and encourage the collection of plastic bottles as part of their curbside programs in a timely fashion, then compliance through the "aggregate rate" option could become threatened. This would be through no fault of plastic manufacturers, product manufacturers, distributors or recyclers. The fate of this option now lies with those controlling the curbside collection of post consumer materials. If there were reasonable assurance that the mixed plastic bottles could be recovered without substantial increase in existing collection program costs and that markets were as reliable as those for existing materials collected, then there would be cause to consider requiring the addition of plastic bottles to these curbside programs if voluntary initiative was lacking.

Thank you for your consideration

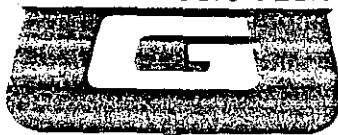


John L. Matthews  
Recycling Coordinator  
Garten Foundation

Implementation Task Force member

UNITED GROCERS

FAX 3 PAGES



September 6, 1994

Serving the West.

Director, Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. Sixth Avenue  
Portland, OR 97204

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Dear Director:

Waste Management & Cleanup Division  
Department of Environmental Quality

Subject: Proposed Administrative Rules  
(OAR 340-90-310 through 340-12-430 and 340-12-065)

United Grocers is an Oregon corporation established in 1915. United has over 284 members in the state of Oregon, in addition to members in the states of Washington and California. United Grocers supplies wholesale grocery products to retailers such as Thriftway stores, Sentry Markets, Select Stores, Food Warehouse, Food Outlet, Holiday Foods, and individual stores such as Hank's, Kienow's, Meister's, Murphy's, Strohecker's, and Wizer's. United also sells groceries and related products to restaurants, hospitals and other institutional buyers through 30 company-owned Cash and Carry stores located throughout our marketing area.

A review of Oregon's Rigid Plastic Container Law, codified in ORS 495A.650 et seq., established in SB 66 (Chapter 385, Oregon Laws, 1991), Senate 641 (Chapter 563, Oregon Law, 1993) and Senate Bill 1009 (Chapter 568, Oregon Laws, 1993) has brought United Grocers to the conclusion that on behalf of our retail members we must seek an exemption from the proposed administrative rule. As grocery retailers who store deli, bakery, and dairy products in rigid plastic containers for the safety, convenience and use of our customers, we now find ourselves "product manufacturers," in accordance with the proposed administrative rule.

The proposed rule incorrectly assumes that point-of-sale containers (those plastic containers found in store delis, bakeries and dairy cases) are purchased from a single container manufacturer and that each container is used for a single food product. The reality is that point-of-sale food containers are purchased by retailers from a wide variety of brokers, wholesalers, and discount club vendors. As a wholesale supplier, (United Grocers' Cash and Carry stores), we purchase containers from brokers and distributors and resell them through our Cash and Carry facilities to, as previously stated, restaurants, hospitals, and numerous institutional buyers. These buyers utilize the containers for a variety of food products. To expect retailers to document and comply with the auditing requirements as provided in the proposed rule, is impossible. Independent grocers, restaurants, and street vendors do not contract specifically with container manufacturers. The containers they purchase for their food products are a generic container that may

Headquarters • 6433 SE Lake Road • Portland, Oregon 97222-2198 • P.O. Box 22187 • Portland, Oregon 97269-2187  
503-833-1000 • Administration FAX 503-833-1962

Medford Division • 2195 Sage Road • Medford, Oregon 97501-1357 • P.O. Box 1647 • Medford, Oregon 97501-0249  
503-773-7383 • FAX 773-7383 ext. 263

pass through a two-, three- or even four-tiered distribution system prior to the retailer purchasing the container.

The optional aggregate rate, as proposed in the rule, presents an additional problem for retailers who use rigid plastic containers. If a retailer attempts to comply using the specified recycling rate option, the retailer is required to establish a collection program for each regulated container, determine the recycling rate, and have the rate verified and approved by the DEQ. A retailer would be unable to calculate the recycling rate. At best, a retailer could only determine the amount of materials collected for recycling. Collection is not recycling. If a collection recycling rate is approved by the DEQ, the retailer would be required to establish and maintain the collection programs, arrange for storage and processing capacity for the collected material, and find transportation to end-use markets. A retailer would also have to document that it has met the 25 percent rate. This would require a retailer to prepare and maintain detailed records for three years in the case of audit, communicate with the DEQ, complete DEQ product manufacturer forms when requested, and file the requested information within the specified time period. Moreover, meeting the rate for one year is no guarantee the rate will be met in the following years.

It was not the intent of the Oregon State Legislature to impose upon the retail community of this state the definition of product manufacturer, thereby burdening the retailer with the obligations of regulatory reporting and compliance.

Regulating point-of-sale food service containers and the retailers who use those containers would do little to reduce the waste sent to landfills. The DEQ is proposing to regulate all point-of-sale retail stores utilizing regulated plastic containers to control less than 0.26 percent of the solid waste stream. It is questionable whether 0.26 percent of the waste stream justified such a disproportionate enforcement effort.

The Oregon Department of Environmental Quality has proposed two definitions of a regulated container. Until a single definition is adopted, it would be difficult to determine which containers are regulated. Moreover, each of the container definitions includes "conditional" containers, meaning that if certain circumstances apply, the containers are regulated. Notwithstanding these ambiguities, it appears the following point-of-sale containers will be regulated under both definitions: plastic and foam cups, tubs, clam shells, salad dome lids, and cake dome lids. "Conditional" containers including trays and unattached lids, cookie trays (inner packaging) are regulated under one definition, but not the other definition, creating even more confusion for retailers.

As previously stated, a thorough review of these proposed rules has led us to the conclusion that while United Grocers supports recycling, as illustrated by our Thriftway stores' highly acclaimed Recycle Saturday program, we cannot comply with the proposed administrative rules. Further, we have no option but to request, on behalf of our 284 Oregon members and the hundreds of restaurants, small grocery stores and institutions



September 6, 1994

who purchase from our Cash and Carry stores, and exemption for food service containers or a complete food exemption.

Sincerely yours,



UNITED GROCERS, INC.

Alan C. Jones  
President and C.E.O.

ACJ:BMc:deq

FAXED  
9/6/94



September 6, 1994

VIA FACSIMILE (Hard copy to follow by mail)

Ms. Deanna Mueller-Crispin  
Senior Solid Waste Planner  
Hazardous and Solid Waste Division  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

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Waste Management & Cleanup Division  
Department of Environmental Quality

Re: Draft Rules Implementing Oregon's Rigid Plastic Container Law

The Northwest Food Processors Association (NWFP) represents 80 food processors in Idaho, Oregon and Washington. Many of our members currently have packages in the marketplace that are impacted by the Oregon Rigid Plastic Container Law. All of our members who are not presently in rigid plastic are affected by the long-term competitive implications of the law that profoundly restrict product flexibility so critical to a strong economic future for Oregon's food processing industry.

NWFP and others in the food industry have reiterated the problems associated with compliance with the law many times. The draft rules do not alleviate the concerns.

Recycled content is not a viable option. Some specific applications are available, but of little significance to most of the food industry. Future expansion of applications are unknown and, in the case of some materials, are unlikely.

Reuse has many of the same obstacles as recycled content. Technology for proper cleaning of potential hazardous materials is not available and may not be possible.

Source reduction is not possible for food processors using stock packages which have already been reduced to the lowest weight possible to meet integrity standards.

Recycling rate is the only viable alternative for food processors. However, Oregon food processing companies have no control over making or maintaining the 25% rate. Because of the volatile nature

Ms. Deanna Mueller-Crispin  
September 6, 1994  
Page 2

of plastics recycling markets, maintenance of 25% is tenuous from year to year, even if it is achieved in 1995. Changes which could drop the rate below 25% are based on factors outside the purview of food processors. Under the current rules, the rate could drop and precipitate immediate and unplanned packaging changes, loss of market, and/or fines.

Given that the rate is the only compliance alternative accessible to food processors, the proposed rules are vague on the following points:

1. Precise methodology used in rate calculation is not defined including definition of the recycler survey process, the auditing process for survey respondents, accuracy expectations on survey and waste characterizations, etc. Does industry, the state or others concerned about the accuracy of recycling data have recourse against recyclers who understate the amount of recycled plastic reported?
2. A public review process for proposed methodology is not advanced. No indication is given that there will be an appeals process built into the methodology.

Reference to a "guidance document" was made in earlier drafts of the rules, but was omitted because incorporation of the guidance document into the rules would be necessary. The department has stated that "Until we have more experience in this specific area we will not know what methodologies will work or not work in each situation" (Bill Bree letter, 7/27/94). The absence of this guidance in the rules affords the department latitude to experiment, while food processors are required to comply. In this void of information, companies looking to recycling rate as their only means of compliance do not know what is expected of them under the rules, or what to expect of the process once they start down the path.

NWFPA has participated in the rulemaking process from its beginning. Representatives have participated on the Implementation and Certification Task Forces. From the outset, we have called for attention to the food processor's dilemma. However, only minor consideration, in the form of an informational report to the Implementation Task Force, was given to this major policy conflict. Some task force members, including sub-chairman John Frewing, have expressed concern for the futility of focusing on minutiae while glossing over major problems which could undermine the enforceability of the law. Our concerns were dismissed because we were told that the statute confines the issues and this problem was viewed as one for the legislature.

Ms. Deanna Mueller-Crispin  
September 6, 1994  
Page 3

Much has progressed in the area of plastics recycling in Oregon since SB66 was passed in 1991. Meanwhile, technical obstacles of recycled content, reuse and reduction of rigid plastic food packages continue to plaque Oregon food processors. While food packages should be a part of the recycling rate calculation, the argument for including food packaging in the compliance alternatives of the law is no longer compelling. In its 1995 status report to the Oregon Legislature, the Department is obligated to address these points. Therefore, NWFPA requests support for a food processors exemption to compliance alternatives of the law and favorable consideration for the remainder of our points.

Thank you for the opportunity to comment on the proposed regulations. If you need further information, please do not hesitate to call me.

Sincerely,

A handwritten signature in cursive script that reads "Connie Kirby" followed by a stylized flourish that looks like a lowercase "m".

Connie Kirby  
Manager, Scientific and Technical Affairs



Dan Colegrove  
Manager, State Affairs  
Western Region

916/447-9425  
FAX 916/447-9439

September 6, 1994

Mr. Fred Hansen, Director  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Dear Mr. Hansen:

On behalf of the Grocery Manufacturers of America (GMA), I would like to offer written comments regarding proposed rules to implement Oregon's Rigid Plastic Container Law.

The Grocery Manufacturers of America is the national trade association for the manufacturers of food and other products sold in grocery stores throughout Oregon and the United States. GMA member companies provide consumers with more than eight out of ten grocery items, including processed foods, soaps and detergents, paper goods, juices and soft drinks. Our industry employs more than 2.5 million people nationwide, and approximately 5,000 Oregonians.

Even before passage of SB 66 in 1991, GMA has consistently voiced concerns about the difficulty most consumer products companies would face in complying. This is especially true for food and cosmetic manufacturers, who are also obligated to comply with product safety standards set by the Food and Drug Administration. Since the law was enacted, we have worked closely and in good faith with the Department of Environmental Quality (DEQ) and the Legislature to try to make the law workable.

In 1991, GMA wrote to Governor Roberts and expressed our concerns over the pending law as it applied to food containers. We noted at that time that federal safety standards preclude food companies from using recycled material in most plastic containers. Because of these standards, food companies would essentially have only one way to comply with the Oregon Rigid Plastic Container law: having the plastics' industry achieve an overall statewide recycling rate of 25 percent or more. Recycling rates, however, are out of the control of consumer products companies. Accordingly, if the then-existing recycling rate is less than 25 percent, and barring dramatic leaps in recycling technology, food companies would be unable to comply with the law.

In 1994, the same problems still exist. At this time, there is no official statewide recycling rate and there are doubts that it will ultimately exceed 25 percent by 1995.

Mr. Fred Hansen  
Page 2

The Food and Drug Administration continues to have reservations about the safety of most plastic containers using recycling materials. As a result, consumer products manufacturers, particularly food and cosmetic companies, face an impossible dilemma. If they cannot comply with Oregon's packaging law due to the conflicting demands for federal safety standards, they will have to discontinue sales in Oregon or risk massive penalties. Such a situation will disadvantage Oregon consumers and businesses, and will do nothing to promote plastic recycling. It is with this background in mind that we offer specific comments on the proposed regulations.

The proposed rules contain two definitions of rigid plastic container (RPC), Alternatives A & B. GMA and its members participated in the Implementation Task Force meetings where these definitions were developed. During these meetings, we pointed out that the Department must adopt a realistic definition of RPC to give the law a chance to succeed. Of the two proposed definitions, Alternative B would do more to promote plastic recycling and provides more opportunities for GMA member companies to comply. As such, GMA supports Alternative B.

Alternative A proposes an unnecessarily broad definition. By the DEQ's own estimates, the additional RPC's found in Alternative A would constitute less than 5 percent of all the rigid plastic containers sold in Oregon. Thus while adoption of Alternative A would not significantly increase the amount of plastic containers regulated, it could present serious hardships to those companies who primarily utilize these containers. Compliance options are already limited for food and cosmetic companies and they will be negatively affected by the adoption of Alternative A.

Including unattached domed lids, flexible plastic tubes and cookie trays, as proposed in Alternative A, would serve only to drive down the statewide recycling rate as there is simply no end market demand for such items. By significantly lowering the statewide recycling rate, Alternative A may make it harder for many industries to comply, especially food and cosmetic companies, and increases the possibility that companies may be penalized for being unable to safely comply with the law.

Alternative B is also the better choice because it allows for a more accurate assessment of whether a particular RPC falls within the scope of the regulation. Alternative B provides manufacturers with the choice of measuring volume either by the labeled fluid volume or by measuring the liquid volume of the container. Alternative A, however, forces manufacturers to use the labeled fluid volume only, a less accurate measure. Moreover, adoption of Alternative A would create a major inconsistency with the California Packaging Law which allows manufacturers flexibility in measuring volume. Manufacturers marketing products nationally would then be subject to having different packages fall within the recycling regulations in each state. For these reasons, as well, GMA supports the Adoption of Alternative B.

Mr. Fred Hansen

Page 3

The regulations also contain two proposed definitions of reduced container for qualifying for the reduced container exemption. GMA understands that the Attorney General has interpreted the statute to mean that a container must be compared to a container in existence five years previously and is not applicable to containers sold less than 5 years ago. We realize that the Environmental Quality Commission (EQC) may feel compelled to follow the Attorney General's advice. However, we believe it is within the power of the Commission and the Department of Environmental Quality to send a message to the Legislature endorsing the application of the reduced container exemption to products not in existence five years previously when the comparison to determine reduction size is to the original container used when the product was introduced. This interpretation of statute would yield the most appropriate way of reducing the amount of plastic going to Oregon landfills.

Excluding newly introduced products from taking advantage of the exemption does nothing to encourage innovation in source reduction for many products. This broader interpretation of the exemption recognizes that source reduction is one of the most effective ways that consumer products companies can reduce the amount of their packaging. In 1993, a national study by Franklin Associates found that the amount of packaging generated by grocery manufacturers has been steadily declining. In 1980, grocery packaging accounted for roughly 15 percent of all municipal solid waste nationally. By 1990, that figure had fallen to 13 percent and is projected to reach 12 percent by 2000. This trend is a direct result of source reduction efforts undertaken by consumer products companies, including many innovations in the area of plastic packaging.

Moreover, the Environmental Protection Agency has placed source reduction at the top of its hierarchy of solid waste management. The current interpretation of the Rigid Plastic Container Law as it applies to source reduction works against this nationally recognized priority. It stifles research and development of new ways of reducing the amount of plastic coming into Oregon. GMA urges the Commission and the DEQ to advise the Legislature that manufacturers must be able to utilize source reduction as an ongoing solid waste management tool and that the law should be amended accordingly. In addition, the broader application of this exemption provides some food companies with an important alternative means for compliance with the Oregon law.

More than three years have passed since the Rigid Plastic Container law was enacted. Since that time, the law has been studied and discussed at length by industry, the DEQ, and environmental groups. It is now clear that for the law to have any chance to work, changes must occur. This is reflected in the important regulatory interpretations discussed above, as well as in more fundamental ways. Not all of the needed restructuring is within the power of the Environmental Quality Commission; however, the EQC and the DEQ can help by endorsing the necessity of such changes for the successful operation of the law.

Mr. Fred Hansen

Page 4

GMA urges the Commission and the Department of Environmental Quality to do everything in its power to make the Rigid Plastic Container law functional.

GMA appreciates your efforts to date, particularly the recently announced delay in enforcement of the law until 1996. We believe more needs to be done, however, including adopting Alternative B of the proposed definition of rigid plastic container. In addition, the Commission should urge the Legislature to amend the law at the earliest opportunity to make source reduction an ongoing method of compliance, and to allow for the introduction of new and innovative packaging. Finally, the DEQ and the EQC should also strongly recommend to the Legislature that federally regulated containers that cannot comply with the law, i.e., those containers whose compliance with federal safety standards would preclude compliance with the Oregon law, should be exempted from its provisions. The safety issues involved are too great to take any risks.

GMA recognizes Oregon's efforts to manage its solid waste, including packaging. We are also committed to reducing our packaging; we have made significant strides and think we can do even more. The rigid plastic container law as it is currently written and interpreted, however, does not allow us to do so efficiently and safely.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Colegrove', with a long horizontal line extending to the right.

Dan Colegrove  
Manager of State Affairs





Manufacturers of stock and custom plastic bottles  
Setco, Inc., P.O. Box 68008, 4875 E. Hunter Avenue, Anaheim, California 92817-0808  
Telephone (714) 777-5200

September 6, 1994

Ms. Patricia Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Dear Ms. Vernon:

Setco, Inc. is a producer of plastic bottles for various pharmaceutical, food, cosmetics, automotive, etc. applications, most of which are affected by Oregon SB 66. All of our customers ship their products to Oregon and many are located in your state. We are working with all of them to attempt compliance during 1995.

We would like to comment on your proposed regulations. Specifically, Setco favors Alternative "B" definition of an RPPC as it is less confusing and should be easier to implement.

Thank you for your consideration of this matter.

Regards,

John McKernan  
Vice President of Engineering  
and New Product Development

JMcK:cw

cc: Laurie Hansen - American Plastics Council  
Harvey Casey - Setco, Inc.

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Waste Management & Cleanup Division  
Department of Environmental Quality





Manufacturers of stock and custom plastic bottles

Setco, Inc., P.O. Box 68008, 4875 E. Hunter Avenue, Anaheim, California 92817-0808  
Telephone (714) 777-5200

Post-it* Fax Note	7671	Date	9.6	# of pages	1
To	Patricia	From	John McKernan		
Co./Dept.	Vernon	Co.	Setco		
Phone #		Phone #	714.777.5219		
Fax #	503.229.6954	Fax #	714.777.5339		

September 6, 1994

Ms. Patricia Vernon  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

Dear Ms. Vernon:

Setco, Inc. is a producer of plastic bottles for various pharmaceutical, food, cosmetics, automotive, etc. applications, most of which are affected by Oregon SB 66. All of our customers ship their products to Oregon and many are located in your state. We are working with all of them to attempt compliance during 1995.

We would like to comment on your proposed regulations. Specifically, Setco favors Alternative "B" definition of an RPPC as it is less confusing and should be easier to implement.

Thank you for your consideration of this matter.

Regards,

John McKernan  
Vice President of Engineering  
and New Product Development

JMcK:cw

cc: Laurie Hansen - American Plastics Council  
Harvey Casey - Setco, Inc.



A SUBSIDIARY OF McCORMICK & COMPANY, INC.

# Letica<sup>®</sup>

CORPORATION

1700 W. HAMLIN RD.

P.O. BOX 5005

ROCHESTER, MICHIGAN 48308-5005

TELEPHONE (810) 652-0557

August 29, 1994

Patricia Vernon  
OR Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Ave.  
Portland, OR 97204

Dear Ms. Vernon:

On behalf of Letica Corporation, I would like to comment on the draft regulations pertaining to Oregon's Rigid Plastic Container Law.

Letica Corporation is a U.S. manufacturer of plastic packaging containers serving a wide range of industries. Our thin wall division primarily services the dairy industry with yogurt, sour cream and cottage cheese HDPE cartons. Our pail division, with plants in 10 states across the United States supplies HDPE buckets to the food industry as well as wide range of industrial businesses including, paint, gypsum, adhesives, chemicals, roof coatings, etc.

Letica currently has a recycling program to assist our customers in recovering containers in any region of the country (including Canada). Letica is committed to buying and utilizing those HDPE recycled materials, and incorporating them into our EcoPail<sup>®</sup> line. We are currently manufacturing EcoPails<sup>®</sup> with 25% PCR content for customers in all regions of the country. (We even have an Oregon customer that has used EcoPails<sup>®</sup> with 50% PCR since the beginning of this year!)

As you can see, Letica Corporation is no stranger to recycling and manufacturing with PCR content! As more of our customers recycle their containers and PCR becomes more consistent and readily available, Letica will continue converting industrial accounts over to EcoPails<sup>®</sup> in all regions of the country, focusing first on the West Coast.

## COMMENTS

I would like to focus my comments today on containers for the food industry, specifically looking at Letica dairy containers (ranging in size from 6oz to 95oz) and food pails (ranging in size from one to seven gallons). I would also like to address regulated pails.

Of the three compliance options for rigid plastic packaging containers, the only viable option for food containers to comply with is the recycling rate option. The other two compliance options are in fact illusory for food packages for the following reasons: 1) current technology has not developed in the PCR content arena to ensure that contaminants do not migrate from the plastic container into the food stuffs to satisfy FDA requirements; 2) reusable/refillable HDPE containers cannot be assured sterility to meet food requirements. As shown below, our industry is left with only one true compliance option--the recycling rate.

### **SOURCE REDUCTION EXEMPTION**

From reading the proposed rules and regulations, it is my understanding that Letica pails and dairy containers can meet the source reduced exemption (until 2000) if they each weigh 10% less than the plastic container used for the same product in 1990.

Letica currently molds food pails with 37 different mold styles. Each style has multiple molds (several styles have 10 to 15 molds per style!)

Letica also molds dairy containers with 30 different mold styles. All of these mold styles also have multiple molds. In addition, each dairy mold has multiple cavities (up to 16 cavities on some of the smaller yogurt containers). *The math is staggering!*

To convert food customers to source reduced containers, Letica would have to modify or make anew hundreds of molds (with thousands of cavities) for millions of dollars (each mold costs over \$100,000 new). While it is relatively easy to modify a mold and make thicker cups/pails, it is nearly impossible to go the other way and create thinner parts. New cores and/or cavities need to be made, pushing costs up excessively.

(We already made those changes back in the late 1980's when plastic resin prices shot up. Instead of calling it "source reduction", we called it "cost savings". We are currently down to the thinnest walled containers possible, without developing new resins, or turning the container into the equivalent of a bag because of sidewall compression loss.)

### **RECYCLING RATE OPTION**

It is my understanding from reading the rules and regulations that the recycling rate is determined by the Oregon DEQ for the 1995 calendar year. This rate will be determined "by mid-1996".

It is also my understanding that if this recycling rate exceeds 25% for plastics in the aggregate or for a specified type of container or for a product-associated container, then the recycling rate is met and there is no necessity to consider the other two options.

## **PROBLEMS WITH THE SOURCE REDUCTION EXEMPTION**

**WAIT FOR RECYCLING RATES:** The recycling rate will be determined a year and a half after all manufacturers are to be in compliance with the law. This draws us to the obvious question: Why must Letica (or any other container manufacturer) spend millions of dollars for a temporary five year exemption in 1995 when there is a strong possibility that the recycling rate will fulfill the law's requirements in 1996? There is really only one choice: wait and see; use as much PCR as possible in non-food, non-regulated containers, encourage end users to recycle their containers, and wait until the recycling rate for HDPE is determined to be 25% or greater in 1996.

**SOURCE REDUCTION OF DAIRY CONTAINERS = LESS RECYCLING:** Within the dairy industry, the move is on to find the lightest container available to meet the source reduction exemption and still maintain package integrity. The message is simple: "He/she who has the lightest container wins!" (at least for the next five years).

Letica does not have the lightest dairy containers in the industry and there is good reason for it. In fact, while we have light-weighted our dairy containers in the past, we have also increased the sidewalls of several containers, because dairies experienced problems with buckling sidewalls when lidding the containers on their fill lines.

At the present time, Letica is at the limit of lightweighting HDPE dairy containers. Therefore, the "lightest" containers available are thermoformed polystyrene (PS) containers. However, rigid PS containers are brittle which results in loss of product. More importantly, rigid PS containers are *not* recyclable in most communities.

Letica believes that encouraging dairies to switch from a more recyclable #2 HDPE container to a less recyclable container that results in greater product loss, for the sake of a few grams of plastic per container, is irresponsible and results in more waste, not less.

**SOURCE REDUCING PAILS = LESS EFFICIENCIES, MORE ENERGY:** Letica pails are designed and sold primarily to industrial users. Plastic pails were essentially invented in the 1960's as a rustproof, seamless, lighter, and more economical alternative to industrial metal containers. Because of the more favorable handling and safety characteristics of plastic pails, they gradually displaced metal containers in the marketplace so that today, plastic pails outnumber metal containers by approximately five to one. However, because they are *industrial* containers, very few are sold to consumers, and therefore are not generally accepted in curbside collection programs. (But they do end up in consumer's garages

being reused as car wash buckets, picking pails, storage containers, etc.)

Plastic pails are available in different sizes and wall thicknesses to efficiently accommodate various products without additional secondary packaging. Over the past 25 years, Letica has been improving the performance of pails (usually with less materials) to better meet customers' needs. However, for some industries it has meant going from a 90 mil pail to 100 mil pails (increasing materials use) to be able to stack the pails higher and increase efficiencies. Source reduction directly counters those increased efficiencies in shipping and warehouse stacking.

For pail customers, the usual questions are: "What is the next lower mil thickness pail available with the same volume?", and "Can I still stack them to the same height to maximize space in shipping and in my warehouse?"

Since Letica manufactures most pails sizes in various wall thicknesses, the answer to the first question is "Yes", unless the customer happens to already use the thinnest wall pail available (for a light weight product). The answer to the second question is usually "No", since wall thickness directly dictates stacking height for filled product. So, for the sake of saving a few grams of plastic, energy is wasted in shipping and inefficiencies are created in warehouses.

**REGULATED PAILS:** It is my understanding from reading the rules and regulations that there is no exemption for regulated packaging (unlike California's regulations).

Pails (especially the ubiquitous five gallon bucket) are a unique shipping package, unlike other plastic containers targeted by this legislation. Plastic pails must conform to several pre-existing ASTM standards (e.g. ASTM D4919--Testing of Hazardous Materials Packaging; ASTM D4504--Testing Standards for Motor and Rail Carrier Tariff Requirements). In addition, pails must meet U.S. DOT shipping requirements (see 49 CFR Part 178.601 et seq., 1993). Similar shipping requirements are set by the United Nations (see U.N. Recommendations for the Transport of Dangerous Goods, Chapter 9, Sections 9.7.2 through 9.8.2, and Section 9.6.7.1). Plastic pails are used globally and, therefore, must meet a number of other international and foreign government standards. Finally, they must comply with the OSHA Materials and Storage requirements (see 29 CFR Part 1910.176(b)). Thus, pails are already subject to regulations by a number of competing regulatory regimes, in addition to falling under these regulations. So, to lighten regulated pails by 10% (or even to add PCR to regulated containers--see 49 CFR 178.509 (b) (1)) is not be possible for a number of industries, and still meet the packaging regulations listed above.

## SOLUTIONS:

**FOR GREATER COMPLIANCE AND BETTER EFFICIENCIES: DELAY ENFORCEMENT UNTIL 1998 AND EXEMPT REGULATED CONTAINERS:** Letica believes that integrated waste management programs are vital to doing business in the 90's and beyond. We also believe that effective integrated waste management must encompass the entire packaging process and avoid becoming myopic and targeting only a portion of the process. Therefore, we request that you consider lengthening the compliance time period and allow the recycling rate to be established before forcing industry to spend millions of dollars modifying old molds or purchasing new molds in the name of source reduction.

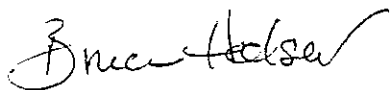
After PET, HDPE is the most recycled plastic in Oregon. Yet, by not allowing the recycling rate to be established before requiring source reduction, Oregon is encouraging the switching of resins in dairy containers and discouraging greater recycling of HDPE. Oregon is also encouraging greater inefficiencies, which is contrary to sound environmental/business practices.

Reconsider your time line. Delay enforcement until 1998. Give the recycling rates a chance before requiring source reduction for food containers. A delay will save a lot of money for all affected parties that could be better spent in creating better recycling opportunities for the state of Oregon. That's a win/win formula for all.

And lastly, we need regulated containers to be exempted. By meeting DOT/UN/OSHA regulations these packages are providing products *safely* to market. Let's not sacrifice that safety for the sake of saving a small amount of plastic or incorporating lesser quality PCR into regulated packages. (After all, many of these pails are being recycled and reused already, and I am working on Letica's behalf to get as many pails back into the recycling loop as possible to meet the PCR content of non-regulated packaging.) Regulated packaging needs to be exempted from this legislation.

Thank you for your attention.

Sincerely,



Bruce Holser  
Recycling/Environmental Specialist



## LANDIS PLASTICS, Inc.

P.O. Box 189 • 10800 So. Central Avenue • Chicago Ridge, Illinois 60415  
Telephone (312) 239-2390 • FAX (708) 422-0856

August 26, 1994

Patricia Vernon  
State of Oregon - DEQ  
811 S.W. 6th Avenue  
Portland, OR 97204

RECEIVED  
SEP 7 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Patricia:

Within the past several weeks we have received a copy of the proposed rules for OAR 340-90-310 through - 430 that the Oregon DEQ is considering for either "A" or "B" language options. As a rigid plastic container manufacturer, we have a vested interest in the outcome of these discussions and appreciate the opportunity to respond.

Having read through the rules, it is our opinion that Alternative "B" due to its narrower definition of a rigid plastic container seems to eliminate any "gray areas". We are concerned that if the definition of a rigid plastic container is too broad, then the efficiency of the DEQ, Product Manufacturers, and Container Manufacturers will be hindered. The elimination of any vague definitions will greatly improve the speed with which the container manufacturers can respond to the requests of our customers and the Oregon DEQ.

The ease of identifying the containers that the DEQ is going to examine, and the accuracy with which we will provide the data, will be aided by adopting Alternative "B". The issue of plastic packaging recycling is critical to Landis Plastics, our customers, and the entire packaging industry. It is imperative that all the affected parties jointly adopt a language that will effectively aid in the recovery of all plastic packaging.

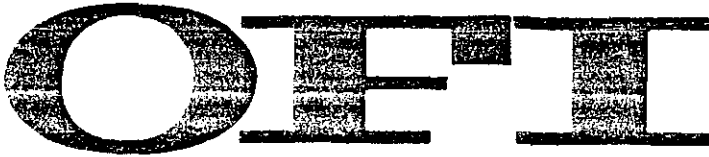
We thank you for your time, and we look forward to working with you in the future.

Sincerely,

H. Richard Landis  
C.E.O. & Brd. Chmn.

HRL/jsg





Association of OREGON FOOD INDUSTRIES Inc.

P.O. Box 12847 • Salem, OR 97309 • (503) 363-3768, Toll Free 1-800-824-1602, Fax (503) 363-5433

September 1, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S.W. 6th Avenue  
Portland, OR 97204

RECEIVED  
SEP 7 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

The Association of Oregon Food Industries (OFI) submits the following comments on the proposed administrative rules implementing Oregon's Rigid Plastic Container Law. OFI is the non-profit trade association representing the grocery industry in Oregon. OFI's 400+ corporate members transact more than 90% of Oregon's \$4.2 billion in annual food store sales. Members include multiple store operators like Safeway, Fred Meyer and Albertsons; independent retailers operating under the Thriftway, Sentry, Select, IGA and Food 4 Less banners; regional operations like Waremart, Roth's, and McKay's; and convenience store operators like Plaid Pantries, 7-11 and Dari Mart. Additionally, OFI counts among its members wholesalers, distributors, food brokers and other businesses providing goods and services to our retailer members.

Oregon's grocery retailers are supportive of programs that increase the amount of materials recycled in our state. The industry can point to its involvement in the Bottle Bill and accurately state that it works because retailers, distributors and bottlers made it work. Similarly, our industry was a pioneer in the development of recycling programs for corrugated cardboard, a program that continues to this day in the backroom of virtually every supermarket in Oregon. The industry also developed programs that utilize or recycle heat generated from refrigeration equipment to heat their stores, thus cutting down on the consumption of other energy sources. One industry retail group operates a highly publicized plastic recycling program in the state today. Certainly, the retail grocery industry has amply demonstrated its commitment to recycling when it has the ability to properly control and manage a specific recycling program.

In the case of Oregon's Rigid Plastic Container Law, however, Oregon's grocery retailers do not have the ability to control or manage the issue, and feel that they are literally caught between the proponents of the law and the plastics industry in the on-going debate concerning how to attain the mandated recycling rates. Oregon's grocery retailers do not have the ability to influence packaging decisions made by multi-national manufacturers of consumer goods. They do not have the ability to influence the development of markets for post-consumer, rigid plastic containers. Oregon's grocery retailers are not in the recycling business and have no desire to be



a part of it. Oregon's retailers are just that - retailers - not recyclers or post-consumer collection depots.

Oregon's grocers look on themselves as the purchasing agents for their customers. They offer manufacturer's products - both proven sellers and new items - to the consuming public at competitive prices and in the most attractive and customer friendly setting possible. Customers vote for, and decide the fate of, these products through their purchases. Purchasing decisions are influenced by the manufacturers' developmental and marketing programs, advertising campaigns, sales forces, and product design and pricing departments. Included in these manufacturer marketing programs are decisions on packaging material. The manufacturer decides what material is used, not the retailer. That decision is based on food safety regulations and science, as well as marketing aesthetics, package durability, weight and costs, etc. The end result is that the store shelves of Oregon's grocery retailers are filled with products utilizing rigid plastic containers both for food and non-food items. These are products that Oregon consumers desire, utilize and wish to continue to be able to purchase.

This leads us to our major concerns regarding the proposed rules. Those concerns are:

1. The fact that if the compliance rates contained in the rigid plastic container law are not met, OFI's member retailers are faced with the loss of the ability to sell literally thousands of items that Oregon's consumers purchase, utilize and demand be available to them on a on-going basis. This is especially worrisome when a major portion of the state's population is located on a border with another state, as is the case with Portland. This creates a situation in which Oregon's retailers are not able to compete with Washington's (or Idaho's or California's) retailers in terms of product selection and availability. Oregonians could simply travel across the Columbia to Clark County to purchase those items encased in rigid plastic containers which are no longer available in Oregon. OFI and its members do not think this is right or fair. We do not believe this is the outcome that the designers of the law envisioned when they drafted and passed the legislation. Further, we do not think that our customers will agree with, or take kindly to, the loss of valued products. Many retailers' ability to survive could be seriously impacted by these rules and this law. They may not be able to deal with the loss in sales that may result from the implementation of these rules.

2. OFI acknowledges the recent directive by Fred Hansen, director of the Department of Environmental Quality (DEQ) regarding the effective date for enforcement of these rules. By pushing that date to January 1, 1996, it enables all affected industries to continue to work towards meeting the various compliance rates included in the rules. However, the fact remains that these rules will begin to be enforced before the DEQ has calculated the various recycling rates and can absolutely tell the affected industries whether or not the packaging they are utilizing is in compliance. If the DEQ cannot tell the affected industries whether or not a particular type of plastic or rigid container is in compliance prior to, and after, the law goes into

effect, then we strongly feel that the DEQ should not enforce that law until they can provide the proper information. Thus, we recommend that retroactive enforcement of the law be prohibited and that all enforcement be deferred until the DEQ actually calculates the recycling rates or can accurately tell all affected industries specifically which packaging and plastic types are in compliance with the law.

3. Oregon's grocery retailers are further affected with regard to their in-store deli and bakery operations. The use of clear plastic clamshell containers is prevalent in both of these areas of store operations. Their use has led the DEQ to propose that these retailers be classified as product manufacturers under the proposed rules. Thus, they are subject to all the reporting requirements and fines under the rules if not in compliance. The use of these containers is preferred because:

a. It is the safest type of packaging to utilize for the products our members sell in their deli's and bakeries.

b. It provides the safest package to ensure product integrity until the customer gets the product home, and also gives the customer the best package in which to store the product.

c. This packaging gives the customer the ability to view the product while making the purchasing decision without having to open the package. This is both a marketing and food safety benefit.

d. The packaging is less expensive than alternative choices, and not prone to leaking or seeping when holding wet or moist products. These containers are not designed to be utilized to hold a specific product. Rather, they are utilized by over 10,000 point-of-sale, food service establishments in Oregon to hold a great variety of products. These containers are also generic in nature and purchased by the users from a great variety of suppliers and not directly from the manufacturer. Thus, the manufacturer does not know who purchased their containers nor what product that container was used to hold. This absence of direct relationships precludes compliance with the specific options listed in these rules because neither the retailers, the food processors nor the container manufacturers are able to obtain the necessary compliance data. Thus, OFI's members are placed in the uncomfortable position of having rules drafted that they cannot comply with because of the nature of the container they use.

Again, the DEQ cannot tell these retailers whether or not this type of container will meet the law's requirements by January 1, 1996. Thus, the regulator can not tell the regulated industry whether they are in compliance or not, yet reserves the right to retroactively enforce the law roughly six months before they know if that type of plastic container is in compliance with the rules' requirements. This is not logical, fair or in keeping with the practices of administrative agencies in the past. It is the DEQ's responsibility to accurately inform affected businesses at the time the law goes into effect on how to comply with the law. In this case, the DEQ cannot do so yet expects affected industries to be in compliance.

We suggest that the DEQ do one of two things. Either: (a) follow California's example and exempt rigid plastic containers that hold a food product for less than seven days; or (b) postpone the enforcement of the law until the recycling rates are accurately calculated and the DEQ can tell affected businesses what types of packaging are in compliance. Further, the DEQ should ban by rule the retroactive enforcement of the law. The only alternative for deli and bakery operators is to go to some type of paper container, which will increase the amount of waste going into Oregon's landfills, while leaving unaddressed the goal of recycling these types of containers.

4. OFI supports the Alternative B definition of a rigid plastic container. We feel that this definition is more in line with legislative intent at the time the bill was drafted and passed. In our opinion, this is the accurate definition of a rigid plastic container - the one that the average citizen would likely come up with if asked to define the term. Alternative A is a definition that expands the concept to draw other plastic products into the regulations. Other than the environmental lobby's desire to draw as many plastic products as possible under the coverage of the law, we see no real rationale for expanding an RPC's definition to include the items added in Alternative A.

Alternative B also calls for a reduced container rule that makes a great deal of sense to our industry. It will allow new products introduced after January 1, 1990, to still meet the reduced container provisions. Our industry sees literally tens of thousands of new items introduced every year. It makes no sense to OFI that these new products will not be able to use packaging reduction to gain an exemption in the future. The inability to use this exemption is unfair to manufacturers producing new products. They should be able to utilize the same exemption options as competitors who market pre-1990 products. Food manufacturers generally can not use recycled product in their packaging and see this option as the only one available for them to comply with the rules. Alternative B will allow them to consider this option, Alternative A will not. OFI feels that these food manufacturers should be afforded the ability to consider the use of this exemption.

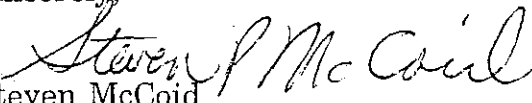
5. OFI would like the rules to clearly state that retailers not otherwise product or container manufacturers will not be subject to enforcement for selling a product in a noncomplying container. As we stated above, we are purchasing agents for our customers and we feel it is only fair that if we sell a product that a manufacturer stated was in compliance with Oregon's Rigid Plastic Container Law the retailer should not be punished with a fine. We are bothered by language found in the DEQ's "Memo To: Interested and Affected Public," dated July 22, 1994, on page 18 where it states that "... a retailer not otherwise a product or container manufacturer would probably not be subject to enforcement..." "Probably" is not specific and can be interpreted to mean that retailers could possibly be fined for offering products for sale that they were led to believe were in compliance. Rules should clearly state enforcement policies and procedures avoiding any gray areas that could be subject to an enforcement agency's interpretation.

In summary, OFI feels that the proposed rules place the retail grocery industry in the position of being unable to comply with the requirements due to the inherent qualities of the generic, food service packaging used in our in-store bakeries and delis. The rules also carry the potential to create large scale withdrawals of products from sale due to a lack of compliance with the regulations, leading to the loss of business to unregulated out-of-state retailers. We support the RPC definition found in Alternative B as being the definition that more closely meets the legislature's intent. We would like to see enforcement of the rules postponed until after the DEQ finally calculates the recycling rates of the various plastic types and containers. To require adherence to rules when the regulator cannot tell the regulated entity if it is in compliance is inherently unfair and not in keeping with the intent of the law. Finally, we want it clearly stated that retailers, not product or container manufacturers, will not be fined for selling products not in compliance with the rules.

We thank you and the various task forces for the time, effort and obvious thought and concern that went into the development and formulation of these rules. It is a very complex issue that cannot be dealt with easily. Be assured that OFI remains ready to cooperate with the DEQ in any way possible to ensure the proper notification of the final rules to its members and the grocery industry. We are also available at any time to assist in developing rules or policies that deal with the problems identified in this written testimony.

Thank you for your consideration of our requests and testimony.

Sincerely,

  
Steven McCoid  
President

# Chesebrough-Pond's USA Co.

RESEARCH LABORATORIES  
TRUMBULL CORPORATE PARK, TRUMBULL, CONNECTICUT 06611

JO ANN GOLIA  
MANAGER  
PRODUCT SAFETY & REGULATORY AFFAIRS

September 1, 1994

## VIA FEDERAL EXPRESS

Ms. Helen Lottridge  
Hearing Officer  
Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

RECEIVED  
SEP 02 1994

Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Ms. Lottridge:

Chesebrough-Pond's USA Co ("CP USA") would like to take this opportunity to comment on the Proposed Rules for Implementation of Oregon Rigid Plastic Container Law, ORS 459A 650-680. CP USA is a member of the Cosmetic, Toiletry and Fragrance Association ("CTFA"), and in general, supports comments submitted by the Association on behalf of its members.

### Rigid Plastic Container definition - section OAR 340-90-330

Chesebrough-Pond's USA Co supports Alternative B definition of "Rigid Plastic Containers" (RPC) as defined in OAR 340-90-330 as it provides clarification of what makes a container "rigid". Alternative B specifies that a RPC is designed to completely contain a product, under normal usage, without other packaging material except a lid or closure. CP USA supports the clarification that tubes which can be easily hand folded, flexed and twisted without damage to the container are not defined as "Rigid Plastic Containers" and are therefore not subject to the RPC Law. Although we prefer Alternative B to Alternative A, Alternative B could still allow for misinterpretation of whether a tube is a RPC. CP USA urges consistency with California's RPPC law which excludes "tubes" from the regulation.

Source Reduction - section OAR 340-90-340(5)

Chesebrough-Pond's USA Co supports "Source Reduction" Alternative B defined in OAR 340-90-340(5) as it takes into account comparison with containers not necessarily sold "five years earlier". Alternative A precludes RPCs from compliance via the source reduction option. This is contrary to the intent of ORS 459A 650-680 and to EPA's solid waste reduction hierarchy which identifies source reduction as the most preferred method of waste reduction. CP USA believes that option A unfairly penalizes products that have not been on the market for five years from using this route of compliance.

Although preferable to Alternative A, Alternative B is still deficient in that it prevents the introduction of new products in "source-reduced containers". CP USA does not feel the legislative intent was to exclude newly introduced products from complying via source reduction. For example, with the intent of introducing less plastic into the waste stream, a company could introduce a new product (formula) in the reduced version of a previously marketed container, and it would not be in compliance with the RPC law since it could not be compared to the "container used for the same product by the same manufacturer five years earlier". As the original purpose, reiterated in OAR 340-90-310(1)(a), is to "reduce the amount of RPC being disposed of in Oregon", source reduction should be a true option for compliance with the RPC Law rather than a one-time five year exemption. Further, during the rulemaking process, the task forces and DEQ were urged to maintain consistency with the California RPPC rule which allows for innovation through new product introduction and treats source reduction as a true compliance option. This inconsistency with California may inhibit CP USA's ability to introduce new products in Oregon, thus limiting products available to the Oregon consumer.

A workable source reduction alternative becomes extremely important because the incorporation of recycled material into cosmetic packages presents significant technical challenges. Cosmetic manufacturers are subject to rigorous FDA safety and integrity standards as OTC Drugs. The DEQ must recognize that we are constrained by our choice of container material due to safety requirements for cosmetics under the Food, Drug and Cosmetic Act (21 U.S.C. 321). Of primary concern, is the migration of contaminants from the recycled material into the cosmetic product. Marketers of Post Consumer Resin (PCR) acknowledge that due to a lack of recycling programs they can not guarantee a continuous supply of high quality PCR. Ultimately, this will manifest itself as a compliance issue when PCR sources are not available. Also, the price of PCR will rise and may prevent this compliance option from being used for availability and economic reasons. Chesebrough-Pond's USA Co supports the exemption of OTC drugs (OAR 340-90-340(2)(a)), as defined in OAR 340-90-320(5), from the requirements of the RPC law.

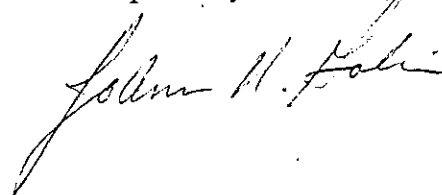
Corporate Averaging

Corporate Wide Averaging was discussed at numerous Implementation Task Force meetings, but unfortunately consensus was not reached. Chesebrough-Pond's USA Co endorses Corporate Averaging and feels it should be permitted as a tool for compliance with the RPC law. Allowing Corporate Averaging of containers across product lines would accomplish the objectives of the RPC law by encouraging recycled content rates above 25% in certain packages to account for containers not able to comply with any options or source reduction. CP USA urges the DEQ to reconsider its position and include a provision allowing Corporate Averaging that is consistent with California's RPPC rule.

CP USA supports OAR 340-90-350(2) which specifies that product manufactured prior to January 1, 1995 is not required to meet the compliance standards of the RPC law. This means that packages in the stream of commerce need not be pulled from shelves in Oregon if not in compliance by 1/1/95. We also support the mechanism for confidentiality of certification data as specified under OAR 340-90-420.

In conclusion, Chesebrough-Pond's USA hopes DEQ will consider these comments in making the rule workable for industry while still meeting the original objective of waste reduction. DEQ and EQC have the opportunity to modify the RPC rule to reflect a true options law by incorporating source reduction as a full compliance option, recommending a provision for newly introduced products and supporting corporate averaging. Please place my name on the "rulemaking mailing list" to receive a copy of the recommendation that is presented to the EQC for adoption.

Respectfully submitted,



cc: Mr. Gerry Preston, DEQ Hearing Officer  
Mr. Charles W. Donaldson, DEQ Hearing Officer





June 10, 1994

Ms. Pat Vernon  
 Department of Environmental Quality  
 Waste Management and Cleanup Division  
 811 S. W. 6th Avenue  
 Portland, Oregon 97204

Dear Ms. Vernon:

Thank you for the opportunity to respond to the draft regulations dated 7/22/94. In response to these rules Owens-Brockway Plastic Containers, a manufacturer of plastic bottles, would like to offer several comments.

First, we believe it is a mistake to include food containers in this legislation. Most containers are already source reduced and can not provide adequate packaging qualities at a 10% reduction in weight. This will require many containers to use PCR content or withdraw from the market. PCR content is not feasible with respect to FDA regulations and consumer safety for packages made with HDPE and many other plastics. The loss of HDPE food packages in Oregon may result in packages which are less recyclable and take up more landfill space.

We also support corporate averaging. The California Rigid Plastic Packaging Act provides for corporate averaging. We feel that a consistent provision in Oregon will be beneficial. Corporate averaging allows the post consumer material to be used at higher rates where possible and we are concerned that by disallowing of corporate averaging some companies will reduce the use of PCR.

Finally, we believe the provisions labeled "Alternative B" are more reasonable and practical. We especially feel that tubes should not be defined to as rigid plastic containers. Tubes are not consistent with the adjective rigid and we do not feel the law should be expanded to non-rigid containers.

Very truly yours,

*James E. Hiltner*  
 James E. Hiltner  
 Manager of Recycling

*Pat Vernon*

Post-It Fax Note	7671
To: Pat Vernon	
Co./Dept: DEO	
Phone #: 503-229-6945	
From: J. Hiltner	
Date: 6-6	
# of pages: 1	

Good Folks

1 Sept 94

The DEQ should adopt strong rules to implement the plastics recycling law. "Rigid Plastic container" should encompass as much as possible, including motor oil containers. Plastic pyrolysis should NOT count as recycling.

Thanks

97329

Mike Gross, PoBox. 768, Cascadia, OR



# OREGON REFUSE & RECYCLING ASSOCIATION

RECEIVED  
SEP 9 1994

September 2, 1994

Bill Bree Waste Management & Cleanup Division  
Department of Environmental Quality  
Waste Management & Clean Up Division  
811 SW Sixth Avenue  
Portland, OR 97204

Testimony of the Oregon Refuse & Recycling Association  
on  
the Proposed Rulemaking for Implementing  
the Rigid Plastic Container Law

The Oregon Refuse & Recycling Association (ORRA) (formerly OSSI) is a nonprofit, statewide trade association. Its members are mostly small, independently owned companies. Those member companies collect and process most of Oregon's residential and commercial recyclables and refuse, in addition to operating many of its municipal solid waste transfer stations and landfills.

### Proposed OAR 340-90-380 RECYCLING RATE CALCULATION

ORRA has two areas of concern with this proposed section of the rules:

1. Proposed OAR 340-90-380(c)(A)(ii) discusses the discretionary use of an annual recycling census of "...all parties directly involved in brokering, processing, or recycling post-consumer rigid plastic containers from Oregon."

"Recycling" is not defined in these proposed rules, but is defined in the Solid Waste Management chapter, ORS 459.005(20) as:

...any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity.

It is ORRA's understanding that this statutory definition of recycling is the definition intended for interpretation of this



Bill Bree  
September 2, 1994  
Page 2

proposed rule. "Recycling" is not intended to include collectors of recyclables. If clarified that this is the correct definition, this section of the proposed rule is acceptable.

2. Proposed OAR 340-90-380(c)(A)(iii)(1) and (11) discusses designing and implementing procedures to conduct the discretionary annual recycling census, including developing and maintaining a comprehensive list of "handlers and reclaimers" and obtaining data from "handlers and reclaimers."

The term "handlers and reclaimers" is not defined either in solid waste statutes or in this proposed rule. It appears the parties that the term "handlers and reclaimers" is intended to cover are "...all parties directly involved in brokering, processing, or recycling of post-consumer rigid plastic..." as stated in section 340-90-380(c)(A)(ii). To avoid confusion, the term "handlers and reclaimers" should be deleted and replaced with the language from 340-90-380(c)(A)(ii).

ORRA appreciates this opportunity to comment on the rulemaking proposal for implementing Oregon's rigid plastic container law. We know how much time has been spent on developing these rules and commend the Department for its patience and diligence. ,

Sincerely,



Max Brittingham  
Executive Director  
Oregon Refuse & Recycling Association

My Name is Tony Kingsbury - I grew up in the Willamette valley, ~~the~~ graduated from Corvallis High and Oregon State and am now a member of the plastics industry as an employee of the Dow Chemical Co.

In reading through those areas in contention with regard to the rules for ~~BBB~~ Oregon's Rigid Plastic Containers. I want to make the following points

We strongly support the language of Alt. B over Alt. A through out this document.

First Pg A-5 lines 45-48 Include the addition of section (e) by adopting Alt. B.

... Is designed to completely contain a product, under normal usage, without other packaging materials except a lid or closure.

This language would properly exclude items not normally considered container in and of themselves - cookie, ~~trays~~ <sup>meat</sup> trays are prime examples. These items do not contain a product on their own - in most cases other packaging materials provide the containment like a box or bag. This type of plastic is "other plastic packaging" vs rigid plastic packaging"

The adoption of Alt B here will help clarify potential gray areas and help

- DEQ manage this law

- Waste auditors more effectively sort

- Companies using Rigid Plastic Containers determine <sup>their</sup>

Next

Adopt Alternative B, page A-6 lines 11-16  
which clarifies that flexible tubes are  
excluded from the law.

This ~~is~~ consistent with the legislative intent  
of the law: Section 34a of SB66 defines  
rigid plastic containers as follows:

... any package composed predominantly of plastic  
resin which has a relatively inflexible finite  
shape or form ... ~~and that is capable~~

Webster defines inflexible as "not readily bent" or  
"deficient in or devoid of flexibility," or "appearing  
stiff and unyielding."

Thus it would appear the intent of the legislature  
and the statutory language was to exclude  
flexible tubes from compliance requirements.

Verifies Alt. A which simply says "rigid plastic  
tubes" are included.

Alt B. allows us to  
~~keep~~ keep the lawyers of this by clearly  
stating a practical method of determining  
what's in and what's out.

look at Crest example

Unaware of anyone recycling tubes of any material since cleaning  
is so difficult. So neither is likely to be recycled - yet the tube  
is 90% source reduced - and harder to incorp. recycle content.

Next

Adopt Alt. B page A-6 lines 18-23

Alternative B further defines whether trays are "in" or "out"

The <sup>clarity</sup> provided will help the regulated community easily determine whether or not their products ~~are~~ must comply <sup>during waste studies</sup>

- It will also assist ~~field~~ crews <sup>(and Oregon Tax payer \*)</sup> by minimizing the time spent on "judgement calls" on what's in and what's out.

I can also imagine it might save a few consumer product company lawyers from ranging with their State counterparts.

On page A-9, lines 30-42 Adopt Alt. B language

The main reason for this is to account for the numerous items introduced into the Oregon marketplace between 1990 and 1995.

Without this ~~clause~~ <sup>language</sup>, new products ~~and~~ <sup>without equiv.</sup> ~~and companies~~ are at a competitive disadvantage. Since they effectively can't use the source reduction option.

This was not the intent of the law.

Please adopt alternative B language.

lastly I wanted to comment on an issue associated with the Responsibilities of a Product Manufacture. pgs A22 - A27

I am concerned for point-of-sale product packagers and their inability to effectively deal with the requirements of this law.

Point-of-sale packagers in the form of fast food restr., deli's, <sup>conv.</sup> stores, etc. will account for a huge portion of the regulated community yet the <sup>PoS</sup> containers in question account for a very small portion of the waste.

Many of these containers are bought by the smaller operations <sup>not McD's + Burger King</sup> are generic and have been so for a very long time thus their ability to determine a containers <sup>standing</sup> in 1990 let alone in 1995 is difficult at best.

Some how I think it would be in the DEQ's best interest to adopt language that would help Point-of-sale folks cope.

For example how would a deli determine the source reduction requirements for a container who's contents are specified by the person on the other side of the counter? reduces

MODIFY THE RULE TO DEAL W/ THE SPECIAL CIRCUMSTANCES OF POS



McDonald's

RECEIVED

SEP 17 1994

McDonald's Corporation  
McDonald's Plaza  
Oak Brook, Illinois 60521  
Direct Dial Number

Waste Management & Cleanup Division  
Department of Environmental Quality

State of Oregon  
Rigid Plastic Container Law  
Written Testimony to Department of Environmental Quality  
Sept. 9, 1994

Submitted by:

Robert L. Langert, Director of Environmental Affairs,  
McDonald's Corporation, Kroc Dr., Oak Brook, Il. 60521

Background

- ◆ Served on CONEG's Source Reduction Council
- ◆ Participated in McDonald's/Environmental Defense Fund task force
- ◆ Direct McDonald's Waste Reduction Action Plan (WRAP)--more than 100 initiatives to reduce, reuse, and recycle/compost
- ◆ Head up McRecycle USA, McDonald's ongoing commitment to purchase more than \$200 million/year of recycled products
- ◆ Founding member and Chairman of the National Recycling Coalition's Buy Recycled Business Alliance.

Over the past six years, I have exclusively worked on waste reduction activities for McDonald's. As active waste reduction practitioners, we at McDonald's appreciate this opportunity to briefly provide you our insight on the key issues we have confronted, and how we have faced some of the barriers toward achieving continuous waste reduction in our restaurants. This input is put in perspective to the proposed Oregon Rigid Plastic Container Law.

McDONALD'S TOP TEN LESSONS LEARNED

*1. Tailored corporate waste reduction programs have the best impact*

Customized programs allow for an appropriate strategic approach and setting the right priorities. The rates and dates of the proposed legislation inhibit effective and comprehensive corporate waste reduction programs.

McDonald's six month in-depth study with the Environmental Defense Fund on how to reduce waste within the McDonald's system, including its distributors and suppliers, is a good example of customized environmental management. The 100 waste reduction projects in the attached WRAP status report illustrate the need to take the 3R (reduce, reuse, recycle) options and comprehensively apply them to an individual business. WRAP shows how waste reduction is not a home run

mentality, but a series of bunts and singles--incremental and ongoing.

For McDonald's, we learned that 80% of our waste is behind-the-counter, so our priorities should reflect that. For example, corrugated is 1/3 of our material's usage. Therefore, we have spent significant time recycling it, specifying recycled content, and putting old corrugated containers back into our carry-out bags.

About half of our packaging comes in direct food contact, involving an important set of safety and health priorities, including FDA regulations, that needs special consideration. This means recycling and recycled content alternatives are restricted, so McDonald's spends significant R&D time and money on new materials and technologies to identify and implement source reduction.

*2. The 3 R's are not mutually exclusive*

Waste reduction is not just source reduction, or reuse, or recycling. It's a combination of all. Our WRAP plan is an example. Trade-offs and options have to be weighed looking comprehensively--not narrowly.

The proposed legislation is heavily weighted toward recycling and recycled content rates and dates. Why such a narrow emphasis when there is not a similar emphasis on source reduction, the number one waste reduction priority?

*3. Source reduction means more than just the package itself*

Forced and specific mandates would be stifling. McDonald's has several innovative projects in test which we believe are terrific environmental advancements, but by regulatory measurement tools, these changes would not be captured.

For example, we are working with a paper company on a totally chlorine free french fry bag in use now in over 1,000 restaurants. We've also recently converted to soy-based inks for Happy Meal boxes and Chicken McNugget containers.

We are currently investing major R&D on new material sciences, many of which the primary benefit is in the manufacturing process. Take our brown, unbleached carry-out bag as another example. Three years of hard work made this breakthrough package possible. Our primary motivation was getting out of the white, bleached material. Where would our motivation be if legislation steered us elsewhere?

We are looking at the same concept with all of our packaging, researching benign bleaching alternatives.

We feel that taking a comprehensive life-cycle approach is critical for making the best environmental decisions. A life-cycle approach involves not just the end product, but the energy needed to produce and ship it, and the pollution created from cradle-to-grave. A major flaw in this proposed legislation is the exclusion of this type of life-cycle thinking. For example, the implications of the law favor paper hot cups over plastic ones. Every study McDonald's has seen, and the environmental groups we have consulted with, show absolutely no environmental advantage to a paper hot cup. As a matter of fact, a paper hot cup uses more energy in manufacturing, generates more air and water pollution in production, and even creates more solid waste. The Rigid Plastic Container Law would force McDonald's to make changes in its business that we feel would create more environmental impacts--not less.

*4. Market-based solutions are key for sustainable environmental progress.*

We would agree that market development is the key, but not by instituting rigid, generic standards.

That's why we have McRecycle USA. We have developed a data base of 500 suppliers and shared it with more than 200 organizations. We buy more than 200 McRecycle items for the construction, equipping and operations of our restaurants.

We need to use our purchasing dollars and practices with the environment as one key criteria. McRecycle is a market-based success story. For example, since McRecycle began in April 1990, our recycled paper purchases have increased from 15% of our packaging to more than 45%--more than \$100 million additional dollars helping create a demand. With several of our packaging items, we have set goals of increasing the post-consumer content to levels well beyond 50% over the next year. With the proposed legislation, 25% is a floor standard that would become a ceiling for many companies. Why set such restrictive standards? The potential for a higher achievement may be possible with certain products.

Based on our progress and the definite need for more market development, we helped start the Buy Recycled Business Alliance: 5,000 companies by 1995 committing to buy more recycled products and reporting their progress annually.

*5. Recycling has limits, especially for food service operations*

Much of our waste is food scraps and plastic and paper packaging contaminated with food remains. This type of legislation could force something no one wants: low quality, limited end-product application and high cost.

Source-separated composting is probably a more viable option for us. We are spending major R&D dollars testing this waste diversion method for McDonald's. The proposed legislation would be a deterrent for finding innovative solutions to diverting waste in the food-service sector.

*6. Providing public accountability and reporting is an effective catalyst*

The Council of Northeast Governor's (CONEG) Source Reduction Council process was our first endeavor into such a public forum, and it was an outstanding opportunity for us. It truly focused us on our packaging practices, and sparked us toward even more packaging innovation.

The National Office Paper Recycling Challenge has been another real effective catalyst for McDonald's. It coalesced us to get our five different internal purchasing arms involved with office supplies and publications to work together, adding recycled criteria into our home office business more effectively.

Providing accountability is incorporated into our overall environmental policy. McDonald's recently joined the U.S. EPA's WasteWise program, another voluntary approach which wisely seeks broad and comprehensive waste reduction from businesses, including source reduction, recycling and recycled content. These examples, along with the WRAP report, demonstrate our commitment and philosophy that being a business leader means being an environmental leader as well.

*7. Environmental packaging can be gained without cost increases, but time and flexibility is needed*

Earlier, I referred to how McDonald's is spending \$100 million more on recycled packaging now versus three years ago. This advancement was not a net increase in our costs. But if we were forced into "dates and rates," this type of progress would be marred by unrealistic time parameters and muddled by severe economic factors. Many of our changes have, at first, indicated a cost increase of 5-10%, but after extensive work, testing, negotiating, etc., we have been able to make environmental changes with sound economics as a result.

For instance, examine our trayliners: 75% post-consumer; 25 pre-consumer--along with significant cost savings per year. It took three years to make these trayliners made mostly from

office paper waste. They meet our quality specifications and save us money: a win for us, our customers, our suppliers and the environment.

Another example is our napkins (100% recycled content/30% post-consumer). We helped pay for the napkin's recycled content by figuring out how to source reduce one inch off the napkin.

I am concerned that companies would lose this type of creativity and good economics with a "rates and dates" approach.

*8. Packaging changes are secondary to uncompromising standards for health and cleanliness*

We could potentially save much money and solid waste by not wrapping our straws, coffee stirrers, and cutlery, but local health codes coupled with customer expectations make this packaging necessary. Collectively, all of us who serve the public should not underestimate the critical nature of sanitation and health safety in our business.

It would be imprudent public policy if companies were mandated to rush into post-consumer recycled content where meeting FDA guidelines is not assured. There could be negative health and safety consequences. We cannot be mandated to reduce or cut back if it might sacrifice quality standards when the typical McDonald's community restaurant serves more than 1,500 people a day who rely on us and trust us.

*9. Incorporating the environmental ethic into one's business is critical*

It is extremely difficult to legislate this concept. Legislation should encourage and not take away our business entrepreneurship. We have been able to make significant progress within the McDonald's system, our restaurants and supply network, because of instilling an environmental ethic as an integral part of our business--on par with Q,S,C and V (Quality, Service, Cleanliness and Value).

We continue to venture into unique and proactive actions and partnerships to address waste reduction in our business. I am afraid if legislation is crafted that is overly prescriptive, we would lose flexibility, creativity, and economic leverage. We would be forced to do things that may not make sense, and give up on things that do make sense.

I look back on all that we have done, and work we have in progress, and I think proposals that you are considering today would limit progress.

10. *The environment should be a business ally, not an enemy.*

Our cumulative actions have been good for the environment and our bottom line. Although we have invested significantly, we have spent it wisely. I am proud to say that we have put ecology as a mainstream issue in our business, not as a fringe "nice to do" thing.

Our environmental efforts have helped all the Oregon McDonald's franchisees, not only as leaders in their community, but by adding overall value to the business. Even with the price sensitivity in our industry being so prominent, the environment has been our ally, not an enemy. And that's the way it should be.

CONCLUSION

Sustainable environmental practices are necessary, but business cannot lose its flexibility, its empowerment, creativity and entrepreneurship through well-intended, but overly restrictive legislation. These qualities make business successful and competitive, and they make sense for achieving the most environmental progress, too.

Waste reduction is a critical responsibility of business. Our progress shows that the most effective reduction programs are customized to a business. They are comprehensive, nipping away at all aspects of reducing, reusing and recycling. The proposed legislation works against these principles.



Bob Langert  
McDonald's Corporation  
Director of Environmental Affairs  
Sept. 9, 1994

#121

Joshua Berger  
po box 69031  
Portland, OR 97201

DEQ Waste Management and Cleanup Division  
811 SW Sixth Ave.  
Portland, OR 97204

RECEIVED  
SEP 1 1991

RE: Plastic containers and the Oregon recycling law.

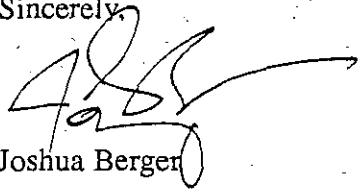
Waste Management & Cleanup Division  
Department of Environmental Quality

For the past three years I have been the Environmental Coordinator for McMenamins Pubs and Breweries. We have 28 locations mainly in the Portland-metro area but also in Eugene, Salem, Corvallis and Lincon City. I have had extensive experience in attempting to deal with plastic container recycling. What I have found is that plastic recycling is a difficult proposition at best. Some types of plastic are convenient to recycle and have legitimate end markets while others are confusing, have highly toxic, questionable recycling (not to mention manufacturing) processes and no legitimate end markets.

The plastic industry has spent more time and energy creating a positive public image and fighting regional initiatives which promote recycling than it has developing solutions to our solid waste problem. The proposed exemptions to Oregon's groundbreaking recycling law are not only a bad idea, but they let the manufacturer off the hook. They say, in effect, that it's okay not to be responsible for the waste you create.

Forward thinking lawmakers across America, around the world and in Oregon have come to the realization that the only way to accomplish waste reduction is to mandate it. Keep the responsibility where it belongs; on the manufactures of recyclable materials not on the shoulders of our future generations' landfills.

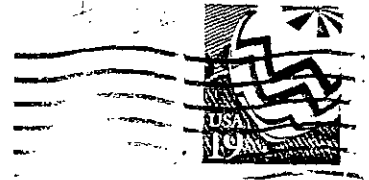
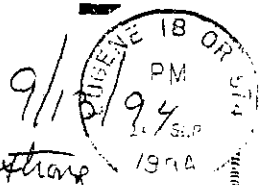
Thanks for your time,  
Sincerely,



Joshua Berger

P.S. If you are disseminating information about developments in this process, I would appreciate being added to the mailing list.

COLLECTING CHICKEN EGGS  
*Tacuinum sanitatis*. MS. Lat. n.a. 1673, f. 60  
Italian, c. 1390-1400  
Bibliothèque Nationale, Paris



Urgent adoption of strong  
rules to implement plastic  
recycling law. Limit  
exemptions. Plastic  
pyrolysis should not  
count as recycling!

EUGENE OR 974

~~SEP 14 1974~~

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SEP 15 1974

The Medicinal Woman Postcard Book • Redmond Press/Little, Brown

Cleanup Division  
Orlando, Environmental  
Quality  
811 S.W. 6th Ave  
Portland OR  
97204

Waste Management & Cleanup Division  
Department of Environmental Quality

Lotte Streisinger  
2075 Harris Street  
Eugene, Oregon 97405



To whom this may concern

The DEQ should adopt strong rules to implement the plastics recycling law. The definition of a "rigid plastic container" should be as broad as possible & should include domed cake, deli, & salad containers; any exemptions should be limited as the law allows.

- Plastic pyrolysis should not count as recycling!

Jude Hobbs

# RAMSEY

THE COMPLETE CARPET CARE SYSTEM

RECEIVED  
SEP 2 1994

September 6, 1994

Ms. Deanna Mueller-Crispin  
Oregon Department of Environmental Quality  
811 S. W. Sixth Avenue  
Portland, OR 97204

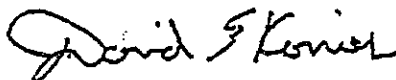
Waste Management & Cleanup Division  
Department of Environmental Quality

Dear Ms. Mueller-Crispin:

The point that I would like to make is that the US Department of Transportation requires that all hazardous substances be shipped in virgin plastic. Our packaging supplier have informed us that it will be impossible to place our products in each of the seven packaging sizes we sell which are DOT hazardous substances, in 25% post-consumer content packaging as of January 1, 1995. To our knowledge DOT has presently exempted only one container size (55-gallon drums), from this requirement. At this time I would request that you exempt DOT hazardous substances from these regulations until January 1, 1996. As you may know, the California Integrated Waste Management Board has taken this approach in implementing their Rigid Plastic Packaging Container Program. At this time we are at the mercy of our packaging suppliers, who are not able to provide us a 25% post-consumer recycled content package in all of the packaging sizes that we offer to our customers in Oregon. Our suppliers indicate that we will be able to meet this requirement by January 1, 1996, especially when you take into consideration the market forces that will spur packaging suppliers to meet the need of both the Oregon and California markets. While regulation is at times required for progress to take place, market forces can at times be a more potent measure to assure a goal will be met.

I would like to thank you for considering these points, as the Oregon Legislature and the Oregon DEQ move towards responsible recycling in the State of Oregon.

Sincerely,



David Kanies  
President  
The Ramsey Company

cc: Grant Watkinson  
Paulsen and Roles  
1836 N.E. 7th Avenue  
Portland, OR 97212

File  
125

# Mobil Chemical Company

COMMERCIAL RECYCLING GROUP-RESTON I  
3225 GALLOW'S ROAD  
FAIRFAX, VIRGINIA 22031-7001  
TEL: (703) 742-8841  
FAX: (703) 742-4542

September 1, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

RE: Comments on Proposed Rules  
Implementing SB 66 (as amended) - Rigid  
Plastic Container Law

Dear Ms. Vernon:

These comments are being submitted on behalf of Mobil Chemical Co., ("Mobil") a division of Mobil Oil Corporation. Mobil is a major manufacturer of food service packaging (hinged lid, two part containers, meat and other trays, etc) in addition to its more widely known range of lubricants also sold in rigid plastic containers. While our interest in the law's implementation is broad (e.g., we also produce virgin and post consumer plastic resins), we will confine comments to those elements having immediate and direct impact and which we trust are within the DEQ's discretionary powers to address.

Issue: Appropriate and clear integration of the enforcement date and the compliance date.

First, we appreciate the DEQ's letter of August 26, 1994 stating that enforcement is to be based on a manufacturer's compliance status as of January 1, 1996. (Without this new position, the regulated community would have been subject to potential penalty for failure to meet a compliance option [aggregate recycling rate] for which the measurement period had not even commenced [calendar year 1995].) We believe this is clearly a move in the right direction but continue to question the appropriateness of enforcement action taken on performance status prior to the DEQ's actual determination of the aggregate recycling rate.

Department of Environmental Quality  
Portland, OR  
September 1, 1994  
Page 2

Issue: Determination of Exemption Status Regarding OAR 340-90-400(3)(d) -

**-Exemption Period**

The regulations and the above referenced letter require, by January 1, 1995, that a manufacturer comply with one of the "options" (rate, content or reuse/refill) or qualify for one of the exemptions. However, the exemption based on substantial investment, OAR 340-90-400 (3) (d), requires (in part) achieving at least a 20% recycling rate for calendar year 1995. This effectively precludes the ability to qualify by Jan 1., 1995. We concur with the calendar year 1995 measurement however, the two year exemption period should be changed to commence with the earliest accountability date i.e., January 1, 1996.

**-Procedure to Qualify**

The regulations require meeting one of the compliance or exemption conditions as of the law's effective date. Relying on an exemption effectively sets a pre condition that one qualifies. Criteria for the various exemptions are within the knowledge of the affected party except for those criteria under the substantial investment provision. Qualification under that provision requires DEQ concurrence or action, e.g., a finding that projections for a 25% recycling rate by 1997 are "reasonable", or with respect to the aggregate recycling rate, its calculation for calendar year 1995.

With respect to the substantial investment procedure only, we recommend that DEQ develop a procedure which sets forth a method to obtain DEQ concurrence, prior to the commencement of the exemption period, that the relevant criteria have been achieved. Such a procedure would also include a reasonable response time from the DEQ.

Issue: Date Which Manufacturers Must Begin Maintaining Records

DEQ should reconsider whether it is necessary for

Department of Environmental Quality  
Portland, OR  
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Page 3

manufacturers to maintain records beginning March 1, 1995. Absent a particular manufacturer's requirement to the contrary, e.g., reliance on a product associated recycling rate, it would seem that the August 26, 1994 directive should allow the manufacture discretion as to when record retention should commence as long as he has the records necessary to show compliance status as of January 1, 1996. Depending on the compliance option employed, this date will vary by manufacturer.

#### Issue: Definition of Rigid Plastic Container

Of the two alternatives presented, we favor Alternative B which more closely aligns with the commonly understood concept of a container as a package versus alternative A which focuses on parts of packages. Nevertheless, Alt B is not as clear as it needs to be to show to the regulated community what is "in" and what is "out".

Pages 10 and 11 of the introduction to the proposed rules states that items such as meat trays and dome lids are not included in the definition. The rules do not make those exclusions clear and should be modified to avoid future misunderstanding. Further, in making specific reference to meat trays, the fate of other trays, e.g., school lunch trays, deli trays (some of which are used with a dome lid), microwaveable food trays etc. is left unclear.

From DEQ discussion on "sidewalls" (Page 11 Introduction), we presume that the DEQ intended to draw a distinction focused on whether the tray itself totally contained the product(s) i.e., where the product does not protrude above the lip or sidewall. Additionally, the discussion of "contain a product" (pg. 10), specifies that alternative B excludes domed lids under the "complete package" concept. Therefore our interpretation is that dome lids are not regulated whether or not use is in conjunction with non regulated trays. (See 340-90-330(4)(a). Clarifying this will enhance rate measurement and manufacturer understanding of what is regulated.

We recommend the following:

- (1) adding the following sentence to OAR 340-90-330 Alt B: (1)  
(e):

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Portland, OR  
September 1, 1994  
Page 4

A bag, film or flexible inner or outer wrap used to cover or contain a product is not considered a lid or closure.

- (2) inserting the words "including a domed lid" to OAR 340-90-330 Alt B (4) as follows:

Lids and caps, including a domed lid, are not considered to be.....of the following criteria:

**Issue: Products packaged at the point of sale**

Products packaged at the point of sale are often placed in generic containers. Retail stores, restaurants, cafeterias, street vendors, etc. frequently purchase such containers "off the shelf" from a third party such as a distributor or warehouse club, and not directly from the container manufacturer. This business environment differs substantially from the one that exists between a major brand and that company's direct interface with his container manufacturer for custom (non generic) specification containers.

The draft rules when applied to the non-generic package are generally well thought out within the confines of statutory flexibility. However when one attempts to apply these same rules to the point of sale container, compliance options for firms using and manufacturing such containers are practically nil. A review of the source reduced container requirements will illustrate the multiple difficulties.

Of the two source reduction alternatives, we favor alternative B, allowing comparison with a product/container combination that has been in existence less than five years. New products are introduced continually. To discourage the innovation that can take place 1, 2 or 3 years after initial introduction does not make sense. Nevertheless, when it comes to containers packaged at the point of sale, source reduction is not a workable alternative.

OARS 340-90-340(5) requires that product manufacturers document their use of a source reduced container as a function of the container/product ratio. With respect to the container filled at the point of sale (and many other generics), this is beyond the knowledge or ability of the product manufacturer (the multiplicity of contents, serving size, menu offerings and containers used over

Department of Environmental Quality  
Portland, OR  
September 1, 1994  
Page 5

time), the container manufacturer (for the same reasons) or by a combination of the two (the nature of commerce which precludes a direct business relationship). By trying to visualize how this might work for containers used at a self-service salad bar, one readily sees the flaws in this concept.

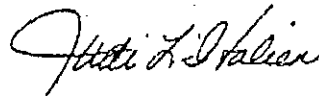
Generic containers may hold a variety of products. When food service containers are involved, this can be as unique and as changing as an individual menu. The container manufacturer is generally not aware of who is buying his containers and certainly unaware of what particular products are placed in them by any particular retailer. The retailer, who DEQ now deems a "product manufacturer," is in his own eyes a buyer and user of packaging that is ancillary to his primary business. There is no reason that a retailer would have historically documented weight of the various packaging or noted when product/package ratios changed. In the present, as illustrated by the case of the salad bar, such documentation is infeasible.

Source reduction is an important option particularly for food contact packaging. We do not believe that any class of container subject to this law was to be excluded from use of the source reduction provision, but that is exactly the practical result of the proposed regulations. Given the statutory language (ORS 459A.660(5)(d)), the regulations stemming from it, and the exclusionary impact on a whole class of containers, we request the DEQ to reevaluate whether containers packaged at the point of sale (and other off-the-shelf generic packaging) were a proper subject for inclusion in this rulemaking procedure.

These are important issues. Should you wish any further explanation of them, please call me at (703) 742-6547.

Very truly yours,

MOBIL CHEMICAL COMPANY



J. A. L'Italien, Manager  
Recycle Plans & Programs

JAL/jw

July 14, 1994



Ms. Deanna Mueller-Crispin  
Hazardous and Solid Waste Division  
Oregon Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204  
Via Fax: (503) 229-6124

RECEIVED  
JUL 20 1994

Dear Ms. Mueller-Crispin:

This letter is written in response to your <sup>Waste Management & Cleanup Division</sup> ~~request for information~~ <sup>Request for Information</sup> ODEQ's report of fiscal impact from Oregon's rigid plastic packaging regulations. Food processors will incur a significant range of costs associated with the package modifications necessary for compliance with the law. The nature of these costs will depend on the options available which do not conflict with Federal law. The forthcoming nationwide survey report from Grocery Manufacturers of America will outline specific detail.

However, there are costs specific to Oregon food processors and Oregonians which will not be reported in the nationwide report. Oregon food businesses could lose market share because they are not able to comply with the options of the law and there are no suitable alternative packaging materials. ODEQ's economic impact report must reflect the costs of the lost jobs to Oregonians and lost revenue to the State through business and personal income taxes.

Northwest Food Processors Association represents 46 fruit and vegetable processors with operations in the state of Oregon representing approximately \$1.6 billion in gross annual sales. About 41% of the Association's Oregon membership is affected by the plastic packaging regulations. While the premature status of regulations prevents accurate, comprehensive estimates of the impact to Oregon's food processing industry, some companies would suffer extensive loss of sales as a result. In the extreme, companies may go out of business.

Here are some scenarios facing several Oregon companies:

For their principal product line, Company A has no packaging available which is permissible under Oregon and Federal law if the statewide aggregate recycling rate is not met. The loss of this multi-million dollar product line would likely mean the demise of the company. The resulting loss to State revenue is \$400,000. In addition, ninety-four people would be laid off, with concurrent loss of personal income tax revenue for the State.

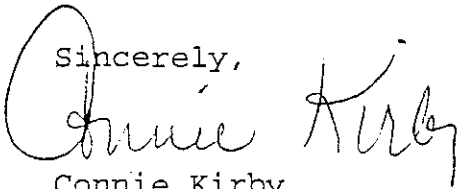


If the statewide resin-specific or aggregate recycling rate is not met, Company B potentially has a product line with no packaging available which meets Oregon and Federal regulatory criteria. The loss of this business is valued over \$2 million annually. At least twenty-one people would lose their jobs as a result. This estimate is conservative since inability to serve a customer in part often leads to the loss of more items or the entire account.

Company C is a commodity-based business expanding into higher value-added product lines. Because of the Oregon law, this company has delayed plans for marketing products with packaging restricted by proposed regulations. They are unlikely to develop this product line under current regulatory proposals. Initial product sales estimates are \$500,000 with rapid growth potential. This product is one component of a full line of related products. Its exclusion hinders the promotion of the entire line and represents lost opportunity for 25-100 potential jobs and concurrent state revenue.

The Department's timeline for study of economic impact to Oregon businesses is inadequate. The number of similar accounts and the dollar impact on NWFPA-member and non-member companies throughout Oregon is impossible to estimate given the short deadline imposed. However, the inclusion of these job and revenue components in the impact report must not be overlooked.

Sincerely,



Connie Kirby  
Manager, Scientific and Technical Affairs



DEPARTMENT OF JUSTICE

PORTLAND OFFICE  
1515 SW 5th Avenue  
Suite 410  
Portland, Oregon 97201  
Telephone: (503) 229-3725  
FAX: (503) 229-5120  
TDD: (503) 378-5938

January 20, 1994

Fred Hansen, Director  
Department of Environmental Quality  
811 SW Sixth Street  
Portland, Oregon 97204

Re: Recycling of Plastics and Pyrolysis  
DOJ File No.: 340-410-P0158-93

Dear Mr. Hansen:

You have asked for legal advice concerning the requirement in ORS 459A.655 that plastic containers in Oregon meet certain minimum recycling requirements by January 1, 1995.<sup>1</sup> Your inquiry is triggered by information from the American Plastics Council (APC) concerning a project in which plastics would be taken to a plant in the state of Washington and subjected to a process commonly referred to as "pyrolysis."<sup>2</sup> According to the APC, the process would involve the heating of plastic material in an enclosed chamber, thereby producing liquid hydrocarbons that could be sold to refineries and petrochemical facilities for

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<sup>1</sup> Recent amendments to the statutes prohibit DEQ from enforcing these recycling requirements before January 1, 1996. Or Laws 1993, ch 568, § 3.

<sup>2</sup> The question whether pyrolysis of plastics would be considered recycling under Oregon law arose during the 1993 legislative session. DEQ initially requested advice on the question at that time. A preliminary advice letter was provided on July 12, 1993. Subsequently, APC requested a meeting with Attorney General Kulongoski to discuss legal concerns with the preliminary advice letter. The meeting occurred on September 13, 1993. APC then submitted a letter dated September 27, 1993, supplementing its position. Because of the importance of this matter, you and Attorney General Kulongoski requested that we review the arguments again and provide more definitive advice.

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eventual conversion into a variety of materials, including monomers for plastic products, synthetic materials for clothing, lube oils and fuels. By-products of the process are described as charcoal or carbon black, as well as gas that is the energy source for the pyrolysis system.

Your questions and our answers are set forth below, followed by a discussion of the issues raised.

#### QUESTIONS

As a matter of Oregon law, does the pyrolysis of plastic materials constitute recycling? What authority, if any, does the Environmental Quality Commission have to define the circumstances under which pyrolysis might constitute recycling?

#### ANSWERS

Pyrolysis of plastics is not recycling to the extent the end product of that process is a form of energy. Beyond this limitation, the Environmental Quality Commission has considerable authority to interpret the statutes, preferably by rule, and to determine when the products of plastics pyrolysis would constitute recycling.

#### DISCUSSION

##### A. Statutory Background

The key statutes that govern your questions are found in ORS chapter 459, which deals broadly with the management of solid waste, and ORS chapter 459A, which deals somewhat more specifically with the reuse and recycling of solid waste. Several important provisions of these statutory chapters date back to the landmark legislation enacted by the 1983 Legislative Assembly and referred to as the Opportunity to Recycle Act. Or Laws 1983, ch 338. See generally L. Parker, Oregon's Pioneering Recycling Act, 15 Env'tal Law 387 (1985).

This 1983 legislation expressed an aggressive state policy with respect to the management of solid waste, a policy that is popularly referred to as the solid waste hierarchy. Or Laws 1983, ch 729, § 14. In its current form, the pertinent part of the policy states as follows:

"(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to

establish a comprehensive statewide program for solid waste management which will:

"(a) After consideration of technical and economic feasibility, establish priority in methods of managing solid waste in Oregon as follows:

"(A) First, to reduce the amount of solid waste generated;

"(B) Second, to reuse material for the purpose for which it was originally intended;

"(C) Third, to recycle material that cannot be reused;

"(D) Fourth, to compost material that cannot be reused or recycled;

"(E) Fifth, to recover energy from solid waste that cannot be reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and

"(F) Sixth, to dispose of solid waste that cannot be reused, recycled, composted or from which energy cannot be recovered by landfilling or other methods approved by the department."

ORS 459.015(2) (emphasis added).

This policy presents the ambitious objective that solid waste should, in the first instance, be reduced, and to the extent that it cannot be reduced, it should be managed according to priorities that seek to conserve energy and natural resources.

Of particular relevance to your questions, these priorities place recycling of solid waste above the use of solid waste for energy recovery. In their current form, the statutes define these key terms as follows:

"'Recycling' means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity."

ORS 459.005(20).

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"'Energy recovery' means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material."

ORS 459.005(9).<sup>3</sup>

Since 1983, the legislature has enacted a series of statutes that specifically amended or otherwise enhanced the Opportunity to Recycle Act. See, e.g., Or Laws 1991, ch 385; Or Laws 1987, ch 876. These statutes have placed more specific requirements both on manufacturers of products that may become waste and on local governments that manage solid waste. The clear thrust of these statutes has been to reinforce the management of solid waste consistent with the state's solid waste hierarchy.

The statute designed to promote the reuse and recycling of plastics is of particular relevance to your questions. Specifically, as amended by the 1993 legislative session, ORS 459A.655 provides in pertinent part:

"(1) Except as provided in ORS 459A.660(5), any rigid plastic container sold, offered for sale or used in association with the sale or offer for sale of products in Oregon shall:

"(a) Contain 25 percent recycled content by January 1, 1995;

"(b) Be made of plastic that is being recycled in Oregon at a rate of 25 percent by January 1, 1995; or

"(c) Be a package that is used five or more times for the same or substantially similar use.

"(2) A rigid plastic container shall meet the requirements in subsection (1)(b) of this section if the container meets one of the following criteria:

"(a) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in the state at a rate of 25 percent by January 1, 1995;

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<sup>3</sup> All statutory quotations include amendments enacted by Or Laws 1993, ch 560 and Or Laws 1993, ch 568, unless otherwise noted.

"(b) It is a specified type of rigid plastic container and that type of rigid plastic container, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995; or

"(c) It is a particular product-associated package and that type of package, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995."

To complete the statutory framework for your questions, we also note the provisions delineating the powers of the EQC under ORS chapters 459 and 459A. The EQC is given express and broad rulemaking authority under both statutory chapters. Under ORS 459.045, the EQC is directed to "adopt reasonable and necessary solid waste management rules" dealing with several specified issues, but then is further directed to "adopt rules on other subjects as necessary to carry out" most of the general solid waste management statutes in ORS chapter 459. ORS 459.045(1), (3). Under ORS 459A.025(1), the EQC is directed to "adopt rules and guidelines necessary to carry out the provisions of ORS \* \* \* 459A.005 to 459A.665 \* \* \* ." Notably, the referenced statutory provisions include those governing the recycling of plastics. Furthermore, in adopting rules under this authority, the EQC is specifically directed to consider, among other factors, "[t]he purposes and policy stated in ORS 459.015 \* \* \*," which includes the solid waste hierarchy discussed above.

#### B. Statutory Analysis

Your questions require that we focus on the second prong of the plastics statutes--namely, the requirement that plastic is being recycled at a rate of 25 percent. ORS 459A.655(1)(b). You ask for advice on whether the pyrolysis of plastics can be used to meet this requirement and whether the EQC has a role in making this determination.

Several principles of statutory construction guide our analysis. The overriding objective in interpreting statutes is to give effect to the intent of the legislature. ORS 174.020; State v. Person, 316 Or 585, 853 P2d 813 (1993). The language of the statute is the best evidence of legislative intent, and the words in the statute should usually be given their plain and ordinary meaning. State v. Curnutt, 317 Or 92, 852 P2d 1312 (1993). At the same time, the entire statutory scheme and context should be considered, and individual provisions should not be construed in a manner that is either illogical or negates other provisions. See Boone v. Wright, 314 Or 135, 138, 836 P2d 727 (1992).

In addition, in explaining the respective authority of the courts and agencies to give meaning to various statutes, the Oregon Supreme Court has offered a categorization of statutory terms. Springfield Education Assn. v. School Dist., 290 Or 217 (1980). The three categories of terms can be summarized as follows:

1. Exact terms

An agency has virtually no interpretive or policy making authority concerning exact terms.

2. Inexact terms

Generally, an agency may express its interpretation on an inexact term either by rule or by order in a contested case. The court will review only to determine whether the agency's interpretation "is consistent with or tends to advance a more generally expressed legislative policy." Id. at 226.

3. Delegative terms

With such terms, the legislature in effect charges the agency with the responsibility, usually through rulemaking, to complete the legislative policy. The court will review only to determine that the agency has not contravened the broad legislative delegation.

Although the courts have cautioned that these categories are primarily directed at the questions of authority and judicial scope of review, the categories are helpful in determining how much latitude an agency has to interpret statutes it administers. See Trebesch v. Employment Division, 68 Or App 464, 469 (1984).

We return now to the statutory requirement that plastics be recycled at a 25 percent rate and the legislature's definition of "recycling" as "any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity." ORS 459.005(20). Viewing this language in isolation, an argument could be made that pyrolysis of plastics meets the definition of recycling. According to this argument, pyrolysis simply transforms plastics into a new product of a different identity--i.e., liquid hydrocarbons, and this product may eventually be transformed into other products, including new plastic products or fuel.

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Upon review of the statutory scheme as a whole, however, this argument collapses, at least insofar as pyrolysis yields fuel. Indeed, we think that this argument, taken to its extreme, would undermine the fundamental legislative objective of the solid waste and recycling statutes. The fallacy of the argument is most evident when we recall that the legislature created priority categories of solid waste management, including both "recycling" and "energy recovery," and that it assigned a higher priority to the former. Furthermore, it defined "energy recovery" as "recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material." ORS 459.005(9) (emphasis added).

A conclusion that pyrolysis constitutes recycling, even when the process is used to create a form of energy, would contravene the existing statutory scheme. The practical effect would be to negate the category of energy recovery with respect to plastics and further to undermine the state's priority for recycling over energy recovery. Such results do not achieve the clear legislative policy behind the solid waste and plastics statutes and do not conform with the previously discussed principles of statutory construction.

We find further guidance on your question in other parts of the statutes. For example, the 1991 legislature specifically confronted the policy question of whether to encourage the use of waste tires to produce fuel. Apparently for reasons involving the limited market for waste tires, the legislature ultimately answered this policy question in the affirmative. Yet, in doing so, the legislature made it clear that the production of fuel from waste tires would not normally be considered recycling. The 1991 legislature adopted the following specific amendment to ORS chapter 459:

"Notwithstanding any other provision of ORS 459.015, for purposes of encouraging the use of waste tires under ORS 459.705 to 459.790, the use of processed source-separated waste tires having a positive market value as a new product to recover energy shall be considered recycling under ORS 459.015(2)(a)(C)."

ORS 459.772 (emphasis added).

Representative Mike Burton, who sponsored the amendment, noted in testimony before the House committee that under the state hierarchy the production of tire-derived fuel was "just one step above landfilling in this hierarchy." Testimony of Rep. Mike Burton, House Committee on Environment and Energy (HB 2246),



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February 8, 1991, tape 35, side B, at 300. Representative Burton further testified that the amendment was designed to "move it [tire-derived fuel] up" so that DEQ's reimbursement rates under the existing reimbursement for use of waste tire regulations would treat production of tire-derived fuel equally with recycling. Id.

This legislative amendment and history strongly indicates that the legislature wished to encourage the use of waste tires for fuel but recognized that this would not be considered recycling under the existing language of ORS chapter 459. In short, had the legislature intended that the production of tire-derived fuel would constitute recycling, no such amendment would have been necessary.

Clearly, the legislature could make the policy choice to encourage pyrolysis of all or certain plastics and amend the statutes accordingly. Indeed, we understand that there was some effort, or at least discussion, to this effect in the 1993 session. The important point, however, is that, unlike waste tires, the legislature has not yet chosen to do so with respect to plastics.

There are still other parts of the statutes that demonstrate a clear legislative recognition of the distinction between recycling and energy recovery. One example involves the portion of the statutes that establishes and implements the state goal of recovering at least 50 percent of the general solid waste stream. ORS 459A.010. These statutes include the following provision:

"If there is not a viable market for recycling a material \* \* \*, the composting or burning of the material for energy recovery may be included in the recovery rate for the wasteshed."

ORS 459A.010(4)(b).

This is simply one more illustration that the legislature considers recycling and burning for energy as distinct activities.

We recognize that the pyrolysis of plastics involves two factual circumstances that require further consideration. First, the proponents of pyrolysis stress that the process, as applied to plastics, does not primarily involve burning for energy or even the production of fuel. Rather, it produces liquid hydrocarbons that could not be used as fuel without further refinement.

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We are not convinced that this fact affects the analysis. It is clear to us that the legislature's concern is the disposition of the solid waste. The fact that a material is temporarily transformed into a different form is not determinative. Surely the pyrolysis of plastics would not constitute recycling if the liquid hydrocarbons were disposed of in a landfill. We think it is equally obvious that pyrolysis does not constitute recycling when the liquid hydrocarbons are ultimately used as a form of energy.

Secondly, the proponents of pyrolysis also stress that a significant percentage of the liquid hydrocarbons will be converted into usable products, such as polyester fiber for clothing and in some cases new plastic containers, which clearly are not fuel. This fact may indeed be significant. Nothing in our analysis has suggested that the pyrolysis of plastics may never qualify as recycling. Rather, we have only said that recycling does not occur to the extent that the pyrolysis process results in a form of energy.

This brings us to the second aspect of your questions--namely, the role of the EQC in determining under what circumstances pyrolysis of plastics may constitute recycling. In short, we think the role of the EQC is considerable. As noted above, the EQC has express rulemaking authority to carry out all of the pertinent statutes, and this authority includes at a minimum the authority to interpret and refine these statutes. Furthermore, as the Springfield court's analysis indicates, a court will review an agency's interpretation of inexact terms only to determine whether the interpretation is consistent with the policies of the legislature.

As should be abundantly evident, the statutes in question are replete not only with inexact terms but also with some seemingly overlapping definitions. The most relevant example is the term "product" in the definition of recycling. ORS 459.005(20). Clearly, the word "product" is an inexact term that may be reasonably interpreted by the EQC. We have identified only one limitation in this letter--i.e., that the term "product" cannot include a form of energy, because that interpretation would negate the statutory category of energy recovery and contravene the legislature's solid waste policies. Otherwise, the EQC has broad interpretive authority, limited only by the guidance of the legislature.

Along these lines, we understand that one frequently debated issue is whether recycling should be limited to the conversion of

Fred Hansen, Director  
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material into the same type of material--i.e., paper into paper products, glass into glass products and plastic into plastic products. You advise us that in many technical and policy circles, such a limitation is considered to be the common understanding of recycling and the preferred environmental policy. According to this school of thought, the essence of recycling is to produce materials that can directly substitute for virgin materials and to do so in a manner that requires minimal processing and use of energy.

Our review of the pertinent legislation and legislative history did not reveal any definitive evidence that the legislature intended to mandate this limitation. Nonetheless, this is precisely the sort of question the EQC would appear to have the authority to resolve through interpretive rulemaking, providing its facts and reasons comport with the legislature's policies.

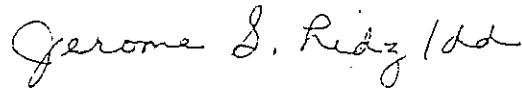
In closing, we would reiterate that the objective of sound statutory interpretation is to give effect to the intent of the legislature. Our office has previously cautioned against "wooden literalism"--namely, the strict literal reading of isolated statutory language, and we think that caution is especially germane in this situation. Letter of Advice dated May 15, 1985, to Dan Smith, Administrator, Building Codes Division, Department of Commerce (Supplement to OP-5774); see Letter of Advice dated April 2, 1987, to Fred Hansen, Director, Department of Environmental Quality (OP-6043) at 11. The proponents of pyrolysis argue that because pyrolysis meets the literal definition of "recycling," the inquiry must end there.

We disagree. We would note that pyrolysis also meets the literal definition of "energy recovery," because it is undisputed that with pyrolysis "all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material." ORS 459.005(9). (Emphasis added.) The more important point, however, is that these statutory definitions simply cannot be interpreted so rigidly and without consideration of the broader statutory context. With certain limitations, the task of reconciling and applying the solid waste statutes falls to the EQC. Obviously, the EQC cannot adopt an interpretation that eliminates either the category of

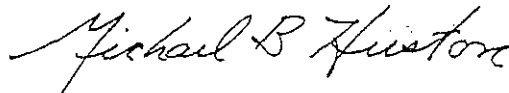
Fred Hansen, Director  
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recycling or the category of energy recovery. Providing, however, that the EQC's interpretations comport with the purpose of the legislation, we think they will be upheld by a court.

Sincerely,



Jerome S. Lidz  
Attorney-in-Charge  
Natural Resources Section



Michael B. Huston  
Assistant Attorney General



Larry Edelman  
Assistant Attorney General

MBH:JL:LE:dld MBH0058.let  
c: Mary Wahl, DEQ  
Bob Danko, DEQ

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.

- 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 \_\_\_\_\_

## ENVIRONMENTAL QUALITY COMMISSION

### Minutes of the Special Meeting Thursday, July 21, 1994

A special meeting was called by the Environmental Quality Commission to consider a request from the National Marine Fisheries Service (NMFS) for a temporary rule. The meeting was held on Thursday, July 21, 1994, at the Department of Environmental Quality headquarters' offices, 811 S. W. Sixth Avenue, Portland, Oregon 97204. The meeting was convened by Chair Wessinger at 1 p.m. with Commissioners Castle, Lorenzen, McMahan and Whipple in attendance. Also present were Michael Huston, Assistant Attorney General, Oregon Department of Justice, Fred Hansen, Director, DEQ, and other DEQ staff.

The NMFS requested that the Environmental Quality Commission (EQC) modify the existing standard for total dissolved gas (TDG) from a maximum of 110 percent of saturation to an average of 115 percent with a maximum of 120 percent for the purpose of enhancing juvenile salmonid survival through the Columbia River Dams by increasing spill passage.

J. Gary Smith, acting regional director of the NMFS, told the Commission that their request was that the Corps of Engineers be allowed to exceed state water quality standards in order to achieve the levels of summer spill at Ice Harbor, John Day, The Dalles and Bonneville dams called for in the 1994-98 biological opinion issued under the Endangered Species Act on the operation of the federal Columbia River power system. He said the opinion requested summer spill in two locations at levels that will exceed the state's 110 percent water quality limit, Ice Harbor (122 percent on the Snake River in Washington) and John Day (116 percent on the Columbia River between Oregon and Washington). He said that the NMFS was requesting the Department amend their rules to allow a 24-hour average TDG of 115 percent with an allowable instantaneous TDG of 120 percent in the lower Columbia during the summer salmon migration season. This amendment would allow the biological opinion spill levels to be met as well as allow more flexibility to address situations such as the recent fish kill at McNary Dam where extreme temperatures of the bypass resulted in a loss of approximately 90,000 juvenile salmon.

Mr. Smith said that the report by the expert gas panel convened by the NMFS notes that the state water quality standard of 110 percent provides a biologically safe level and that higher levels are in the direction of harm. However, he said, spill and gas supersaturation are part of a larger management picture and should be considered in the overall management structure. Mr. Smith also discussed the risks involved and the modeling techniques used.

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Gary Fredericks of the NMFS spoke to the Commission about the gas monitoring plan and gas experts panel. Mr. Fredericks indicated that over 188,000 fish were sampled externally, and less than 1 percent exhibited signs of gas bubble disease (GBD). He said that information gathered required that the spill be reduced since approximately 40 percent of the 2,000 which were fish internally examined showed signs of GBD. He said that the examination techniques used to measure internal signs were not entirely the best and that the majority of those signs were probably invalid. He said it was unknown whether their technique caused the signs or whether they were truly seeing signs of GBD.

In regard to the gas panel, Mr. Fredericks indicated that the main points were that more research is needed to understand the effects of GBD, especially the sublethal effects; he said that management based on risk assistance must include conservative measures to account for those unknown effects of GBD and gas supersaturation. He added that the future must include a means to safely pass fish past these dams without increasing gas supersaturation.

Commissioner Castle indicated that at the last meeting they received testimony that the NMFS had ceased research on gas supersaturation because they had the answers. He said that he found it interesting that an expert panel would be unable to say anything about this when earlier the decision was made to cease research. Mr. Fredericks replied that the reason why the NMFS discontinued research on gas supersaturation was that NMFS believed that the developed hydrosystems with reservoirs and storage capacity in the upper basin made periods of high flow and involuntary spill a thing of the past. The NMFS also developed spillway deflectors on several of the dams which helped to reduce gas supersaturation but that effort was stopped because the storage would take care of most of the involuntary spill and bypass system, which was an experiment. Mr. Smith added that in the March 1994 biological opinion the NMFS had requested at that time an implementation of a long-term research program beginning in 1995 using the 1994 year to develop the protocol and research approach. He said that the NMFS still plans to go forward with that and will be convening a work group and inviting the state agencies and environmental protectional agencies to participate.

Chair Wessinger asked the NMFS about future water quality standards in regard to TDG. Mr. Fredericks replied what must be considered is deep versus shallow water systems. Mr. Smith added there are existing standards, and if the NMFS can develop the proper research protocol to obtain and test this additional information from the natural environment, that all options should be kept open while working toward a better understanding of the standard in a natural system.

Director Hansen commented that Donna Darm of the NMFS had characterized the spill program as an experiment during this summer to gather information. He asked Mr. Smith if that was still an appropriate way to characterize the program. Mr. Smith said that adaptive



management has been the goal of the NMFS. While the NMFS was comfortable with the spill as a management tool, they do not know all that needs to be known. He said that the intent of the monitoring plan is to continue the long-term database that has been established and that a more formal, experimental approach is what they will try to obtain through a workshop scheduled for the fall.

Jim Weber, Columbia River Inter-Tribal Fish Commission (CRITFC), said the CRITFC wished to recommend a somewhat different plan. He said that in September 1993, the CRITFC sent a letter to the Department highlighting the dissolved gas standard and spill and how it was being used to prevent them from obtaining an 80 percent fish guidance proficiency at all projects. Mr. Weber said that the plan was developed by the CRITFC and member tribes, Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), Idaho Department of Fish and Game and the U. S. Fish and Wildlife Service. He said that if their plan was not adopted today that the EQC should still take it under advisement.

Director Hansen summarized the CRITFC's request for the Commission: that the EQC adopt the CRITFC's recommendation which included a 120 percent average spill with a 125 percent instantaneous spill maximum; however, if the EQC was not prepared to do that, the CRITFC would like to have, at minimum, the NMFS request and recognize that this plan may come back to the EQC under a formal request or some other mechanism. Mr. Weber agreed with Director Hansen's summary. Chair Wessinger asked whether the recommendation would be for a permanent or temporary rule; Mr. Weber replied it would be for a temporary rule.

Bob Heinth, CRITFC, spoke to the Commission about their proposed recommendation. Key points included allowing a daily average of up to 120 percent total gas pressure (TGP), allowing an instantaneous average of up to 125 percent TGP, asking the U. S. Army Corps of Engineers to improve the existing physical monitoring program, continuing the existing biological monitoring program and implementing the program immediately and continuing through August 31, 1994, to protect the summer anadromous fish migration. Mr. Heinth briefly described the CRITFC's risk assessment. He talked about the critical situation of fish escapement, migrations, turbine and spillway mortality and in-river survival. He said that handling the fish and poor water quality conditions limit transportation options.

Silus Whitman, Confederated Tribe of the Warm Springs Reservation, told the Commission that his tribe has been flexible and adaptive but that fish are not flexible and adaptable; he said he wanted the right conditions to exist for fish to live. Mr. Whitman indicated his tribe

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would support the EQC in their decision. He said that some dam areas need to be reconstructed for proper fish passage. He added that relaxing the gas standards to implement spill is a way to share the burden of the issue and work together on joint economies and cultures. Mr. Whitman concluded by stating that fish should be treated as we would treat ourselves.

In summarizing, Mr. Weber spoke about the recent fish kill at McNary Dam and expressed concern about the lethal affects to fish in regard to water temperature. He said that implementing the spill was the best way to minimize the amount of time that juvenile salmon are exposed to high stream temperatures in the water immediately behind dams and in fish holding areas for barging. He said that although there is a risk of gas bubble trauma (GBT) due to spilling, a monitoring program is in place to allow for adjustments on a real-time basis. The risk of GBT is considerably less than the risk in mortality due to high stream temperatures.

Dr. Thomas Backman, CRITFC, responded to Commissioner Lorenzen's questions about the value of examining internal signs of fish. He said that the most relevant internal measurements were looking at gill rakers which can be externally examined. Additionally, reliability of measurements was questioned since training was not always adequate.

Dr. Backman talked to the Commission about the draft report on GBT released by the NMFS. He said that the panel's focus was on laboratory studies but that the panel was asked questions orientated in that direction. He said there are different ways that the fish pass through the dams. Currently, the program is monitoring fish coming through the bypass system. The bypass system is substantially different and much more stressful than the other passage way. Dr. Backman indicated it is inappropriate to take the results from one treatment and apply it to another treatment.

Doug DeHart, Oregon Fish and Wildlife Department (ODFW), Phillip Schneider, Oregon Fish and Wildlife Commission (OFWC), Bert Bowler, Idaho Department of Fish and Game, and Jim Neilsen, Washington Department of Fish and Wildlife, spoke to the Commission.

Mr. DeHart stated that the ODFW was very concerned with trying to identify and implement emergency measures that would improve the survival of juvenile salmon and steelhead in the Columbia River. He said they have seen a long-term decline from the late 1960's in up-river stocks of Chinook salmon down from the Grande Ronde and Imnaha rivers of northeast Oregon as well as the streams on the Idaho side of the river. He added that there has been a very disturbing collapse in numbers which has occurred this year and will be clearly existing for at least one to two more years. The outlook is for very low returns of fish in the near future, and ODFW believes everything must be done to maintain the critical level of parent fish from which to rebuild these depleted and, in some cases, federally listed stocks of

salmon and steelhead. The scientific information available points out that a spill program such as being proposed produces the highest survival of any method of allowing fish to pass large hydroelectric dams and poses the lowest risk of any of the alternatives available. He said the ODFW is sensitive to the concern related to the possibility of GBD and have seen that disease occur in past years at very high levels of dissolved gas and would not want to create another problem while trying to solve another.

He continued by saying that the ODFW have examined the laboratory information available as well as observations in the river. He said some of the laboratory information causes concern and that was the reason for the controversy surrounding the program and convening the scientific panel by the NMFS. When those results are compared to observations actually made in the Columbia River and other free-flowing rivers and reservoirs, the ODFW sees a significantly different result because of the ability of fish when swimming in a free-flowing river or reservoir to adjust their depth and position in the water column and throughout the river. He said that the ODFW has looked at the observations of adult returns from out migrating populations which they have kept for many years; they have noted that in past years of high spill levels there have been high survival and adult returns which gives additional confidence in the observations made in the river. For those reasons, the ODFW believes that programs could be safely implemented that accomplish dissolve gas levels up to daily averages of 120 percent and instantaneous of up to 125 percent.

Mr. DeHart recommended that the Commission adopt the temporary rule and requested the Department to work closely with the ODFW and other agencies this winter to draft a new permanent rule.

Mr. Schneider said emphasized the urgency of this matter and asked the Commission to support this timely and difficult issue. Mr. Schnieder said he spoke today on behalf of the ODFW seven-member commission and expressed support of the testimony submitted by the ODFW.

Commissioner Castle asked Mr. DeHart how he reconciled his confidence about the spill program with the conclusions of the panel. Mr. DeHart said the present laboratory information does not allow conclusions about the survival or mortality rates that would be expected to occur in the free-flowing river in the range of 100 to 120 percent dissolved gas. He said that the panel stopped too soon, that observations made in the field and laboratory needed to be compared. He added that he saw little way to apply the present laboratory observations to the decisions being made.

Mr. Bowler said that opportunities to improve fish survival in the short term include flow augmentation and improving in-river migration which Idaho believes can be accomplished by spilling more water at the dams. He urged the EQC to look at a long-term permanent

modification to the gas standard this winter that would allow levels of daily average rates of 120 percent and instantaneous levels of 125 percent. Mr. Bowler said that as an interim, Idaho can support the recommendation before the EQC for a temporary rule change of 115 percent TDG and 120 percent instantaneous TDG.

Mr. Neilsen told the Commission that Washington supports the NMFS request, however, that the request should include the McNary project and those criteria modifications. He said that we cannot lose sight of the fact that there are other stocks in the basin; that it is a bigger problem than just the Snake River stocks although they are probably the prime example of the problem. In regard to McNary Dam, Mr. Neilsen urged the dam be included since it is not possible due to temperature problems to collect fish there and that as much spill as possible be provided to minimize the numbers of fish going through the turbines or going into the bypass. The WDFW supports the NMFS's monitoring program for summer spill and the ability to monitor dissolved gas levels on the river. Mr. Nielsen indicated that the WDFW will work with the WDOE, ODEQ, agencies and tribes to get ahead of the problem for 1995.

Phyllis Barney, Director, Lower Columbia River Fish Health Center, U. S. Fish and Wildlife Service, told the Commission that the Service supports the NMFS request. She said the Service has long believed that spill needs to be a tool used in the river to assist threatened, endangered and other stocks. She said that the spill program is a methodology that can be used to assist fish to exit the system and remove them from high temperatures regimes that are causing problems.

Bob Baumgartner of the Department's Water Quality Division, briefly explained the Department's TDG standard, how it relates to the questions being considered now and the acute risk associated with elevated TDG levels.

Commissioner Lorenzen asked about the 12- and 24-hour averages. Mr. Baumgartner said that the Department is concerned with the level of dissolved gas, duration of exposure to fish and difficulty of averaging spill periods. He said the reason the 24-hour averaging was chosen was because some spill is for 24 hours. To make sure that consistent averaging is occurring, individual readings are checked which is why the cap was established at 5 percent and for examining instrument accuracy.

Commissioner McMahan asked about the August 23 versus August 31 completion date for the temporary rule. Mike Downs, Administrator of the Water Quality Division, responded by referring to the "NMFS Proposed Summer Spill Program." He said the document attempts to summarize what has been proposed and how it affects fish survival, where the fish are, how many fish there are and when they will pass through the system. Mr. Downs discussed collector projects, spill levels at each project, planned spills and dates the spills

would end. He said the dates were proposed by the NMFS. He also briefly discussed fish guidance and passage efficiencies. He said that by the end of August 90 percent of the fish would have passed Bonneville Dam.

Jonathan Poisner, Sierra Club, Columbia Group, told the Commission that the Sierra Club strongly supported the tribes' recommendation to change the standard to the 120/125 levels that were discussed earlier. He said the NMFS request was entirely based on a biological opinion that has been discredited already in federal court. The opinion was ruled to be arbitrary and capricious; that the models used were not accurate. He talked about the double standard that is being applied to the issue of spill as opposed to other threats to migrating juvenile salmon. Mr. Poisner said that there seems to be hypercaution applied to spill that is not applied to turbines and barging. He urged the Commission to adopt the tribe's proposal; however, if that was not possible, not to wait until the winter to work it out over a period of several months.

Ken Johnston, Northwest Environmental Defense Center, Lewis and Clark Law School, said the Center had concerns about the U. S. Army Corps of Engineers barging techniques and recent fish kill. He said temperature variation in barging is deadly to smolts, that it causes high stress and strain, leaves the fish disoriented and subject to severe predation. The crowding on barges also exposes fish to diseases and water impurities. He said it seems that more emphasis is placed on what the TDG saturation will be rather than that the turbines will kill more fish. He said it is urgent that this temporary rule be adopted because spill has been shown to be the least deleterious of all the passage methods for fish. Mr. Johnston said that the Center believes that the fish operating plan that was developed by CRITFC and state fish and wildlife agencies and U. S. Fish and Wildlife Service is the most comprehensive and most healthy proposal for fish protection.

Greg McMillan, Conservation Director, Anglers' Club of Portland, said the Commission's decision should be based on the question of what method of transportation down the Columbia River will provide the highest survival of anadromous fish. He said it is clear that if prior management practices are continued as they were implemented prior to recent changes, there will no change in the disappearance of salmon and steelhead. He indicated it was the Anglers' Club recommendation to allow for at least 120 percent TDG to facilitate increased flow and spill of hydropower projects on the Columbia River. Allowances for higher TDG should not be made based on the actual TDG but instead should be linked to the mortality observed in smolt monitoring programs.

Diane Valentine, Oregon Natural Resources Council, said the Council supported the operating plan put forward by the CRITFC and fish and wildlife agencies. She said the status quo of the river hydrosystem is so lethal that doing nothing is not a conservative position. She said the same standards that are applied to the spill program should be applied to the barging program. She commented that the agencies arguing against the spill program have a monetary interest in preserving the status quo.

Marcia Anderson, Save Our Wild Salmon, said she supported the previous testimony and variation in the water quality standard. She added that if more water is spilled over the dams more fish will be spilled over the dams; therefore, less fish are picked up in the collection system so fewer fish are barged.

David Bean, Wild Salmon Nation, discussed the natural attributes of fish. He said that in a threatening situation, the good fish could get through and get back. He concluded that spill was the quickest way for the fish to get through the dams.

Dan Weitkamp, fisheries biologist, Parametrix Inc., told the Commission that he was not there to support or argue against the request. He said the panel report tries to address what spill levels cause problems. He discussed the risks of spilling and depth distribution and that increased mortality occurs at 125 percent TDG.

Commissioner Castle asked Mr. Huston about the precedent for taking action without considering beneficial uses of water. Mr. Huston said that he was not aware of either from the federal Clean Water Act or in the state enabling legislation that obligates the Commission to weigh impacts on all beneficial uses when water quality standards are adopted.

Director Hansen indicated that two changes were made to the draft rule: that wording about concurring in the necessity of the spill had been eliminated and that the date of December 7 had been added as the maximum time that a temporary rule could be adopted.

After Commission comments, Commissioner Castle moved approval of the Department's recommendation: adoption of a temporary rule consistent with the NMFS request and extension of the temporary rule beyond that requested by NMFS to the maximum allowable temporary rule period of 180 days which when accounting for earlier temporary rules for total dissolved gas ends on December 7, 1994. Additionally, Commissioner Castle moved approval of the findings and statement of need. Commissioner McMahan seconded the motion. The motion was unanimously approved.

Commissioner Lorenzen commented briefly about biological monitoring. He said that he hopes staff will continue to encourage extensive monitoring. He also asked the staff to continue examining 12- versus 24-hour spilling averages.

Commissioner Whipple asked questions about the draft rule in regard to documenting mortality and altering spill levels. Director Hansen said that the measure was clearly intended to be an issue of mortality. Commissioner Lorenzen suggested and moved approval of the following amendment:

**...If such an increase [~~in mortality~~] is documented, as determined by the Director, the Director shall...**

Commissioner Castle seconded the motion. The motion was approved four votes to one with Commissioners Whipple, Castle, Lorenzen and McMahan voting yes; Chair Wessinger voting no. In regard to the main motion as amended, the motion was unanimously approved.

In closing, Director Hansen indicated that the Commission has the responsibility to insure standards such as TDG are reflective of that which is necessary to protect beneficial use. He said that in this case, the original standard was adopted at the request of the fishery agencies; likewise, it would be appropriate for the Commission to consider the 120/125 percent spill not in a setting today but that it is not an appropriate action for the Commission instigate.

*Minutes are not final until approved by the EQC*

**ENVIRONMENTAL QUALITY COMMISSION**

Minutes of the Two Hundred and Thirty Ninth Meeting  
August 26, 1994

**Regular Meeting**

The Environmental Quality Commission regular meeting was convened at 9:30 a.m. on Friday, August 26, 1994, Harris Hall, Lane County Public Service Building, 125 E. 8th Avenue, Eugene, Oregon. The following commission members were present:

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

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

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

Chair Wessinger called the meeting to order.

**A. Approval of minutes.**

Commissioner Lorenzen moved approval of the June 3 and July 22 regular meeting minutes; Commissioner Castle seconded the motion. The motion was unanimously approved.

**B. Approval of tax credits.**

The Department recommended issuance of the following tax credit applications:



Application Number	Applicant	Description
TC 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.
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.**

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.

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

The Department recommended the Commission approve certification for the tax credit applications as presented in Attachment A of the staff report.

**C. Air contaminant discharge permit fee revision and proposed fee increase for asbestos program.**

This rulemaking proposed 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 would increase the portion of that program's funding paid by the regulated community from 66 to 84 percent. 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.

Greg Green, Administrator of the Air Quality Division, and Gregg Lande, Air Quality Division, introduced this agenda item with a brief discussion of the need for fee increases. After expressing concern about the magnitude of the fee increases, Chair Wessinger asked for a description of the activities involved in permitting and in compliance. Commissioner Lorenzen asked whether the movement of large sources to the Title 5 permit program would not reduce the level of effort needed for the ACDPs. Director Hansen pointed out that larger sources generally require less assistance from the Department in permitting because they have the expertise in-house or can hire a consultant; in effect, the large sources have provided a subsidy which is now being lost.

Shannon Harmon of the Oregon Humane Society presented additional testimony about the difficulty increased fees present to small non-profit agencies. While the Commission genuinely appreciated the problem, they decided not to amend the rules or provide any exemption for such facilities.

Commissioner Castle moved to adopt the rules and rule amendments as proposed; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

**D. Proposed adoption of rule amendments to wastewater system operator certification fees and applications.**

The Department proposed adoption of this 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 Oregon Revised Statutes (ORS) 448.410.

Additionally, companion rule amendments were proposed 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.

Commissioner McMahan moved adoption of the rule amendments to wastewater system operator certification fees and applications; Commissioner Whipple seconded the motion. The motion was unanimously approved.

**E. This item was withdrawn.**

**F. Proposed rule on public records access and reproduction.**

This item proposed to establish new rules providing guidance on how members of the public can access and obtain copies of public records maintained by the Department. Reasonable restrictions for protection of Department records and a fee schedule were also proposed for public records related activities. The rulemaking was initiated at the suggestion of the State Attorney General's office, which advised the Department that formal rulemaking was not only recommended but necessary to carry out certain provisions of the Oregon Public Records Law (ORS 192.410, et. seq.).

Lydia Taylor, Administrator of the Management Services Division, and Chris Rich, Management Services Division, explained that the proposed rules are necessary to ensure consistent statewide Department application of public records policy, to notify the public of Department's public record fees and procedures, and to otherwise ensure conformance with the Oregon Public Records Law.

Commission members asked why an advisory committee was not used. Ms. Taylor explained that almost all provisions of the rule were simply formalizing existing

Department internal policies within the constraints of the Public Records Law. Commission members inquired about the fees, and Mr. Rich indicated that the fee schedule was established pursuant to a costing survey recently performed by Department's business office and review of fees which were set to allow the Department to recoup actual costs of making records available to the public. Commissioner Lorenzen suggested that the level of service that the Department provides to the public in making records available should not be lessened when implementing these rules. Mr. Huston of the Attorney General's office stated that the Department should be credited for the excellent work done on these rules and that they will probably become a model for other state agencies.

Commissioner Lorenzen moved approval of the proposed rule on public records access and reproduction; Commissioner Castle seconded the motion. The motion was unanimously approved.

**G. Request for EQC action on petition for enhanced I/M program fee increase.**

A petition had been received from Associated Oregon Industries (AOI) 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 Oregon Administrative Rules (OAR) Chapter 340, Division 24, as it pertains to motor vehicle emissions.

AOI believes that the contribution of industrial sources in the Portland area ozone pollution is small relative to the contribution of motor vehicles. AOI asserts that it is in the best interest of the state that industrial growth impediments imposed on the area because of Portland's classification as a nonattainment area be removed as soon as possible. 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.

The Department recommended the Commission accept the petition and direct the Department to initiate rulemaking proceedings.

Commissioner Lorenzen moved approval of the Department's recommendation; Commissioner Castle seconded the motion. The motion was unanimously approved.

**H. Commissioners' report.**

Commissioner Whipple gave an update on G-WEBB.

**I. Director's report.**

Reynolds Metals proposed for NPL: The EPA announced that the Reynolds Metals facility in Troutdale has been proposed for addition to the National Priorities List (NPL (commonly known as the Superfund list)). Pollutants identified at the site include cyanide and fluoride in groundwater and cyanide, fluoride, metals, and polyaromatic hydrocarbons in surface water and wetlands.

Legislative Update: The House Natural Resources Subcommittee on Water will hear from the DEQ on September 12 on general issues related to water quality regulation. On September 29, the Senate Agriculture Committee has asked us to participate in an informational session on the fish spill issue as well as provide an update on the rigid plastic recycling issue.

Hearing Authorizations:

- Gasoline vapor recovery permits and fees and oxygenated fuel fees:

The rules propose new permits and fees to implement an ongoing compliance program to include inspection, technical assistance, enforcement and training to control vapor emissions from tanker truck delivery and motor vehicle refueling. The proposed fees would be \$50 for Stage I (tanker truck delivery) and \$100 for Stage II facilities. Gasoline tankers would pay a \$25 permit fee to support the ongoing permit program already in place for those tankers.

- Hardboard particulate emissions rule:

The proposed rule would correct the particulate emission rate for hardboard plants to take into account emissions from press vents. Press vent emissions were mistakenly omitted when the standard was originally calculated and adopted.

- Acid rain, stratospheric ozone protection and airborne radionuclide emissions:

The Department is proposing to adopt, by reference, federal rules regulating acid rain precursors, stratospheric ozone depleting chemicals and airborne radionuclide emissions. If adopted, the Department will request delegation of implementation and enforcement from the EPA.

EQC Meeting Schedule:

The following EQC meeting have been dates scheduled for 1995.

January 19 and 20  
March 2 and 3  
April 13 and 14  
May 18 and 19  
July 6 and 7  
August 17 and 18  
September 28 and 29  
November 16 and 17

Work sessions are usually scheduled for Thursday afternoons, and regular meetings are scheduled for Friday mornings and afternoons.

**Public Forum**

Ruth Bascom, Mayor, City of Eugene, thanked the Department for opening an office in Eugene and for solving the Tugman Park landfill problem.

Representatives Cynthia Wooten and Avel Gordly spoke to the Commission. Representative Wooten complimented DEQ staff on being responsive. She's looking forward to working with Department staff on extending the Oregon Bottle Bill; Representative Gordly complimented the Department on taking the lead on Oregon's environmental equity project.

Mike Stevenson, owner of Knee Deep Cattle Company and his attorney, David Moon, spoke to the Commission about the company. Mr. Stevenson said he did not like way the Department handled the situation with a company that is discharging into Little Muddy Creek and that the pollutants discharged killed Mr. Stevenson's cattle. Mr. Moon complained the violation fees the Department is charging is too low. Mr. Moon said he believed that the DEQ is not doing its job and that Mr. Stevenson should be compensated for the loss of his cattle. The Commission requested that the department submit a status report about this issue at the next Commission meeting.

There was no further business, and the meeting was adjourned at 12:25 a.m.

Approved _____
Approved with Corrections _____

*Minutes are not final until approved by the EQC*

## ENVIRONMENTAL QUALITY COMMISSION

Special Meeting  
September 22, 1994

The Environmental Quality Commission regular meeting was convened at 1:00 p.m. on Thursday, September 21, 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. Informational item: issues raised by Knee Deep Cattle Company concerning Bindana Company/Econo Lodge wastewater treatment facility discharges and DEQ enforcement.**

At the August 26, 1994, Commission meeting, statements were received during the public forum regarding the Bindana (EconoLodge) wastewater treatment facility. The Commission requested that additional information and an update be provided at the next Commission meeting.

The staff report was presented by Barbara Burton, Western Region Water Quality Manager. Commissioner Castle said that the information requested by the Commission at the previous meeting had been supplied by the Department, and that the Department had responded appropriately in actions with Bindana Corporation. Comment was also made that the Commission agreed with the Department decision to re-visit the amount of stipulated penalties routinely included in Stipulation and Final Orders, to make them more meaningful.

**B. Rule adoption: proposed modification of rules affecting on-site sewage disposal.**

This item concerned a proposed upgrade and modifications to the on-site sewage disposal rules. The affected divisions were 14, 45, 52, 71, and 73. Mike Downs, Administrator of the Department's Water Quality Division, and Charles (Kent) Ashbaker of the Department's Northwest Regional Office, presented this item to the Commission. Additionally, the Department submitted a report and list of corrections suggested by the technical advisory committee after it met on September 19, 1994. The Department also requested that the date in the rule for requiring the testing of installers be moved to July 1, 1996.

Those presenting testimony at the hearing were:

- Alex Mauck, representing EEEZZZLay Drain Co. Mr. Mauck requested that the rules be modified such that the Department's ability to approve alternative technologies be effective immediately, rather than at the general April 1, 1995, effective date. He proposed that Oregon Administrative Rules (OAR) 340-71-130(2) be made effective upon filing of the rule.
- Jan Heron and Rick Partipilo, representatives of Linn County Environmental Services. Ms. Heron and Mr. Partipilo voiced support for the rule package and concerns about privatization; that is, the possible delegation of critical decision making processes to the private sector.



- Judd Efinger, representing Infiltrator Systems Inc. Mr. Efinger requested changes to the minimum requirements for the graveless absorption method to specify that the chambers have adequate footings to support soil cover (OAR 340-71-290(7)(a)(F)).

Department staff had no objections to the rule changes requested by Messrs. Mauck and Efinger.

Commissioner Whipple moved approval of the proposed rules with the suggested revisions which incorporated the technical advisory committee corrections, the July 1, 1996, date for testing installers and rule changes requested by Messrs. Mauck and Efinger. The motion was unanimously approved.

**C. Rule adoption: proposed rulemaking revision of water quality permit fee schedule for industrial and agricultural wastewater facilities.**

This item concerned revisions to OAR 340-45-075, permit fee schedule to increase fees and to add clarifying language to the text of the rule. Director Hansen provided a brief overview about the background and need for the rule amendment.

Tom Lucas, Water Quality Division, gave a brief presentation outlining the highlights of the staff report, including the key issues and concerns raised in public testimony. Mr. Lucas reiterated the Department's recommendation that a formal advisory committee be formed as soon as possible to analyze the industrial permitting program. He also pointed out that the correct rule citation should be OAR 340-45-075, not -070 as shown in Attachment A of the staff report.

Jim Whitty, Associated Oregon Industries (AOI), provided comment in support of the fee increase provided that the Department form an advisory committee to review all features of the industrial permitting program.

Joni Low, League of Oregon Cities (LOC), also spoke in support of the fee increase. She noted that the fee increase would raise fee revenue support to about 60 percent of industrial water quality program budget. While the increase to 60 percent is still less than the 80 percent fee support for the municipal water quality program, Ms. Low said that the Department had significantly narrowed the equity gap between the programs.

Craig Smith, representing Northwest Food Processors Association, commented in opposition to the proposed amendments. He stated that the Department appeared premature in raising fees at this time, without benefit of comprehensive review. He

also indicated that the Department's argument for raising fees in light of anticipated federal regulation requirements was not well founded; it would seem more prudent to wait until the reauthorized law is placed into effect.

Members of the Commission briefly presented their views on the rule amendments. Commissioner Castle expressed his distaste at increasing fees, but saw no viable alternatives; Commissioner Lorenzen questioned the philosophical and fundamental basis for using fees to finance regulatory programs in general; however, he indicated that he could at this time see no alternative to raising fees.

After also expressing her reservations about raising fees, Commissioner Whipple moved approval to adopt the rule amendment; Commissioner Mr. Castle seconded the motion. The motion was unanimously approved.

**D. Informational item: update to the Commission on advisory committee process and related information on the three-basin rule concerning water quality issues in the Clackamas, North Santiam and McKenzie rivers sub-basins.**

Mr. Downs briefed the Commission on the activities of the advisory committee established to provide assistance on a possible revision of OAR 340-41-470 (1), the three basin rule. He stated that the committee had met approximately monthly between March and September of this year under the very capable leadership of Joe Richards. Mr. Downs noted that in the timeframe provided, the Committee had not reached consensus on recommendations, but had discussed issues related to a possible regulatory framework that could provide both protection of high quality waters and flexibility to allow some growth in the basins.

Lynne Kennedy, Water Quality Division, reviewed the major issues discussed by the committee. She said that three broad goals had been agreed upon, as well as a number of options for meeting each goal. Major issues discussed included: whether to put a cap (more strict than Willamette basin standards) on the total degradation that would be allowed; whether to allow industrial discharges that meet as yet undefined strict water quality criteria; whether new municipal sewage treatment facilities should be allowed and whether they should be restricted to non-surface water discharges; how to increase the level of oversight of all permitted sources; how to assure accountability of nonpoint sources; and how to meet resource needs associated with the implementation of any proposed rule change.

Ms. Kennedy stated that due to the complexity of the issues more time was needed to arrive at a recommendation. She said that representatives of the advisory committee's three subcommittees had expressed willingness to continue working on the review and that they had agreed to meet on a weekly basis to flesh out proposals that could be brought back to the full advisory committee. Mr. Downs noted that the Department plans to have a proposed rule ready for a special Commission meeting that would be held in February 1995.

Mr. Downs requested that committee members Nina Bell, Northwest Environmental Advocates (NWEA), Joni Low, LOC, and Jim Whitty, AOI, provide their views on the advisory committee progress. Ms. Bell stated that the substantial task assigned to the committee warranted additional effort to arrive at a rule revision that would be fully protective, implementable and implemented. She agreed to continue to represent environmental interests on the committee. Ms. Low articulated some of the concerns and interests held by water suppliers, sewage treatment facilities and utilities. She stated that she was willing to continue to work toward a rule revision that would meet those needs of these groups. Mr. Whitty stated that he had been on the committee originally and had only recently rejoined the group. Having followed the committee discussions, however, he said that he believed there was room for agreement and would be willing to work toward that goal.

Chair Wessinger opined that the issues raised in the three basin rule review are among the most difficult he has encountered as a member of the Commission and that two or three years could be spent in defining the best policy. Commissioners McMahan and Whipple said that it would be appropriate to allow time for more discussion of the issues. Commissioner Castle stated that he is willing to make difficult decisions and is more interested in knowing that the implications of various rule amendments have been fully considered than in having consensus on a proposal. Chair Wessinger expressed concern that a proposed regulatory framework should not draw staff resources away from important issues in other basins.

There was no further business, and the meeting was adjourned at 4:40 p.m.

## Special Conference Call Meeting

### ENVIRONMENTAL QUALITY COMMISSION

October 13, 1994  
1:00 p.m.

Attending the special conference call meeting were William Wessinger, Chair, Emery Castle, Vice Chair, Henry Lorenzen, member, and Carol Whipple, member; Linda McMahan, member, joined the meeting in progress. Also attending via the conference call were Fred Hansen, Director, and Michael Huston, Assistant Attorney General. The purpose of the special conference call meeting was to decide upon the process for recruiting and selecting a permanent director and to determine an interim director since Mr. Hansen has been appointed and confirmed as the Deputy Administrator of the U. S. Environmental Protection Agency (EPA).

Director Hansen outlined the steps leading to selection of a permanent director.

- Position description and selection criteria must be made available for public comment and approval;
- A draft of standards and criteria will be made available to Commission members by the Department early next week;
- Adoption of standards can be held in a special telephone conference call in November;
- A detailed list of recruitment methods (newspapers, organizations, etc.,) will also be available in November.

Mr. Huston stated that the Commission had the authority to hire the director and that Senate confirmation was not necessary. He added that there were no time limits for selecting the director. Mr. Hansen stated that the Commission should wait for public comment on selection criteria before advertising for the position.

Commissioner Lorenzen moved that the Department prepare a draft memorandum covering standards and criteria for Commission review, to be put out for public comment and considered at the next EQC meeting; Commissioner Whipple seconded the motion. The motion was unanimously approved.

In regard to selecting an interim director, Director Hansen recommended that Lydia Taylor, Administrator of the Management Services Division, be appointed interim director effective upon his resignation (on or about October 18, 1994, when he is sworn in as Deputy Administrator of the EPA). Director Hansen stated that the interim director should come from within the Department, that all the division administrators were outstanding and that Ms. Taylor has the skills to serve well in this role.

Special Conference Call Meeting  
Environmental Quality Commission  
Page 2  
October 13, 1994

Chair Wessinger asked if the interim director served until a permanent replacement is hired; Mr. Huston answered that this was implied. Commissioner Castle asked if other senior agency management were consulted. Director Hansen confirmed this and stated that his recommendation was supported by other division administrators. Commissioner Whipple asked about the Commission replacing the interim director. All Commission members expressed their support for Ms. Taylor.

Commissioner Lorenzen moved that Ms. Taylor be named interim director; Commissioner Whipple seconded the motion. Chair Wessinger added that the motion would be effective immediately. The motion was unanimously approved.

There was no further business, and the meeting was adjourned.

# Environmental Quality Commission

- Rule Adoption Item  
 Action Item  
 Information Item

Agenda Item B  
October 21, 1994 Meeting

**Title:**

Approval of Tax credit Applications

**Summary:**

New Applications - 13 tax credit applications with a total facility cost of \$2,668,644.00 are recommended for approval as follows:

- |  |              |
|--|--------------|
| - 1 Air Quality facility with a total facility cost of:  | \$ 327,318   |
| - 2 Field Burning related facilities recommended by the Department of Agriculture with a total facility cost of: | \$ 388,027   |
| - 1 Hazardous Waste facility costing:  | \$ 1,010,220 |
| - 8 Water Quality facilities costing:  | \$ 859,458   |
| - 1 Water Quality (UST) facility with a facility cost of:  | \$ 83,621    |


Two (2) applications with claimed facility cost exceeding \$250,000 were reviewed by independent accounting firm contractors. The review statements are attached to the application reports.

**Department Recommendation:**

- 1) Approve issuance of tax credit certificates for 13 applications as presented in Attachment A of the staff report.

  
Report Author

  
Division Administrator

  
Director

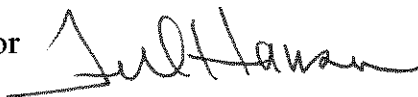
September 29, 1994

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

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: October 21, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item B, October 21, 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 2900	A. E. Staley Manufacturing Company	A Water Pollution control facility for industrial waste treatment and disposal consisting of irrigation sprinklers, flowmeters, pumps and associated piping, monitoring equipment, a tractor, hay baler, rake, and a 59 acre irrigation field.
TC 3866	Anodizing, Inc.	A water pollution control caustic etch recovery (CER) facility consisting of a crystallizer/clarifier, an alumina separation tank, a centrifuge, a filtration tank and auxiliary pumps and controls.
TC 4091	Polk County Farmers' Co-op	A water pollution control closed loop truck and equipment washing facility consisting of a concrete wash pad, a collection system, a Delta 1000 water treatment system and a protective housing shed.

<sup>†</sup>A large print copy of this report is available upon request.

Application Number	Applicant	Description
TC 4092	Polk County Farmers' Co-op	A water pollution control closed loop washing facility consisting of an All American Oil water separation system, a wash slab and a protective housing shed.
TC 4203	Cascade Farm Machinery Company, Inc.	A water pollution control closed loop industrial wastewater recycling facility consisting of a Water Mage Delta unit, a sump, pits and associated electrical and plumbing equipment.
TC 4210	Talent Gas-4-Less	A water quality Underground Storage Tank (UST) facility consisting of three doublewall fiberglass tanks and piping, spill containment basins, a tank gauge system with overflow alarm, automatic shutoff valves, line leak detectors, sumps and Stage I and II vapor recovery piping.
TC 4245	Lamb Weston, Inc.	A water pollution control irrigation expansion facility to prevent groundwater pollution consisting of four center pivots, a Pringle pivot and associated valves, vaults and electrical equipment.
TC 4255	Willamette Industries, Inc.	A water pollution control facility consisting of sumps, an ITT Flight wastewater pump, a level control system and piping.
TC 4261	Consolidated Metco, Inc.	A water pollution wastewater control facility consisting of an ultrafilter KOCH Membrane unit and associated plumbing and electrical equipment.
TC 4269	Franklin Hoekstre	An air quality field burning facility consisting of a Freeman Big Baler (Model 1592), a Hyster Challenger Lift Truck H180H, a New Holland Rake Model 216, trailers, a tractor, a single axle converter dolly and a fork assembly.



Application Number	Applicant	Description
TC 4271	Golden Valley Farms	An air quality field burning facility consisting of a Roadrunner with hay clamp, a Case IH 8580 Baler, a 1085 Bale Wagon, a J.D.4050 tractor, 2 hay rakes, and 2 bale racks

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

Application Number	Applicant	Description
TC 3778	Taylor Lumber & Treating, Inc.	A hazardous waste facility consisting of a coated drip pad with liner, a waste collection tray and a leak detection system.
TC 4232	Jeld-Wen, Inc.	An air pollution control facility consisting of two Carter-Day baghouse filters and ductwork.

**Background**

On April 16, 1992, Taylor Lumber & Treating, Inc. submitted an application for the certification of a pollution control facility for tax relief, TC 3778. Construction of the facility was completed and the facility placed into operation February 14, 1992. Subsequent inspections of the facility by the EPA and the Department indicated that the drip pad was defective and that, in addition, inadequate cleaning and maintenance procedures prevented the facility from achieving complete compliance with hazardous waste regulations. In addition, a soil pile created during the construction of the drip pad has been determined to contain listed hazardous wastes and is also being required to be brought into compliance. The applicant took measures to determine the extent of the problems and to remedy the defects in the construction of the drip pad. However, considerable time elapsed before the Department was able to verify jointly with the federal Environmental Protection Agency that the facility did, in fact, comply with all pollution control requirements and that, therefore, the filing of the application should be considered complete.

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Authority to Address the Issue

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

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

Alternatives 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.

Memo To: Environmental Quality Commission  
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o Proposed October 21, 1994 Pollution Control Tax Credit Totals:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>Certified Allocable Costs**</u>	<u>No.</u>
Air Quality	\$ 327,318	\$ 327,318	1
CFC	0	0	0
Field Burning	388,027	112,966	2
Hazardous Waste	1,010,220	1,010,220	1
Noise	0	0	0
Plastics	0	0	0
SW - Recycling	0	0	0
SW - Landfill	0	0	0
Water Quality	859,458	859,458	8
UST	<u>83,621</u>	<u>72,750</u>	<u>1</u>
<b>TOTALS</b>	<b>\$2,668,644</b>	<b>2,382,712</b>	<b>13</b>

o Calendar Year Totals Through September 30, 1994:

<u>Certificates</u>	<u>Certified Costs*</u>	<u>Certified Allocable Costs**</u>	<u>No.</u>
Air Quality	\$ 2,726,151	\$ 2,726,151	9
CFC	\$ 36,318	\$ 32,793	14
Field Burning	\$ 1,783,500	\$ 894,391	14
Hazardous Waste	43,024	43,024	1
Noise	4,158	4,158	1
Plastics	\$ 362,777	\$ 362,777	10
SW - Recycling	\$ 436,972	\$ 436,972	3
SW - Landfill	\$ 0	0	0
Water Quality	\$ 2,707,087	\$2,707,087	5
UST	<u>\$ 1,333,732</u>	<u>\$1,184,608</u>	<u>18</u>
<b>TOTALS</b>	<b>\$ 9,433,719</b>	<b>\$ 8,391,791</b>	<b>75</b>

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

\*\*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.

### **Attachments**

- A. Pollution Control Tax Credit Application Review Reports.

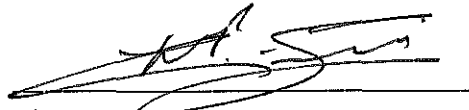
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Reference Documents (available upon request)

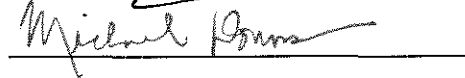
1. ORS 468.150 through 468.190.
2. OAR 340-16-005 through 340-16-050.
3. ORS 468.925 through 468.965.
4. OAR 340-17-010 through 340-17-055.

Approved:

Section:



Division:



Report Prepared By: Charles Bianchi

Phone: 229-6149

Date Prepared: October 4, 1994

Charles Bianchi  
OCTEQC  
October 4, 1994

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

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1. Applicant

A. E. Staley Manufacturing Company  
Stanfield Plant  
2200 East Eldorado Street  
Decatur, IL 62525

The applicant owns and operates a cationic potato starch manufacturing plant in Stanfield, Oregon.

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

2. Description of Facility

The claimed facility consists of irrigation sprinklers, flowmeters, pumps, associated piping system, a tractor, hay bailer, rake, monitoring equipment and an irrigation field of 59 acres.

Claimed Facility Cost: \$206,568  
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that construction, of the facility was substantially completed on March 1, 1990 and the application for certification was filed on February 10, 1992, within 2 years of substantial completion of the facility. A revised cost of the claimed facility together with an accountant's certification was submitted on March 2, 1992.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to control a substantial quantity of water pollution. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

A. E. Staley Manufacturing Company has been operating a potato starch processing plant since 1977. Process wastewater from the plant is being disposed of by irrigation unto a 7.4 acre field through a sprinkler irrigation system. A Waste Discharge Permit No. 3787 was issued by the Department for the operation of the treatment and disposal system.

In January 1990, the manufacturing plant was upgraded to include a high efficiency cationic starch processing facility. This upgrade resulted to an increased amount of wastewater. To accommodate the increased volume of process wastewater A. E. Staley upgraded its wastewater treatment and disposal system. The claimed facility allowed the company to stay within the limitations of the waste discharge permit. Wastewater is being irrigated at agronomic rates.

The farm equipment consisting of a tractor, New Holland baler, and a Ford rake are dedicated to the operation and maintenance of the wastewater land irrigation and disposal system.

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.

Hay is being harvested from the land irrigated with process wastewater. The crop is being sold to a farmer in the area.

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

There is no return on investment for the claimed facility. The operation and maintenance costs exceed the revenue from the sale of hay.

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

The alternative method evaluated is the treatment of wastewater at the City of Stanfield Wastewater Treatment Plant. The city's treatment plant does not have the capacity to treat the waste.

- 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 claimed facility. The net cost of maintaining and operating the facility is \$37,018 annually.

Average annual hay sales :	\$4,241
Average annual operating expenses:	<u>(41,259)</u>

Average annual net cost: (\$37,018)

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to control a substantial quantity of water pollution and accomplishes this purpose by the disposal of industrial waste as defined in ORS 468B.005.
- c. The facility complies with DEQ statutes and rules.



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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$206,568 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-2900.

Renato C. Dulay:crw  
MW\WC12\WC12925.5  
(503) 229-5374  
19 Sept 94

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Anodizing Inc  
7933 NE 21st Ave.  
PO Box 11263  
Portland OR 97211

The applicant leases and operates an aluminum fabricating and anodizing plant in Portland, Oregon.

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

2. Description of Facility

The facility is a caustic etch recovery (CER) system. It consists of crystallizer/clarifier, tank for alumina separation, centrifuge, filtrate tank, and auxiliary pumps and controls.

Claimed Facility Cost: \$209,304  
(Accountant's certification was provided.)

3. Procedural Requirements

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

The facility met statutory deadline in that installation of the facility was substantially completed on July 31, 1992 and the reinstated application for certification was found to be complete on May 26, 1994 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 Bureau of Environmental Services (BES), City of Portland, to reduce water pollution. The requirement is to comply with BES Compliance Order CO-1992-003 (CO) issued March 23, 1992. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Anodizing, Inc. has a Wastewater Discharge Permit No. 467.001 issued by the BES for its wastewater discharge to the city sanitary sewer system. As a result of previous effluent limit violations, Anodizing entered in a compliance order with the City of Portland to install a wastewater pretreatment system which includes a caustic etch recovery unit (CER).

In a letter dated May 4, 1994 the BES cited Anodizing for being out of compliance with sulfate, chrome, and total oil and grease permit effluent limitations. This led to an erroneous conclusion that the CER was not in compliance with the CO.

Although Anodizing, Inc. is not totally in compliance with all its permit limitations, the claimed facility which was designed to reduce dissolved metals, e.g. aluminum and solids, is functioning properly and is achieving compliance with solids removal requirements imposed by the City of Portland. Between October 1992 and April 1994, the CER reduced solids discharge by 296,624 pounds. However, the CER is not designed to reduce chrome, sulfate, and oil and grease in the wastestream. These are the other permit effluent limitations being required by the City of Portland to be met. Anodizing is in the process of resolving its problems of meeting these other effluent limitations.

The Bureau of Environmental Services, City of Portland agreed with Anodizing, Inc. that the CER is functioning properly. BES encouraged Anodizing to seek reinstatement of their tax credit application.

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 saleable or usable commodity.

The facility recovers aluminum tri-hydrate from the caustic etch recovery unit. This is a by-product of the solids reduction process.

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

There is no return on investment for the CER. The operation and maintenance costs exceed the return on sales of aluminum tri-hydrate from the CER.

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

There are no known alternatives. Caustic etch recovery units are designed specifically for the recovery of solids from caustic soda etching baths. Three vendors, Lancy Environmental Systems, Eco-Tec, and Novamax were contacted for bids. Eco-Tec was chosen.

- 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 net cost of maintaining and operating the facility is \$6008 annually.

Average annual aluminum tri-hydrate sales:	\$ 97,847
Average annual Operations & Maintenance:	<u>(\$103,855)</u>
Average annual net costs associated with CER:	(\$6,008)

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that

The principal purpose of the facility is to comply with a requirement imposed by the City of Portland, Bureau of Environmental Services to reduce water pollution and accomplishes this purpose by the use of a treatment system to reduce industrial waste as defined in ORS 468B.005.

- c. The facility complies with DEQ statutes and rules and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$209,304 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-3866.

Elliot J. Zais:crw  
MW\WC12\WC12894.5  
(503) 229-5292  
9 Sept 94

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Polk County Farmers' Co-op  
P.O. Box 47  
Rickreall, OR 97371

The applicant owns and operates a feed and farm supply store in Rickreall, Oregon.

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

2. Description of Facility

The constructed facility is a closed loop truck and equipment washing facility, and consists of a concrete wash pad, collection system, a Delta 1000 water treatment system and a shed to house the system.

Claimed Facility Cost: \$23,454  
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that installation of the facility was substantially completed on December 31, 1992 and the application for certification was found to be complete on August 24, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to control a substantial quantity of water pollution. This control is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Prior to the construction of the claimed facility, wastewater was allowed to flow on land surface within the site and which could have discharged to public waters through nearby ditches during storm events. With the installation of the facility all treated wastewater is recycled.

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.

A portion of the waste products are converted into a salable or usable commodity consisting of heavy oil.

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

The estimated annual percent return on the investment is calculated as follows:

Average annual cash flow:	\$2,129.
Useful life of the facility:	10 yrs.
Return on investment factor:	$\frac{\$23,454}{\$2,129}$
	= 11.02

From Table 1, OAR 340-16-030

Percentage Return on Investment: 0

From Table 2, OAR 340-16-030

RROI (1992): 6.8

$$P_A = \frac{RROI - ROI}{RROI} \times 100$$

Prior to the construction of the claimed facility, wastewater was allowed to flow on land surface within the site and which could have discharged to public waters through nearby ditches during storm events. With the installation of the facility all treated wastewater is recycled.

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.

A portion of the waste products are converted into a salable or usable commodity consisting of heavy oil.

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

The estimated annual percent return on the investment is calculated as follows:

Average annual cash flow:	\$2,129.
Useful life of the facility:	10 yrs.
Return on investment factor:	$\frac{\$23,454}{\$2,129}$
	= 11.02

From Table 1, OAR 340-16-030

Percentage Return on Investment: 0

From Table 2, OAR 340-16-030

RROI (1992): 6.8

$$P_A = \frac{\text{RROI} - \text{ROI}}{\text{RROI}} \times 100$$



$P_A$ : percentage of actual cost allocable to pollution

$$P_A = \frac{6.8 - 0}{6.8} \times 100 = 100\%$$

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

There are no alternatives evaluated by the applicant.

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

As stated in 2) above, there is an estimated positive cash flow of \$2,129 which equates to a 0% return on investment in the facility.

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

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

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

#### 5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of water pollution and accomplishes this purpose by the use of a treatment system to reduce industrial waste as defined in ORS 468B.005.

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$23,454 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4091.

William J. Perry:crw  
MW\WC12\WC12922.5  
(503) 686-7838

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Polk County Farmers' Co-op  
P.O. Box 47  
Rickreall, OR 97371

The applicant owns and operates a feed and farm supply store in Woodburn, Oregon.

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

2. Description of Facility

The claimed system is a closed loop equipment washing facility. The project consisted of installing an All American Oil water solids separation system, wash slab and a shed to house the equipment.

Claimed Facility Cost: \$13,025  
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that installation of the facility was substantially completed on December 31, 1992 and the application for certification was found to be complete on August 24, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of water pollution. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Prior to the construction of the claimed facility, wastewater from the washing operation was collected in a sump and discharged to the Woodburn sanitary sewer system. With the installation of the filtration system, heavy oil is removed from the wastewater prior

to discharge to the city sewer system. Pretreatment of the wastewater will result to less polluted discharge to the sanitary sewer.

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.

A portion of the waste products are converted into a salable or usable commodity consisting of heavy oil.

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

The estimated annual percent return on the investment is calculated as follows:

Average annual cash flow:	\$1,196
Useful life of the facility:	10 yrs.
Return on investment factor:	$\frac{\$13,025}{\$1,196}$
	= 10.8

From Table 1, OAR 340-16-030

Percentage Return on Investment: 0

From Table 2, OAR 340-16-030

RROI (1992): 6.8

$$P_A = \frac{RROI - ROI}{RROI} \times 100$$

$P_A$ : percentage of actual cost allocable to pollution

$$P_A = \frac{6.8 - 0}{6.8} \times 100 = 100\%$$

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

A closed loop washing facility is technically recognized as an acceptable method for controlling heavy oil discharge to the city's sewer system. No other alternatives were cost effective.

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

As stated in 2) above there is an estimated positive cash flow of \$1,196 which equates to a 0% return on investment in the facility.

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

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of water pollution and accomplishes this purpose by the use of a treatment system to reduce industrial waste as defined in ORS 468B.005.

- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$13,025 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4092.

William J. Perry:crw  
MW\WC12\WC12901.5  
(503) 686-7838  
12 Sept 94

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Cascade Farm Machinery Company, Inc.  
812 McClaine Street  
Silverton, OR 97383

The applicant owns and operates a farm machinery sales and service facility in Silverton, Oregon.

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

2. Description of Facility

The claimed facility is a closed loop water recycling system for pressure washing activity. This system consists of a Water Mage Delta unit, sump, pits and associated electrical and plumbing system.

Claimed Facility Cost: \$ 16,238

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 deadline in that construction, and erection of the facility was substantially completed on April 21, 1993 and the application for certification was found to be complete on December 29, 1993, within 2 years of substantial completion of the facility.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to control a substantial quantity of water pollution. This reduction is accomplished by the use of treatment units for industrial waste as defined in ORS 468B.005.

Machinery parts are washed by a pressure washer and the wastewater drains into a collection pit. The water is then pumped to the Water Maze Delta unit and filtered. The reclaimed water is returned to the steam/pressure washer for reuse. No wastewater is discharged to the environment.

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 the facility, therefore, no return on the investment.

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

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

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

There are no savings from the facility. The cost of maintaining and operating the facility is \$1,046 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.

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to control a substantial quantity of water pollution and accomplishes this purpose by the elimination of industrial waste as defined in ORS 468B.005.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$16,238 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4203.

Raghu V. Namburi:crw  
MW\WC12\WC12868.5  
(503) 686-7838 Ext.230  
29 Aug 94

MW\WC12\WC12868.5

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Talent Gas-4-Less  
Thomas and Daniel Hawkins  
P. O. Box 1388  
Medford, OR 97501

The applicant owns and operates a retail gas station at 21 Talent Ave., Talent, OR, Facility No. 4234.

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

This applicant also received a 75% not to exceed \$75,000 essential services grant through DEQ's Underground Storage Tank Financial Assistance Program.

2. Description of Claimed Facility

The claimed pollution control facilities described in this application are three doublewall fiberglass tanks and piping, spill containment basins, tank gauge system with overflow alarm, automatic shutoff valves, line leak detectors, sumps and Stage I vapor recovery and Stage II vapor recovery piping.

Claimed facility cost \$126,699  
(Accountant's certification was provided)

The Department has determined that 66 percent of the claimed facility cost of \$126,699 is the actual cost to the applicant when adjustment is made for an essential services grant awarded the project under DEQ's UST financial assistance program (see Attachment A for details of calculation). Thus, the Department concludes that an adjusted claimed facility cost of \$83,621 is eligible to be claimed as a tax credit with a breakdown as follows:

	Claimed Facility Cost	Percent Adjustment	Adjusted Claimed Facility Cost
	-----	-----	-----
Fiberglass tanks and piping	\$51,300	66%	\$33,858
Spill containment basins	596	"	393
Tank gauge system w/alarm	9,156	"	6,043
Line leak detectors	771	"	509
Automatic shutoff devices	870	"	574
Sumps	3,940	"	2,600
Stage I & II vapor recovery	2,765	"	1,825
Labor & Materials	57,301	"	37,819
	-----	-----	-----
Total	\$126,699	66%	\$ 83,621

### 3. Procedural Requirements

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

The facility was substantially completed on September 22, 1993 and placed into operation on September 23, 1993. The application for certification was submitted to the Department on February 3, 1994 and was considered to be complete and filed on May 1, 1994, within two years of the completion date of the project. The recommendation for approval was not submitted to the Commission until the grant reduction could be calculated on August 15, 1994, when grant funds became available to the applicant.

4. Evaluation of Application

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

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

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

- 1) For corrosion protection - Doublewall fiberglass tanks and piping.
- 2) For spill and overfill prevention - Spill containment basins, overfill alarm, sumps and automatic shutoff valves.
- 3) For leak detection - Tank gauge system and line leak detectors.
- 4) For VOC reduction - Stage I and Stage II vapor recovery piping.

Contamination found at the site was reported to DEQ. Cleanup has been completed.

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

The Department concludes that the costs claimed by the applicant (adjusted to \$83,621) are eligible pursuant to the definition of a pollution control facility in ORS 468.155.

b. Eligible Cost Findings

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

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

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

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

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

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

The applicant chose to install the most effective system available. The methods chosen are acceptable for meeting the requirements of federal regulations.

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

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

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

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

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

	Eligible Facility Cost	Percent Allocable	Amount Allocable
<u>Corrosion Protection:</u>			
Doublewall fiberglass tanks and piping	\$33,858	69% (1)	\$23,362
<u>Spill &amp; Overfill Prevention:</u>			
Spill containment basins	393	100	393
Automatic shutoff valves	574	100	574
Sumps	2,600	100	2,600
<u>Leak Detection:</u>			
Tank gauge system w/alarm	6,043	90 (2)	5,439
Line leak detectors	509	100	509
Stage I & Stage II vapor recovery piping	1,825	100	1,825
Labor and materials	37,819	100	37,819
Total	\$ 83,621	87%	\$ 72,521

- (1) The Department has determined the percent allocable on the cost of a corrosion protected tank and piping system by using a formula based on the difference in cost between the protected tank and piping system and an equivalent bare steel system as a percent of the protected system. Applying this formula to the costs presented by the applicant, where the protected system cost is \$51,300 and the bare steel system is \$15,788, the resulting portion of the eligible tank and piping cost allocable to pollution control is 69%.
- (2) The applicant's cost for a tank gauge system is reduced to 90% of cost based on a determination by the Department that this is the portion properly allocable to pollution control since the device can serve other purposes, for example, inventory control.

5. Summation

- a. The facility was constructed in accordance with all regulatory requirements.
- b. The facility is eligible for tax credit certification in that the principal purpose of the claimed facility is to comply with requirements imposed by the federal Environmental Protection Agency to prevent pollution of soil, water and air. This is accomplished by preventing releases in soil, water or air. The facility qualifies as a "pollution control facility" defined in OAR 340-16-025(2)(g): "Installation or construction of facilities which will be used to detect, deter or prevent spills or unauthorized releases."
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 87%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$83,621 with 87% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4210.

Barbara J. Anderson  
(503) 229-5870  
August 26, 1994

ATTACHMENT A.

TAX CREDIT/GRANT ADJUSTED FACILITY COST WORKSHEET  
APPLICATION NO. TC-4210

Talent Gas-4-Less  
21 Talent Ave.  
Talent, OR 97540  
Facility No. 4234

A. TOTAL STATE GRANT AWARDED TO APPLICANT: \$75,000

B. PROJECT EQUIPMENT AND COSTS:	TOTAL PROJECT COSTS ELIGIBLE FOR GRANT	APPLICANT'S CLAIMED FACILITY COSTS ELIGIBLE FOR TAX CREDIT	ADJUSTED CLAIMED FACILITY COSTS (reduced by % in D.3. below)
Doublewall fiberglass tanks & piping	\$51,300	\$51,300	\$33,858
Spill containment basins	596	596	393
Tank gauge system with overfill alarm	9,156	9,156	6,043
Line leak detectors	771	771	509
Automatic shutoff devices	870	870	574
Sumps	3,940	3,940	2,600
Stage I & Stage II vapor recovery piping	2,765	2,765	1,825
Labor & materials	57,301	57,301	37,819
Fuel pumps	2,640	0	0
Contaminated soil cleanup costs	89,396	0	0
C. TOTAL PROJECT COST	\$218,735	\$126,699	\$83,621

D. CALCULATION OF APPLICANT'S ACTUAL EQUIPMENT COST:

- Costs eligible for a tax credit as a percent of total project cost:  $\$126,699 / 218,735 = 58\%$
- Portion of State grant applicable to costs eligible for tax credit:  $\$75,000 \times .58 = \$43,500$
- Reduced equipment costs eligible for tax credit rounded to the nearest percent:  $(126,699 - 43,500) / 126,699 = 66\%$
- Applicant's actual equipment cost:  $\$126,699 \times .66 = \$83,621$

E. APPLICANT'S ADJUSTED CLAIMED FACILITY COST: \$83,621



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Lamb Weston, Inc.  
P. O. Box 705  
Hermiston, OR 97838

The applicant owns a frozen potato processing plant in Hermiston, Oregon.

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

2. Description of Facility

The applicant has completed phase II of the expansion of the acreage available for irrigation. The expansion includes installation of five (5) center pivots and associated valves, vaults and electrical equipment for the center pivots. These improvements were installed at the Madison Ranch.

Claimed Facility Cost: \$184,594.00  
(Accountant's Certification was provided).

Eligible Facility Cost: \$184,594.00

The eligible costs are:

4 new center pivots (125 acre circles)	-	\$142,820
Valves, vaults & electrical	-	27,506
1 used Pringle center pivot	-	8,500
Valve, vault & electrical for Pringle circle	-	<u>5,768</u>
		\$184,594

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 installation of the claimed facility was substantially completed in February 1994 and the application for certification was filed on June 3, 1994, 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 of Environmental Quality to prevent groundwater pollution by irrigating at agronomic rates. To accomplish this goal, the applicant has increased the land irrigation area to an additional 535 acres.

Prior to expanding the irrigation system, the applicant was not able to meet the requirement that wastewater be land applied at agronomic rates. The additional irrigation acreage enables the applicant to irrigate wastewater at agronomic rates to prevent groundwater pollution.

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.

Two other options were considered by the applicant. Option one was to purchase and develop additional land near their existing site to irrigate wastewater. An additional 3,000 to 4,000 acres of land would be required at an estimated cost of 3.0 - 4.5 million dollars.

A second option considered was to install a constructed wetland treatment system. The applicant conducted pilot testing of a constructed wetland treatment system. The option that was selected (land application at the Madison Ranch) provided the best use of the wastewater at the least cost.

- 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 realized as a result of installing the center pivot irrigation system. The cost of maintaining and operating the facility is \$20,192 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.

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

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

5. Summation

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

- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department of Environmental Quality to protect groundwater. The applicant accomplished this purpose by irrigating at agronomic rates and increasing the irrigation acreage an additional 535 acres.
- c. The facility complies with DEQ statutes and rules.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$184,594.00 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4245.

John Straughan:crw  
MW\WC12\WC12867.5  
(503) 276-4063  
29. Aug 94

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

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1. Applicant

Willamette Industries, Inc.  
Duraflake Division  
1300 SW Fifth Ave, 3800 First Interstate Tower  
Portland, OR 97201

The applicant owns and operates a particleboard manufacturing plant in Albany, Oregon.

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

2. Description of Facility

The facility consists of a 10.5 foot deep by 6 foot diameter sump at outfall 001, a 12.65 foot deep by 7 foot diameter sump at outfall 002, an ITT Flyght wastewater pump model CP-3127-484, an ITT model 8.408 level control system, 6-inch diameter sewer piping from outfalls 001 to 002 and an 8-inch diameter Drisco pipe from outfall 002 to the Willamette Industries Kraft Mill effluent pipeline.

Claimed Facility Cost: \$188,185  
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that construction, of the facility was substantially completed on December 21, 1992 and the application for certification was found to be complete on August 22, 1994, 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 reduce water pollution. The requirement was to comply with Schedule C of NPDES Waste Discharge Permit No. 100668, which required the permittee to reduce the amount of woody debris discharged to the waters of the state. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Prior to installation of this system large quantities of stormwater and washwater containing high concentrations of Total Suspended Solids (TSS) were discharged directly to Murder Creek. Duraflake was unable to meet the TSS effluent limitations in its permit. On February 14, 1992, Duraflake was issued a Notice of Noncompliance for exceeding discharge limitations.

Installation of the new system has reduced Duraflakes discharge of TSS by approximately 90 %. Duraflake now routes washwater, and much of it's stormwater to Willamette Industries, Albany Paper Mill's waste treatment pond. The permit has been modified to reflect the new discharge arrangements. Duraflake is now in compliance with all permit requirements.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment from this facility.

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

The following alternatives were considered:

- a) Passive collection using sidehill screens to settle out wood fibres. This alternative was rejected because it was unable to remove fine wood fiber.
  - b) High pressure filtration of collected flows. This option was rejected because it would not handle high volume flows, and the projected costs were too high.
  - c) Sedimentation type clarifier system. This alternative was rejected because it would take up too much room, and the projected costs were too high.
- 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 \$3,829 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.

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department, to reduce water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468B.005.
- c. The facility complies with DEQ statutes and rules, and permit conditions.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$188,185 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4255.

William J. Perry:crw  
MW\WC12\WC12923.5  
(503) 686-7838  
19 Sept 94



State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Consolidated Metco, Inc.  
13940 N Rivergate Blvd  
Portland, OR 97203

The applicant owns and operates an aluminum casting plant in Portland, Oregon.

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

2. Description of Facility

The facility consists of an ultrafilter KOCH Membrane unit and associated plumbing and electrical system.

Claimed Facility Cost: \$18,090

3. Procedural Requirements

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

The facility met the statutory deadline in that installation of the facility was substantially completed on July 31, 1992 and the application for certification was found to be complete on July 29, 1994, 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 by the City of Portland to reduce water pollution. The requirement is to comply with the effluent limitations of a waste discharge permit issued by the City of Portland to Consolidated Metco, Inc. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

The Department has delegated the implementation of the pretreatment program to the City of Portland as required by its National Pollutant Discharge Elimination System (NPDES) Permit No. 100807. The permit requires the City of Portland to control significant industrial dischargers to its sanitary sewer. Consolidated Metco, Inc. was issued Waste Discharge Permit No. 300-013 by the City of Portland for its wastewater discharge to the city sanitary sewer.

According to the Bureau of Environmental Services, City of Portland (BES), the facility has been in compliance with the requirements of the Waste Discharge Permit No. 300-013. Prior to the installation of the facility, approximately 1,800 gallons of wastewater a month was being discharge to the city sanitary sewer. No discharge to the city sewer system was observed in the 1993 inspection of the facility by BES personnel.

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 saleable or usable commodity.

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

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

There is no return on investment for this equipment.

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

Alternative methods evaluated were chemical treatment and evaporation. Both processes were labor intensive and not cost effective on a minimal discharge as experienced from this process.

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

There are no savings or increase in costs as a result of the facility modification. The cost of maintaining and operating the facility is \$3,675 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.

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

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the City of Portland to prevent a substantial quantity of water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468B.005.
- c. The facility complies with the permit conditions of the Waste Discharge Permit No. 300-013 issued by the City of Portland, Bureau of Environmental Services.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%.

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$18,090 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4261.

Elliot J. Zais:crw  
MW\WC12\WC12900.5  
(503) 289-2756  
12 Sept 94

State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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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 air pollution control equipment.

2. Description of Claimed Facility

The equipment described in this application is located at 11325 Ehlen Road, Aurora, Oregon. The equipment is owned by the applicant.

Used Steffen Fork Assembly Model 51-16	\$ 3,875
1966 White Truck (tractor)	3,500
1984 Hyster Challenger Lift Truck H180H	24,500
New Freeman Big Baler Model 1592	74,360
New 1993 Comet 32' Flatbed Trailer	9,378
New 1993 Comet 32' Flatbed Trailer	9,378
New 1993 Comet Single Axle Converter Dolly	3,501
New Ford New Holland Rake Model 216	13,600

Claimed equipment cost: \$142,092  
(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 baling operations 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 equipment is governed by ORS 468.150 through 468.190, and by OAR Chapter 340, Division 16. The equipment has met all statutory deadlines in that:

Purchase of the equipment was substantially completed on November 2, 1992 and October 6, 1993. The application for final certification was found to be complete on August 26, 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 equipment's qualification as a "pollution control facility", defined in OAR 340-16-025(2)(f))A): "Equipment, facilities, and land for gathering, densifying, processing, handling, storing, transporting and incorporating grass straw or straw based products which will result in reduction of open field burning."

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing 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 equipment.

The pollution control equipment 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 equipment. 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

purchase of the claimed equipment from RMA, Annual Statement Studies for both 1992 and 1993 provides an industry average profit before taxes as a percent of total assets (IROI) of 4.84 (ROA/5). Selecting the reference annual percent returns (RROI) of 6.8 for 1992 and 5.5 for 1993 from Table 2 that corresponds with the year construction or purchase was completed the percentage of actual costs allocable to pollution control  $(RROI-IROI/RROI \times 100)$  is 29% for equipment purchased in 1992 and 12% for equipment purchased in 1993.

Date Acquired	Equipment Description	Claimed Cost	Allocable %	Allocable Costs
11/2/92	Used Steffen Fork Assembly Model 51-16	\$ 3,875	29%	1,124
2/27/93	1966 White Truck (tractor)	3,500	12%	420
6/17/93	1984 Hyster Challenger Lift Truck H180H	24,500	12%	2,940
6/28/93	New Freeman Big Baler Model 1592	74,360	12%	8,923
8/27/93	New 1993 Comet 32' Flatbed Trailer	9,378	12%	1,125
8/27/93	New 1993 Comet 32' Flatbed Trailer	9,378	12%	1,125
8/27/93	New 1993 Comet Single Axle Converter Dolly	3,501	12%	420
10/6/93	New Ford New Holland Rake Model 216	13,600	12%	1,632
Total allocable costs		142,092	12%	17,709

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 no savings or increase in costs as a result of the equipment.

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 12%.

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 12%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$142,092, with 12% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4269.

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

jb:bm4269  
August 29, 1994



State of Oregon  
Department of Agriculture

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Golden Valley Farms  
7385 Howell Prairie Road NE  
Silverton OR 97381

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 located at 7385 Howell Prairie Road NE, Silverton, Oregon. The equipment is owned by the applicant.

J.D. 4050 Tractor Serial #07422	\$27,950
New Holland 216 Hay Rake	9,500
1085 Bale Wagon Serial #546791	53,000
Case IH 8580 Baler Serial #CFH0026652	55,200
Model 51 Bale Rack Serial #050 341 0693	4,935
Model 51 Lower Bale Rack Serial #050 3345 0793	4,455
40' Wheel Rake	10,895
Roadrunner Serial # SDR121J0694 with Hay Clamp Serial # SD476	80,000

Claimed equipment cost: \$245,935  
(Accountant's Certification was provided.)

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

The applicant has 4,500 acres of perennial grass seed under cultivation. The applicant indicates that up to 1989 and the company's awareness of straw as a marketable by-product, it was customary to register and open field burn up to one-half of the total grass seed acreage produced annually. The remaining acreage was baled off, propane flamed, and the stacks were open burned.

With capital investment in storage sheds, straw compressors, straw rakes, balers, tractors, forklifts, hay squeezes, and trucks and trailers, the applicant is able to rake the grass straw in windrows, bale it, move it into storage sheds, compress and containerize the bales, and truck it to Port of Portland for export to Asian markets.

The applicant has been heavily investing in this alternative since 1987 and is able to remove the grass straw residue from all acreage without the necessity of open field burning or propane flaming and with remote stack 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 January 3, 1993. The application was submitted on August 24, 1994; and the application for final certification was found to be complete on August 31, 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 promotes the conversion of a waste product (straw) into a salable commodity by providing all the necessary operations to remove the residue from the fields to the marketplace.

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

The actual cost of claimed equipment (\$245,935) divided by the average annual cash flow (\$39,738.10) equals a return on investment factor of 6.19. Using Table 1 of OAR 340-16-030 for a life of 7 years, the annual percent return on investment is 3.25%. Using the annual percent return of 3.25% and the reference annual percent return of 5.5%, 41% is allocable to pollution control.

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

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

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

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

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, propane flamed, or stack burned is as follows:

<u>Implement</u>	<u>Acres Worked</u>	<u>Acres/Hour</u>	<u>Annual Operating Hours</u>
Baler	1,000	4	250

The total annual operating hours of 250 divided by the average annual operating hours of 450 produces a percent allocable of 56%. The tractor claimed cost of \$27,950 adjusted to 41% by the allocation of costs calculation is \$11,460 and further adjusted to 56% is \$6,418 or 23% of the claimed cost.

<u>Equipment</u>	<u>Claimed Cost</u>	<u>Percent Allocable</u>	<u>Allocable Cost</u>
J.D. 4050 Tractor	\$27,950	23%	6,429
New Holland 216 Hay Rake	9,500	41%	3,895
1085 Bale wagon	53,000	41%	21,730
Case IH 8580 Baler	55,200	41%	22,632
Model 51 Bale Rack	4,935	41%	2,023
Model 51 Lower Bale Rack	4,455	41%	1,827
40' Wheel Rake	10,895	41%	4,467
<u>Roadrunner with Hay clamp</u>	<u>80,000</u>	<u>41%</u>	<u>32,800</u>
 Total Allocable Costs	 245,935	 39%	 95,803

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 39%.

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 39%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$245,935, with 39% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application Number TC-4271.

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

jb:bm4271  
September 1, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Taylor Lumber & Treating, Inc.  
Wood Preserving Division  
22125 S.W. Rock Creek Road  
Sheridan, Oregon 97378

The applicant owns and operates a lumber preservation facility in Sheridan, Oregon. Application was made for a tax credit for a hazardous waste drip pad facility.

2. Description of Facility

The drip pad facility consists of a roofed, concrete pad that is situated over clay soils. The pad is designed to contain and collect wood treatment chemicals that drip off treated lumber after its removal from the treatment vessels. The pad is coated with a sealant and is underlain with an impervious double liner of high density polyethylene. A leak detection system, consisting of inspection ports built into the pad, provides visual detection of chemicals which may penetrate the pad's surface. And a metal tray system, which is positioned above the pad's surface, collects hazardous waste chemical drippage that is recycled back into the treatment vessels for reuse.

Claimed Facility Cost: \$1,070,218.50  
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met all statutory deadlines in that:

Construction commenced in May 1991; the facility was placed into operation on February 14, 1992; application for a tax credit was received April 16, 1992; and the application for final certification was found to be complete on August 8, 1994, two years and six months after completion of the facility.

A delay in processing the application occurred because of compliance problems at the facility. The problems that pertained directly to the facility were corrected, and the facility is now operating in compliance with regulations to prevent pollution.

4. Evaluation of Application

- a. The facility is eligible because the sole purpose of the facility is to comply with requirements imposed by the federal Environmental Protection Agency (EPA) and the Department to prevent, control, and reduce the probability of hazardous waste chemical drippage from contaminating soil and groundwater.

Prior to the construction of the new facility, Taylor Lumber had operational procedures and a pad to prevent residual wood treatment chemicals from dripping onto the soil, but the pad did not meet EPA's new drip pad technical or operational standards adopted by DEQ. Therefore, Taylor Lumber removed the old pad and installed a new one.

During the construction of the new pad, Taylor Lumber conducted a remediation effort of the grossly contaminated soils beneath the old pad. The remaining soils ostensibly do not contain chemical concentrations above health based action levels. Therefore, these remaining soils do not warrant additional remediation at this time. Also during construction of the new pad, Taylor Lumber created a 3000 cu. yds. soil pile which may contain hazardous wastes and is currently regarded as a RCRA regulated hazardous waste soil pile. The regulation of the pile is currently being addressed through the hazardous waste program.

Although soil remediation efforts have occurred during the construction of the drip pad facility, granting this tax credit does not relieve Taylor Lumber of possible additional remediation of soils and /or contaminated ground water either beneath or adjacent to the facility.

b. Eligible Cost Findings

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

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

A small portion of chemical drippage is collected on the pad and is converted into usable wood treatment chemical. Taylor Lumber estimates that approximately \$300.00 worth of usable chemicals is collected and reused annually.

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

There is no return on investment. The cost of operating the pad and equipment exceeds the value of any usable, reclaimed chemical.

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

There are no known alternatives.

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

There is no savings from the facility. Taylor Lumber estimates that pad operating expenses are approximately \$59,761/yr.; property taxes about \$20,351/yr. and insurance \$4,833/yr. for a total of \$84,946/yr., which far exceeds the annual income of approximately \$300/yr. in reusable product collected from the pad.

- 5) Any other factors which are relevant in establishing the ration 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.

- c. The Environmental Quality Commission has directed that tax credit applications of \$250,000 or more be reviewed by an external accounting firm under contract with the Department. The accounting firm of Symonds, Evans and Larson reviewed the application and found ineligible claimed costs amounting to a total of \$59,999 for certain design, legal and acceleration charges. As a result, the adjusted certifiable cost of the facility is \$ 1,010,220.

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

5. Summation

- a. The facility was constructed in accordance with all regulatory deadlines.
- b. The facility is eligible for final tax credit certification in that the sole purpose of the facility is to comply with requirements imposed by EPA and adopted by DEQ to prevent, control, and reduce the probability of hazardous waste chemical drippage from treated lumber from entering the soil or groundwater.
- c. An EPA-lead inspection on March 25, 1993 discovered facility structural and operational deficiencies which were described in EPA's May 13, 1994 report to the Department. In response to Department concerns, on July 5, 1994 and July 13, 1994 Taylor Lumber certified that the deficiencies had been corrected.
- d. The portion of the facility cost that is properly allocable to pollution control is 100%

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of \$1,010,220 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application TC 3778.

Gary Calaba:crw  
GW\WC12\WC12949.5  
(503) 229-6534  
September 20, 1994



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

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

At your request, we have performed certain agreed-upon procedures with respect to Taylor Lumber & Treating, Inc.'s (the Company's) Pollution Control Tax Credit Application No. 3778 (the Application) filed with the State of Oregon, Department of Environmental Quality (DEQ) for the Hazardous Waste Pollution Control Facility in Sheridan, Oregon (the Facility). The Application has a claimed Facility cost of \$1,070,219. Our procedures, findings and conclusion are as follows:

Procedures:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits – Sections 468.150 through 468.190 (the Statutes), and the Oregon Administrative Rules for Pollution Control Tax Credits – Sections 340-16-005 through 340-16-050 (OAR's).
2. We discussed the Application, the Statutes and OAR's with certain DEQ personnel, including Charles Bianchi and Gary Calaba.
3. We discussed certain components of the Application with Company personnel, including John Doss.
4. We toured the Facility with Mr. Doss.
5. We reviewed certain documents supporting the cost of the Facility.
6. We requested that Company personnel confirm the following:
  - a) There were no related parties or affiliates of the Company, other than Sumco Excavating, which had billings which were included in the Application. The excavation performed by Sumco Excavating, in the amount of \$7,421, was performed on an arms length basis at fair market value.
  - b) There were no internal costs of the Company that were included in the Application, other than labor costs of \$48,338. These labor costs represented actual costs incurred and paid.
  - c) The capacity of the Facility is adequate for the Company's present operations and does not include significant capacity for potential future operations. All costs related to the extension of the drip pad and the railing system beyond the roof canopy were excluded from the Application.

# SYMONDS, EVANS & LARSON

CERTIFIED PUBLIC ACCOUNTANTS

- d) The additional costs incurred to operate the Facility in accordance with regulatory requirements exceed any economic benefits derived from the Facility.
- 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) The operation of the Facility has no positive economic effect on the operation of the Company's treatment plant in Sheridan, Oregon.
- i) The Application does not include any costs related to the environmental remediation of the Facility.
- j) Legal fees totalling \$18,471 directly relate to the construction of the Facility.
- k) The Application included approximately \$28,000 in costs to accelerate the construction of the Facility.

## Findings:

1. through 5.

No matters came to our attention that caused us to believe that the Application should be adjusted, except for \$59,999 of non-allowable costs related to the following:

<u>Description</u>	<u>Amount</u>
Design costs for table rail and cart rail extension.	\$ 6,680
Acceleration costs	28,000
Legal fees	<u>25,319</u>
Total non-allowable costs	<u>\$59,999</u>

As a result, the adjusted costs for the Application should be reduced to \$1,010,220.

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 intended 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. 3778 with respect to its Hazardous Waste Pollution Control Facility in Sheridan, Oregon and should not be used for any other purpose.

*Symonds, Evans & Larson*

September 18, 1994

State of Oregon  
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Jeld-Wen, Inc.  
P.O. Box 1329  
Klamath Falls, OR 97601

The applicant manufactures hard board and molds the fiber into door skins.

Application was made for tax credit for an air pollution control facility installed at the applicant's Lakeport Boulevard, Klamath Falls plant.

2. Description of Facility

The claimed facility controls the emission of particulate generated from two wood dryers. The facility consists of two Carter-Day baghouse filters and ductwork.

Claimed Facility Cost: \$327,318.05

Accountant's certification was provided.

The applicant indicated that the useful life of the facility is 20 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 November 12, 1993 and the facility was placed into operation on November 14, 1993. The application for final certification was received by the Department on April 26, 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 25, Rule 325. The Air Contaminant Discharge Permit for this source, 18-0006, 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 two flash tube particle dryers of the applicant's hardboard manufacturing operation. Prior to installation of the new baghouse dried fiber leaving each of the two flash tube particle dryers was collected by a cyclone which emitted exhaust directly to the atmosphere. Source tests performed on the flash tube dryer cyclones on May 8, 1990 and July 3, 1991 showed emissions from the cyclones to the atmosphere to exceed permitted levels. On June 21, 1994 a Department inspector observed the new baghouses during an inspection of the hardboard manufacturing operation. The inspector found the particle dryers and baghouses to be in compliance.

The claimed facility consists of two Carter-Day 376 RFW-10 dryer baghouse filters, ductwork, and a fire suppression system. A pre-existing material handling fan blows wet fiber into the flash tube particle dryers. The dried fiber is blown out of each dryer into ducting and collected in two pre-existing cyclones. Each cyclone's exhaust is routed through ducting into a baghouse inlet. The exhaust gas then passes through the bagfilters. The wood particulate accumulates on the surface of the bagfilters and the filtered exhaust is emitted to the atmosphere. Accumulated particulate is removed from the surface of each bagfilter with a reverse pulse of compressed air and settles to the bottom of the baghouse hopper. The collected particulate consists of a very fine wood fiber and dust which is removed and used for hogged fuel in the applicant's boiler.

##### 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.

A portion of the waste product is converted into a usable commodity. The facility recovers 172 tons per year of wood particulate which is used as boiler fuel. The average annual value of this fuel is estimated to be \$690.00 per year.

- 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 hard board manufacturing plants. Besides the Carter-Day baghouses, prices were acquired for Clarke baghouses. The prices were within ten percent of each other. Carter-Day's equipment was chosen based on past performance at other Jeld-Wen facilities.

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

The increase in annual operating cost of the facility is approximately \$14,000 due to increased electricity use, maintenance time, 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.

The Environmental Quality Commission has directed that tax credit applications at or above \$250,000 go through an additional Departmental accounting review, to determine if costs were properly allocated. This review was performed under contract with the Department by the accounting firm of Boldt, Carlisle, & Smith (see attached report).

The cost allocation review of this application has identified no issues to be resolved and confirms the cost allocation as submitted in the application.

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%.

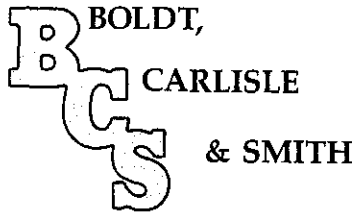
5. Summation

- 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 \$327,318 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. TC-4232.

Tonia C. Garbowsky : PRC Environmental Management, Inc. / June 9, 1994



CERTIFIED PUBLIC ACCOUNTANTS

FIR GROVE BUILDING, SUITE D  
2001 FRONT STREET N.E.  
SALEM, OR 97303-6651  
(503) 585-7751  
FAX 370-3781

408 NORTH THIRD AVENUE  
STAYTON, OR 97383-1797  
(503) 769-2186  
FAX 769-4312

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
811 S. W. Sixth Avenue  
Portland, OR 97204

At your request, we have performed agreed upon procedures with respect to JELD-WEN, Inc. Pollution Tax Control Credit Application No. 4232 regarding two Carter-Day baghouse filters and ductwork. The aggregate claimed costs on the Application were \$327,318.05. The agreed upon procedures and our related findings are as follows:

1. We read the Application, the Oregon Revised Statutes on Pollution Control Facilities Tax Credits - Section 468.150-468.190 (the Statutes) and the Oregon Administrative Rules on Pollution Control Tax Credits - Sections 340-16-005 through 340-16-050 (OAR'S).
2. We discussed the Application and statutes with Brian Fields of the Oregon Department of Environmental Quality and with Charles Bianchi the Pollution Control Facilities Tax Credit Program consultant. We then discussed the Application with Tonia Garbowsky of PRC Environmental Management, Inc. including the qualification of some specific project costs.
3. We discussed the Application and Statutes with Gary Koepke of JELD-WEN, Inc., and Marlin J. Peterson CPA and Terrence J. Scroggin CPA of Molatore, Peugh, McDaniel, Scroggin & Co. the firm that examined the Application for Final Certification.
4. We inquired as to whether there were any direct or indirect Company costs charged to the Facility costs claimed in the Application. We were informed that no direct or indirect costs were included in the Application.

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

5. We reviewed supporting documentation for 87 percent of the amount claimed on the Application through review of vendor invoices. All costs which we reviewed supporting the Application appeared to be from third party vendors.
6. We discussed with Gary Koepke, of the Company, the extent to which non-allowable costs were excluded from the Application. This was accomplished by reviewing specific contractor invoices (see item no. 5). We determined that the Company had properly excluded all non-allowable costs from the Application.

RECEIVED

AUG 19 1994

Water Quality Division  
Dept. of Environmental Quality



Conclusions

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on any of the items referred to above. In connection with the procedures referred to above, no matters came to our attention that caused us to believe that the claimed facility costs of \$327,318.05 on the Application should be adjusted. Had we performed additional procedures, or had we conducted an audit of the financial statements of the Company in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report relates only to the items specified above and does not extend to any financial statements of the Company taken as a whole.

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

*Boldt, Carlisle & Smith*

Certified Public Accountants  
Eugene, Oregon  
August 8, 1994  
70591\REP4232.DOC

# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item C  
October 21, 1994 Meeting

**Title:**

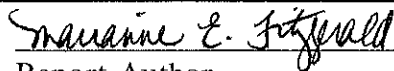
Proposed Adoption of EQC Policy on Disclosure of the Relationship Between Proposed Rules and Federal Requirements

**Summary:**


The proposed rule establishes a policy statement and set of questions which disclose information on the relationship between proposed rules and any related federal requirements. DEQ staff would make the information available to the public for review throughout the rulemaking process for any future rules proposed for adoption or amendment. The rule neither mandates nor precludes any particular decision by the EQC when a rule package is presented for ultimate adoption.

**Department Recommendation:**

Adopt the rules establishing a policy statement and list of questions which disclose the relationship between proposed rules and federal requirements.

  
Report Author

  
Division Administrator

  
Director


September 30, 1994

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

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: October 4, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item<sup>CC</sup>, October 21, 1994, EQC Meeting

Proposed Adoption of EQC Policy on Disclosure of the Relationship  
Between Proposed Rules and Federal Requirements

**Background**

On July 15, 1994, the Director authorized the Office of the Director to proceed to a rulemaking hearing on proposed rules which would establish a policy and procedure for disclosing information regarding the relationship between the proposed rules and federal requirements. The proposed rules require that for any future rulemaking, the Department of Environmental Quality (DEQ) prepare responses to a list of questions, and make the information available to advisory committees and the public early in the rulemaking process, and available to the Environmental Quality Commission (EQC) when rule adoption is recommended.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on August 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 July 21, 1994.

A Public Hearing was held on August 25, 1994 at 1:30 p.m. in Conference Room 10A, 811 S.W. Sixth Avenue in Portland with Marianne Fitzgerald 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 29, 1994. Only one letter was received by that date; however, three additional letters arrived immediately after the deadline. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

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

Memo To: Environmental Quality Commission  
Agenda Item C  
October 21, 1994 Meeting  
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Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, no changes to the proposed rules are recommended by the Department. These proposed rules are contained in Attachment A.

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**

Oregon's citizens have made a clear record of their concern about the quality of the environment, the environmentally related health and safety of its citizens, and the overall livability of the state. This record predates the existence of all federal environmental programs and requirements, beginning with the cleanup of the Willamette River in the 1930's and the development of the nation's first air pollution laws in the 1950's, to its current leadership in the field of pollution prevention.

Federal environmental legislation establishing national minimum standards and program requirements were enacted during the last three decades for at least three reasons:

1. To provide a means for dealing with pollution that originates in one state and imposes pollution problems upon an adjacent state.
2. To impose minimum requirements for protection of the public health, safety, and welfare in states that have not chosen to establish programs to achieve such minimum protection.
3. To level the economic playing field by imposing national minimum requirements designed to make sure that industry cannot escape basic pollution control requirements by locating in a "pollution haven" state.

Federal environmental legislation recognizes the responsibility of the states to be the primary implementer of environmental protection, and the rights of states to enact requirements that are more stringent than the national minimums if they so choose. Federal laws also provide for the state to operate mandated federal programs (or a fully equivalent program) within the state in lieu of direct federal operation.

Oregon takes pride in its leadership in protecting its environment and working proactively with all parties to prevent pollution. There are numerous examples where Oregon has acted ahead of the federal government in adopting laws to protect Oregon's environment, such as the ban on phosphates in detergents (1991), the development of a woodstove certification program (1983), and the adoption of requirements to evaluate the use of toxic chemicals and generation of hazardous wastes in the workplace (1989). These laws addressed environmental problems unique to Oregon which were not adequately addressed at the federal level, and in some cases, national laws were subsequently enacted based on the Oregon model.

Federal environmental programs and standards have been maturing over these last three decades, and for those areas where the federal government has established standards, these standards are beginning to approach the level of health, safety, and environmental protection that Oregonians want. Consistency with federal requirements where such requirements meet Oregon's needs is desirable. Therefore, the proposed rule mandates a process where, as rulemaking is undertaken, the Department will evaluate the applicable federal requirements and existing state requirements and will recommend to the EQC adoption of the national standard as the state standard so far as they address the issues at hand in Oregon, and if it can conclude that the national minimum standard appropriately addresses Oregon environmental concerns, and adequately protects the health, safety and welfare of Oregon's citizens.

The proposed rule requires that the information on the relationship between proposed new rules and federal requirements be available to advisory committees and the general public early in the rulemaking process. The EQC and the DEQ seek broad based input from the public and the regulated community during the development of rules and standards, and advisory committees which represent the spectrum of interests and expertise on the issues at hand (including technical experts and representatives from the regulated community, environmental organizations, local officials, and citizens) are utilized in the development of all significant new or amended rules. Advisory committees are encouraged to seek a consensus position with respect to proposed rules. The EQC relies heavily on the analysis, advice and recommendations of advisory committees as it seeks to follow statutory policy direction and thoughtfully balance the interests of all Oregonians to meet state and federal statutory mandates. The proposed rule recommends that advisory committees assist in this evaluation.

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

There is no parallel federal requirement.

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**Authority to Address the Issue**

ORS 468.020 authorizes the Commission to adopt such rules and standards as it considers necessary and proper in performing the functions vested by law in the Commission.

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

A small task force consisting of representatives of the business community and environmental groups discussed the concepts, and developed the list of questions that would be used to evaluate the relationship between proposed rules and federal requirements. The group reached consensus on the draft language which was presented for public hearing after only two meetings. Members of the task force included Jim Whitty, Associated Oregon Industries; Frank Deaver, Tektronix; John Charles, Oregon Environmental Council; Louise Bielheimner, Pacific Rivers Council; and Dave Murray, Precision Castparts.

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

The Department proposed a rule which describes EQC policy and lists the questions that would need to be responded to in order to evaluate how any future proposed rules compare to federal requirements. The rule neither mandates nor precludes any particular decision by the Commission when a rule package is presented; it merely assures that the information is available throughout the process. There were no significant issues raised during the rulemaking process, although a few minor word changes were suggested. All commentors supported the proposal.

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

Written testimony was received from four groups. All of the comments were in favor of the proposed rule. A few comments pertained to clarifying individual questions regarding stringency evaluation. A summary of these comments and the Department's response is contained in Attachment E.

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

The rule is already being piloted within the rulemaking procedures at DEQ. A format has been created for DEQ staff to use for this evaluation when developing rulemaking materials. Questions have also been added to the EQC staff report format.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rules regarding an EQC policy to disclose information on the relationship between proposed rules and any federal requirements as presented in Attachment A of the Department Staff Report.

**Attachments**

- A. Rule Proposed for Adoption
- B. Supporting Procedural Documentation:
  - 1. Legal Notice of Hearing
  - 2. Public Notice of Hearing (Chance to Comment)
  - 3. Rulemaking Statements (Statement of Need)
  - 4. Fiscal and Economic Impact Statement
  - 5. Land Use Evaluation Statement
- C. Presiding Officer's Report on Public Hearing
- D. List of Written Comments Received
- E. Department's Evaluation of Public Comment

**Reference Documents (available upon request)**

Written comments received (listed in Attachment D)

Approved:

Section:

Marianne E. Fitzgerald

Division:

Olivia N. Clark

Report Prepared By: Olivia Clark and Marianne  
Fitzgerald

Memo To: Environmental Quality Commission  
Agenda Item 6  
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Page 6

Phone: 229-5327, 229-5946

Date Prepared: September 29, 1994

/mef  
stringad



State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

*The following is new rule language proposed for addition to  
OAR Chapter 340, Division 11.*

**Policy on Disclosure of the Relationship between Proposed Rules and Federal Requirements**

340-11-029

- (A) In order to clearly identify the relationship between proposed rules and applicable federal requirements and facilitate consideration and rule adoption by the Environmental Quality Commission, the Department, with assistance of advisory committees where appropriate, shall, to the extent practicable:
1. Consider and develop a response to the questions set forth below in Table 1 during the rule development process.
  2. Include the questions and responses in the information package distributed to the public prior to the rulemaking hearing.
  3. Include the questions and responses in the final staff report presented to the EQC when rule adoption is recommended.
- (B) Nothing in this rule shall apply to temporary rules adopted pursuant to OAR 340-11-042.

**Table 1**

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

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

1. Are there federal requirements that are applicable to this situation? If so, exactly what are they?
2. Are the applicable federal requirements performance based, technology based, or both with the most stringent controlling?

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?
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?
5. Is there a timing issue which might justify changing the time frame for implementation of federal requirements?
6. Will the proposed requirement assist in establishing and maintaining a reasonable margin for accommodation of uncertainty and future growth?
7. Does the proposed requirement establish or maintain reasonable equity in the requirements for various sources? (level the playing field)
8. Would others face increased costs if a more stringent rule is not enacted?
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?
10. Is demonstrated technology available to comply with the proposed requirement?
11. Will the proposed requirement contribute to the prevention of pollution or address a potential problem and represent a more cost effective environmental gain?

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.

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*Oregon Department of Environmental Quality*

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

**Proposed Adoption of EQC Policy on Disclosure of the Relationship  
between Proposed Rules and Federal Requirements**

Date Issued:	July 15, 1994
Public Hearing:	August 25, 1994
Comments Due:	August 29, 1994

**WHO IS  
AFFECTED:**

Members of the public and the regulated community who are interested in or affected by rules adopted by the Environmental Quality Commission

**WHAT IS  
PROPOSED:**

The DEQ proposes to adopt a policy statement and set of questions which disclose information on the relationship between proposed rules and any related federal requirements. The rule neither mandates nor precludes any particular decision by the EQC when a rule package is presented for ultimate adoption. It is intended to assure that the information is available throughout the rulemaking process.

**WHAT ARE THE  
HIGHLIGHTS:**

- \* Requires that the DEQ prepare a written response to a list of questions as a structured means for disclosure of the relationship between the proposed rule and the federal requirements.
- \* Establishes the list of questions within the rule.

**HOW TO  
COMMENT:**

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

1:30 pm  
August 25, 1994  
Department of Environmental Quality  
Conference Room 10A  
811 S.W. Sixth Avenue  
Portland, Oregon



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.

Written comments must be received by 5:00 p.m. on August 29, 1994 at the following address:

Department of Environmental Quality  
Office of the Director  
811 S.W. Sixth 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 Monika Johnson, Office of the Director, at (503) 229-5395. If you have any questions about the proposed rule, please contact Olivia Clark, Office of the Director, at (503) 229-5327, or Marianne Fitzgerald, Pollution Prevention Coordinator, at (503) 229-5946. You may also call toll free within Oregon at 1-800-452-4011.

**WHAT IS THE  
NEXT STEP:**

The Department will evaluate comments received and will make a recommendation to the Environmental Quality Commission. Interested parties can request to be notified of the date the Commission will consider the matter by writing to the Department at the above address.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for

Proposed Adoption of EQC Policy on Disclosure of the Relationship  
between Proposed Rules and Federal Requirements

## Rulemaking Statements

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

1. Legal Authority

ORS 468.020

2. Need for the Rule

Questions are frequently raised as to whether a proposed rule is more or less stringent than a counterpart federal rule or requirement. This proposed rule expresses the policy of the EQC to disclose information on the relationship between proposed rules and any related federal requirements. The rule requires response to a list of questions as a structured means for disclosure. The rule neither mandates or precludes any particular decision by the EQC when a rule package is presented for ultimate adoption. It is intended to assure that the information is available through out the rulemaking process.

3. Principal Documents Relied Upon in this Rulemaking

None

4. Advisory Committee Involvement

DEQ assembled a work group (advisory committee) consisting of representatives of environmental organizations and industry to develop a mechanism for consideration of proposals for rules which may be different or more stringent than federal rules. The committee met twice. The proposed rule seeks to implement the consensus reached by the work group.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Proposed Adoption of EQC Policy on Disclosure of the Relationship  
between Proposed Rules and Federal Requirements

## Fiscal and Economic Impact Statement

### Introduction and Assumptions

Oregon's citizens have made a clear record of their concern about the quality of the environment, the environmentally related health and safety of its citizens, and the overall livability of the state. This record predates the existence of all federal environmental programs and requirements, beginning with the cleanup of the Willamette River in the 1930's and the development of the nation's first air pollution laws in the 1950's, to its current leadership in the field of pollution prevention.

Federal environmental legislation establishing national minimum standards and program requirements were enacted during the last three decades for at least three reasons:

1. To provide a means for dealing with pollution that originates in one state and imposes pollution problems upon an adjacent state.
2. To impose minimum requirements for protection of the public health, safety, and welfare in states that have not chosen to establish programs to achieve such minimum protections.
3. To level the economic playing field by imposing national minimum requirements designed to make sure that industry cannot escape basic pollution control requirements by locating in a "pollution haven" state.

Federal environmental legislation recognizes the responsibility of the states to be the primary implementer of environmental protection, and the rights of states to enact requirements that are more stringent than the national minimums if they so choose. Federal laws also provide for the state to operate mandated federal programs (or a fully equivalent program) within the state in lieu of direct federal operation.

Oregon takes pride in its leadership in protecting its environment and working proactively with all parties to prevent pollution. There are numerous examples where Oregon has acted

ahead of the federal government in adopting laws to protect Oregon's environment, such as the ban on phosphates in detergents (1991), the development of a woodstove certification program (1983), and the adoption of requirements to evaluate the use of toxic chemicals and generation of hazardous wastes in the workplace (1989). These laws addressed environmental problems unique to Oregon which were not adequately addressed at the federal level, and in some cases, national laws were subsequently enacted based on the Oregon model.

Federal environmental programs and standards have been maturing over these last three decades, and for those areas where the federal government has established standards, these standards now approach the level of health, safety, and environmental protection that Oregonians want. Consistency with federal requirements where such requirements meet Oregon's needs is desirable. Therefore, as rulemaking is undertaken, the Department will evaluate the applicable federal requirements and existing state requirements and will recommend to the Environmental Quality Commission adoption of the national standard as the state standard so far as they address the issues at hand in Oregon, and if it can conclude that the national minimum standard appropriately addresses Oregon environmental concerns, and adequately protects the health, safety and welfare of Oregon's citizens.

During the development of rules and standards, the Environmental Quality Commission and the DEQ seek broad based input from the public and the regulated community. Advisory committees which represent the spectrum of interests and expertise on the issues at hand (including technical experts and representatives from the regulated community, environmental organizations, local officials, and citizens) are utilized in the development of all significant new or amended rules. Advisory committees are encouraged to seek a consensus position with respect to proposed rules. The EQC relies heavily on the analysis, advice and recommendations of advisory committees as it seeks to follow statutory policy direction and thoughtfully balance the interests of all Oregonians to meet state and federal statutory mandates.

This proposed rule requires that the DEQ formally evaluate the relationship between proposed rules and any related federal requirements, and make the information available to the public early in the rulemaking process. This proposed rule expresses the policy of the EQC to disclose information on the relationship between proposed rules and any related federal requirements. The rule requires response to a list of questions as a structured means for disclosure. The rule neither mandates or precludes any particular decision by the EQC when a rule package is presented for ultimate adoption. It is intended to assure that the information is available through out the rulemaking process.

Overall, the economic impact of the proposed rule is minimal. It requires that the DEQ disclose information which is currently available but may not be written in a clear and concise statement. This rule merely requires that the DEQ develop answers to questions which will clearly indicate whether the proposed rule is more stringent than the federal rule. By making this information available to the public throughout the rulemaking process, it



should facilitate public comments on whether it is appropriate for the state to differ from federal requirements. This proposed rule does not impose any costs or savings upon the public or the regulated community, and requires minimal additional effort on the part of DEQ staff responsible for rule development.

### **General Public**

The proposed rule should facilitate comment by the general public on future rulemaking proposals by providing additional information on the relationship between rule proposals and potentially applicable federal requirements. This proposed rule does not impose any costs or savings upon the public or the regulated community.

### **Small Business**

The proposed rule should facilitate comment by small businesses on future rulemaking proposals by providing additional information on the relationship between rule proposals and potentially applicable federal requirements. This proposed rule does not impose any costs or savings upon the public or the regulated community.

### **Large Business**

The proposed rule should facilitate comment by large businesses on future rulemaking proposals by providing additional information on the relationship between rule proposals and potentially applicable federal requirements. This proposed rule does not impose any costs or savings upon the public or the regulated community.

### **Local Governments**

The proposed rule should facilitate comment by local governments on future rulemaking proposals by providing additional information on the relationship between rule proposals and potentially applicable federal requirements. This proposed rule does not impose any costs or savings upon the public or the regulated community.

### **State Agencies**

The rule will require DEQ to prepare written responses to the questions set forth in the rule. The basic information should be readily available as part of the rule development process. Therefore, preparing the information in the question and answer format should require negligible additional effort on the part of DEQ staff.

The proposed rule should facilitate comment by other state agencies on future rulemaking proposals by providing additional information on the relationship between rule proposals and potentially applicable federal requirements. This proposed rule does not impose any costs or savings upon the public or the regulated community.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for

Proposed Adoption of EQC Policy on Disclosure of the Relationship  
between Proposed Rules and Federal Requirements

Land Use Evaluation Statement

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

Questions are frequently raised as to whether a proposed rule is more or less stringent than a counterpart federal rule or requirement. This proposed rule expresses the policy of the EQC to disclose information on the relationship between proposed rules and any related federal requirements. The rule requires response to a list of questions as a structured means for disclosure. The rule neither mandates or precludes any particular decision by the EQC when a rule package is presented for ultimate adoption. It is intended to assure that the information is available through out the rulemaking process.

**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 XX

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 does not affect land use. It simply requires that DEQ, when developing a rulemaking proposal, to prepare responses to a series of questions regarding the relationship of the proposed rule to related federal rules and requirements. The questions and responses are then distributed during the rulemaking process so as to provide opportunity for comment.

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

<i>Maura Fitzgerald for Olivia Clark</i>	<i>Robert Gray</i>	<i>7/1/94</i>
Division	Intergovernmental Coord.	Date

State of Oregon  
Department of Environmental Quality

Memorandum

Date: September 6, 1994

**To:** Environmental Quality Commission

**From:** Marianne Fitzgerald

**Subject:** Presiding Officer's Report for Rulemaking Hearing  
Hearing Date and Time: August 25, 1994, beginning at 1:30 p.m.  
Hearing Location: 811 S.W. Sixth, Conference Room 10A,  
Portland, Oregon

Title of Proposal: Proposed Adoption of EQC Policy on  
Disclosure of the Relationship between  
Proposed Rules and Federal Requirements

The rulemaking hearing on the above titled proposal was convened at 1:35 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.

Three people were in attendance, but none of the people signed up to give testimony. One additional person arrived after the close of the hearing, but did not wish to testify.

Prior to receiving testimony, Marianne Fitzgerald briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience. People were then called to testify, but all of the persons present declined. There were no oral comments.

No one handed in written comments at the hearing. The following persons submitted written comments directly to the Department:

William C. Park, Marine Spill Response Corporation  
Kevin Hanaway, Oregon Association of Clean Water Agencies  
Phillip Fell, League of Oregon Cities  
Jim Whitty, Associated Oregon Industries

There was no further testimony and the hearing was closed at 1:40 p.m..

Proposed Adoption of EQC Policy on Disclosure of the Relationship  
Between Proposed Rules and Federal Requirements

List of Written Comments Received

Only one person submitted written testimony prior to the close of the comment period. Three other letters were sent but appear to have been lost in the facsimile process. Copies of these letters were received within 48 hours of the close of the comment period. Below is the complete list of comments received. An evaluation of all of the comments received is included in Attachment E. No changes were made to the proposed rules which were presented for public comment.

1. Jim Whitty, Associated Oregon Industries, letter dated August 24, 1994, and received on August 25, 1994.

AOI expressed support for the rule in general. They had two points which they requested be resolved prior to rule adoption. First, they suggested that advisory committees should be involved in examining and commenting on the Department's response to the questions, and thought that the proposed language was too discretionary. Second, they suggested exempting fee-only rules from the evaluation because they do not involve federal standards and this exercise could be a waste of Department resources.

2. William C. Park, Marine Spill Response Corporation, letter dated August 26, 1994 and received on August 30, 1994.

MSRC expressed support for the rule and its attempt to address issues of consistency between jurisdictions and attempts to avoid duplication. They made a few specific observations and comments. They suggested that the questions should also consider consistency with international standards where applicable (such as International Maritime Organization standards). They also suggested clarification of the language in Questions 3, 4 and 7.

3. Kevin Hanaway, Oregon Association of Clean Water Agencies, letter dated August 29, 1994 and received on August 30, 1994.

OR-ACWA expressed support for the proposed rules, including the flexibility to address local conditions beyond what is required by federal rules if warranted by local conditions and clearly identified Oregon interests.

4. Phillip Fell, League of Oregon Cities, letter dated August 26, 1994 and received on August 31, 1994.

LOC expressed support for the proposed rules. They suggested adding a cost-benefit analysis to the list of questions to help in the evaluation. They also suggested inclusion of a process for post-implementation review of the questions for the purpose of adding any additional questions as experiences in the intervening months dictate.

Proposed Adoption of EQC Policy on Disclosure of the Relationship  
Between Proposed Rules and Federal Requirements

Department's Response to Public Comment

No persons offered oral testimony at the public hearing. Four persons provided written comments. These are summarized below.

COMMENT: Support for the rule in general.

All of the comments began with a statement in support of the evaluation concept to examine consistency with federal requirements. Two of the comments added that they supported retaining flexibility to adopt or retain more stringent rules if justified by local needs.

COMMENT: Advisory Committees should be involved in examining and commenting on the Department's response to the questions.

RESPONSE: It is the Department's intent to involve advisory committees in all rulemaking activities, especially for large, potentially controversial rule packages. It is also the Department's intent to make this information available to the advisory committee members early in the rulemaking process. The committee could provide comments on the Department's responses before it is distributed to the public prior to the rulemaking hearing. There may be some circumstances where a formal advisory committee is not appointed (such as housekeeping rule changes), and we prefer to retain the flexibility in the current proposed rule language which does not mandate advisory committee involvement. No changes to the rules are proposed.

COMMENT: The policy should exempt fee-only rules from this process.

RESPONSE: The Department has already exempted temporary rules from this process. It is our desire to simplify this procedure as much as possible, and further exemptions may make administration more difficult. In certain circumstances, a simple "Not applicable" may be all that is necessary to comply. In the case of fees, federal statutes may require a certain level of fees to support the program (such as the Air Quality Title V Permit Program) and this information may be useful to the public when evaluating the proposed fee system. Information on consistency with other states' fees may also be helpful to the public. No changes to the rules are proposed.

COMMENT: The questions should also consider consistency with international standards where applicable (such as International Maritime Organization standards).

RESPONSE: It is the Department's intent to be consistent with international requirements where they apply in Oregon. However, this information would be considered on a case-by-case basis due to the limited number of international standards in effect at this time. No changes to the rules are proposed at this time, although we could consider adding it at a future time, especially if it is brought to our attention that agency staff failed to consider this information in the rulemaking process.

COMMENT: Regarding Question 3, how will DEQ determine the issues of concern in Oregon?

RESPONSE: Oregonians have a long history of commitment to the environment. For example, our current solid waste recycling rules and gold mining rules went beyond the federal requirements because of strong public interest and concern in these areas. There may be other circumstances where the federal requirements may address pollutants or sources which do not exist in the state of Oregon, or are not present in levels which would harm the public health or the environment. These issues would not likely be of concern to Oregonians. While there is no formal process for determining which issues are of concern, there will be an informal attempt to identify whether local circumstances differ from the federal process that established the federal requirements. No changes to the rules are proposed.

COMMENT: Regarding Question 4, one commentator stated that the qualifiers seem confusing and the suggested simplifying the language in the question by removing the qualifiers. Another commentator suggested adding the requirement of a cost-benefit analysis to the list of questions.

RESPONSE: The question was worded to help explain what was meant by "improving the ability of the regulated community to comply in a more cost-effective way". It is very difficult to measure the true cost of pollution, and the level of effort (and expertise) required to do a cost-benefit analysis is beyond what we intended in this evaluation process. We prefer to rely on the general language in the proposed question, and the existing fiscal and economic impact statement, to estimate the fiscal impact of the proposed regulations and benefits which could be obtained through improved efficiencies. The answers to these questions provides some information on costs and benefits without placing an unreasonable burden on Department staff. No changes to the rule are proposed.

COMMENT: Regarding Question 7, it was suggested we replace the phrase "reasonable equity in the requirements for various sources" with the

phrase "reasonable equity in the requirements for the regulated community."

RESPONSE: The Department disagrees with the proposed change because there may be sources of pollution which are not regulated and therefore not part of the regulated community. We prefer the broader language which includes all potential sources of pollution. No changes to the rule are proposed.

COMMENT: The Department should include a process for post-implementation review of the questions.

RESPONSE: We agree that there may be a need to revise the questions after we gain more experience using this evaluation process. However, the questions may only be changed through a formal rulemaking process. It is the Department's intent to use existing advisory committees and other communication with DEQ staff to bring problems to our attention. If changes to the rule are needed, the rules would be proposed for revision. No changes to the rule are proposed at this time.

/mef  
9/23/94



# Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D  
October 20-21, 1994 Meeting

**Title:**

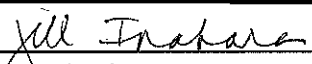
Federal Operating Permit Program Rule Amendments

**Summary:**


To ensure EPA approval of the Federal Operating Permit Program, the Department is proposing rules which would clarify and correct the language in the Federal Operating Permit Program rules contained in Chapter 340, Divisions 28 and 32. The proposed rulemaking also incorporates changes to the minor New Source Review rule (OAR 340-28-2270) and updates the rules in Division 32 for Early Reductions and Accidental Release chemicals.

**Department Recommendation:**

The Department recommends that the Commission adopt the rule amendments in order to gain EPA approval of the Federal Operating Permit Program.

  
Report Author

  
Division Administrator

  
Director

September 30, 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: October 20, 1994

To: Environmental Quality Commission  
From: John Ruscigno, Air Quality *QJR*  
Subject: October 21, 1994 EQC Agenda Item D

This memorandum serves as an amendment to the staff report for Agenda Item D, Federal Operating Permit Program Rule Amendments and concerns the issue of insignificant emissions.

The EPA recognized that some types of activities and some levels of emissions may not warrant regulation and allowed states to adopt lists of insignificant activities and/or emission levels that would be exempted from the permitting process, within some limits.

Oregon adopted a list of "Categorical insignificant activities" such as janitorial and office activities, that would not be addressed in the permit. The applicant is only required to tell the Department if those activities exist at the site. This current rulemaking adds some activities to that list and modifies the descriptions of some activities on the list.

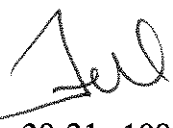
To address insignificant emission levels, Oregon adopted the concept of "Aggregate insignificant emissions" which allow the applicant to define a group of emission units whose total emissions are less than a specified amount by pollutant. Those amounts were one ton per year for most criteria pollutants (particulate matter, PM<sub>10</sub>, carbon monoxide, sulfur dioxide, nitrogen oxides, and volatile organic compounds) and less for other pollutants as defined. This group of "Aggregate insignificant emissions" will be addressed in the permit but the Department will require less rigorous monitoring and compliance demonstration requirements than for emissions that are above the aggregate insignificant levels. This current rulemaking adds some pollutants, such as total reduced sulfur, to the list of specified amounts.

Neither the rules changes nor the notice of rulemaking addressed the one ton per year level.

State of Oregon  
Department of Environmental Quality

Memorandum<sup>†</sup>

Date: October 4, 1994

To: Environmental Quality Commission  
From: Fred Hansen, Director   
Subject: Agenda Item D, October 20-21, 1994, EQC Meeting

**Background**

On June 7, 1994, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would clarify and correct the rule language in the Federal Operating Permit Program rules contained in Chapter 340, Divisions 28 and 32. The proposal would also incorporate changes to the minor New Source Review rule (OAR 340-28-2270) and update the rules in Division 32 for Early Reductions and Accidental Release chemicals to ensure EPA approval of the Federal Operating Permit Program.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on July 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 July 14, 1994.

A Public Hearing was held August 1, 1994 in Portland at 1:00 p.m. with Gregg Lande 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 19, 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

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

Memo To: Environmental Quality Commission  
Agenda Item D  
October 20-21, 1994 Meeting  
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by the Department. These modifications are summarized below and detailed in Attachment F.

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

This proposal is intended to address comments received as a result of the EPA's review of the Department's Federal Operating Permit Program submittal. In order to gain EPA approval of the program, the Department must incorporate the required changes. These changes include significant revisions to the minor New Source Review rule (OAR 340-28-2270). The EPA has also issued final and amended rules for hazardous air pollutant Early Reductions and Accidental Release Prevention and the Department must update the corresponding Oregon Administrative Rules. This proposal is also intended to respond to experience the Department gained in implementing this new program while conducting the pilot permitting project of the Federal Operating Permit Program with a group of volunteer industrial sources. During this pilot project, suggestions were made by the sources, the EPA, and Department staff to clarify and correct the rule language. This package also includes several housekeeping changes to correct typographical errors.

The proposed categorical rules to exclude smaller air pollution sources from the Federal Operating Permit Program have been withdrawn from this rulemaking. This step was taken to allow the Department additional time to resolve issues raised by EPA comments, including the prospect of incorporating new approaches to calculate potential to emit and applicability of the Federal Operating Permit Program. This action was also taken to avoid jeopardizing EPA approvability of the program.

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

The Federal Clean Air Act Amendments of 1990 require all states to develop and implement operating permit programs. The new rules and amendments to existing rules in this proposal will make the Federal Operating Permit Program approvable.

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### Authority to Address the Issue

The proposed new rules and amendments to the OARs are intended to effectively implement the Federal Operating Permit Program as required by the Federal Clean Air Act Amendments of 1990. They are proposed under the authority of ORS 468.020 and 468A.310.

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

This proposal was developed with the assistance of an Industrial Source Advisory Committee (ISAC-3) which includes representatives of the regulated community, environmental organizations, and the public. Attachment G contains a list of the Advisory Committee members. The Committee received an introduction to the issues and briefly discussed them at its first meeting on April 6, 1994. The Committee also discussed the issues at the June 2, 1994 meeting and agreed that the Department should proceed with the rulemaking process. The Committee received an introduction to the proposed changes to the minor New Source Review rule (OAR 340-28-2270) on the July 27, 1994 meeting, and a special meeting was held on August 18, 1994 to further discuss this issue. Many of the changes to the Federal Operating Permit Program are in response to suggestions from participants in the Department's pilot permitting project. Throughout this project, suggestions were made by volunteer industrial sources, the EPA, and Department staff to help facilitate the permitting process.

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

- **Change the rules regarding categorically insignificant activities to add more activities and clarify the requirements.** Permitting and compliance monitoring requirements for activities that are listed as categorically insignificant are much less burdensome than for other activities at a facility. The Department feels that more activities should be defined as categorically insignificant if the emissions from each activity are much less than the aggregate insignificant emissions thresholds. This would eliminate unnecessary work load for both applicants and the Department for activities that have little environmental impact, allowing both parties to concentrate on larger emitting activities. The Department also proposes to change the definition of categorically insignificant activities to include the language

clarifying that these activities must comply with all applicable requirements, as required by Federal Clean Air Act Amendments of 1990.

- **Delete all rules regarding insignificant mixtures.** The Department's definition of insignificant mixtures would require owners or operators to perform chemical analyses on mixtures containing less than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of Chapter 340, and less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens. This information is not contained in Material Safety Data Sheets (MSDS). The Department feels that if the mixture is used in a categorically insignificant activity or is used at levels less than 100,000 pounds per year, then that mixture is exempt from quantification of emissions and rigorous compliance monitoring. If the mixture is used elsewhere at the facility in quantities greater than 100,000 pounds per year, the owner/operator must quantify the emissions from the mixture using the best data available and must be willing to certify the accuracy of the data. Owners/Operators are required to contact suppliers and manufacturers of the mixture if the information is not available in the MSDS. Therefore, the rules regarding insignificant mixtures are not necessary because they are extremely burdensome and probably would not provide valuable information.
- **Changes to the minor New Source Review rule (OAR 340-28-2270).** Based on EPA comments, significant changes were made to the minor New Source Review rule, including the meaning of the word "modify" and the thresholds for public notice and comment.
- **Amend the HAP Early Reductions and Accidental Release Prevention rules to address the EPA requirements.** The EPA has issued final and amended rules for Early Reductions and Accidental Release chemicals. These rule changes include deletions of chemicals and changes in thresholds for the Accidental Release (112(r)) chemicals and changes to the Early Reductions rules as amended by the EPA.
- **Clarifying and typographical corrections to Divisions 28 and 32.** Through the pilot permitting project, the Department recognized the need for clarification or correction of some rules. The changes are minor and do not change the scope or requirements of the rules.

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

### Categorically Insignificant Activities

- ★ **Additional activities included on the list.** The Department added only those proposed additional activities for which the commentor provided evidence that the activity is insignificant for all industries in the state.
- ★ **Categorically insignificant activities should not have to comply with all applicable requirements.** The Department feels that an acceptable compromise has been reached with the pilot program sources regarding compliance with the general applicable requirements for categorically insignificant activities. The Department will consider rule revisions once the new Part 70 rules are promulgated.

### Insignificant mixtures

The Department clarified the rule language in OAR 340-28-110(15) to reflect that owners or operators that use less than 100,000 pounds of a mixture that contains chemicals or compounds below the 1.0%/.01% thresholds do not have to go beyond Material Data Safety Sheets for purposes of quantifying emissions. The rule revisions are in accordance with a consensus reached by the ISAC-3 members.

### Minor New Source Review

In response to written comment and a special ISAC-3 subcommittee meeting, the Department has clarified both the meaning of the term "modify" and what types of modifications do and do not require the more extensive public notification process.

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

The proposed amendments will be implemented through the Department's Federal Operating Permit Program. In Lane County the amendments will be implemented by the Lane Regional Air Pollution Authority (LRAPA). This workload will be administered within the revenue and staffing previously allocated to implement the Federal Operating Permit Program. The proposed changes to Divisions 28 and 32 would clarify many of the requirements of the rules and would incorporate changes required by the EPA for approval. These changes are anticipated to relieve administrative burdens and uncertainty for both the Department and the regulated community.

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### Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding the revisions to the Federal Operating Permit Program as presented in Attachment A of the Department Staff Report.

### Attachments

- A. Rule (Amendments) Proposed for Adoption
- B. Supporting Procedural Documentation<sup>††</sup>:
  - 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. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- G. Advisory Committee Membership and Report
- H. Rule Implementation Plan

### Reference Documents (available upon request)

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

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<sup>††</sup>As noted in the body of this report, categorical rules to exclude smaller air pollution sources from the Federal Operating Permit Program have been withdrawn from this rulemaking. References to categorical exclusions continue to appear in the attachments.



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Approved:

Section:

Greg E. Faudt

Division:

Gregory A. Hree

Report Prepared By: Jill Inahara

Phone: 229-5749

Date Prepared: September 16, 1994

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OREGON ADMINISTRATIVE RULES  
CHAPTER 340, DIVISION 28 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 28

General

**Stationary Source Air Pollution Control  
and Permitting Procedures**

**Purpose and Application**

340-28-001 [Renumbered to OAR 340-30-400]

**Exclusions**

340-28-003 [Renumbered to OAR 340-30-410]

**Definitions**

340-28-005 [DEQ 61, f. 2-5-73, ef. 12-25-73; DEQ 88, f. 4-3-75, ef. 4-3-75 (Temp), 4-25-75 (Perm); DEQ 123, f. & ef. 10-20-76, Repealed by DEQ]

**Open Outdoor Fires - General**

340-28-010 [DEQ 61, f. 12-5-73, ef. 12-25-73; Repealed by DEQ 123, f. & ef. 10-20-76]

**Open Outdoor Fires - Domestic**

340-28-015 [DEQ 61, f. 12-5-73, ef. 12-25-73; DEQ 88, f. 4-3-75, ef. 4-3-75 (Temp), ef. 4-25-75 (Perm); Repealed by DEQ 123, f. & ef. 10-20-76]

**Open Outdoor Fires - Land Clearing**

340-28-020 [DEQ 61, f. 12-5-73, ef. 12-25-73; Repealed by DEQ 123, f. & ef. 10-20-76]

**Incinerators and Refuse Burning Equipment**

340-28-025 [Renumbered to OAR 340-30-420]

**Concealment and Masking of Emissions**

340-28-030 [Renumbered to OAR 340-30-430]

**Effective Capture of Air Contaminant Emissions**

340-28-040 [Renumbered to OAR 340-30-440]

**Odor Control Measures**

340-28-045 [Renumbered to OAR 340-30-450]

**Storage and Handling of Petroleum Products**

340-28-050 [Renumbered to OAR 340-30-460]

**Ships**

340-28-055 [Renumbered to OAR 340-30-470]

**Upset Condition**

340-28-060 [Renumbered to OAR 340-30-480]

**Emission Standards - General**

340-28-065 [Renumbered to OAR 340-30-490]

**Visible Air Contaminant Standards**

340-28-070 [Renumbered to OAR 340-30-500]

**Particulate Matter Weight Standards**

340-28-075 [Renumbered to OAR 340-30-510]

**Particulate Matter Size Standard**

340-28-080 [Renumbered to OAR 340-30-520]

**Sulfur Dioxide Emission Limitations**

340-28-085 [Renumbered to OAR 340-30-530]

**Odors**

340-28-090 [Renumbered to OAR 340-30-540]

**Purpose, Application and Organization  
340-28-100**

(1) The purpose of this Division is to prescribe air pollution control and permitting procedures which apply to all stationary sources regulated by the Department.

(2) This Division applies in addition to all other rules of the Environmental Quality Commission. In cases of apparent conflict, the most stringent rule shall apply. The requirements in this Division shall be administered by the Department, except in Lane County, where they shall be administered by the Lane Regional Air Pollution Authority.

(3) This Division is organized as follows:

- (a) General Rules, including purpose, application, organization and definitions;
- (b) Rules applicable to all stationary sources, including information submittal and disclosure, compliance schedules, general control requirements, registration, and Notice of Construction;
- (c) Rules applicable to sources required to have Air Contaminant Discharge Permits or federal operating permits, including plant site emission limits, sampling, testing, monitoring, excess emissions, and emission statements;
- (d) Rules applicable to sources required to have Air Contaminant Discharge Permits, including permitting procedures, New Source Review, and fees; and
- (e) Rules applicable to sources required to have federal operating permits, including permitting procedures and fees.

(4) Subject to the provision of the rules in this Division, the Regional Authority is designated by the Commission as the permitting agency to implement the federal permit program within its area of jurisdiction. The Regional Authority's program is subject to Department oversight. The requirements and procedures contained in this Division pertaining to the federal operating permit program shall be used by the Regional Authority to implement its permitting program until the Regional Authority adopts superseding rules which are at least as restrictive as state rules.

[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 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

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**Definitions**

340-28-110 As used in this Division:

- (1) "Act" or "FCAA" means the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.
- (2) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.
  - (a) For purposes of determining actual emissions as of the baseline period:
    - (A) Except as provided in paragraph (B) of this subsection, actual emissions shall equal the average rate at which the source actually emitted the pollutant during a baseline period and which is representative of normal source operation;
    - (B) The Department may presume the source-specific mass emissions limit included in the permit for a source that was effective on September 8, 1981 is equivalent to the actual emissions of the source during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A) of this subsection.
  - (b) For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source.
  - (c) For purposes of determining actual emissions for Emission Statements under OAR 340-28-1500 through 340-28-1520, Major Source Interim Emission Fees under OAR 340-28-2400 through 340-28-2550, and Federal Operating Permit Fees under OAR 340-28-2560 through 340-28-2740, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities.
- (3) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.
- (4) "Affected States" mean all States:
  - (a) Whose air quality may be affected by a proposed permit, permit modification or permit renewal and that are contiguous to Oregon; or
  - (b) That are within 50 miles of the permitted source.
- (5) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities shall be less than or equal to the lowest applicable level specified in this section. ~~Emissions from the usage of non-exempt insignificant mixtures may be included in the aggregate provided that the criteria of this section are met.~~ The aggregate insignificant emissions levels are:
  - (a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;
  - (b) 120 pounds for lead;
  - (c) 600 pounds for fluoride;
  - ~~(d)~~ 500 pounds for PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area;
  - ~~(e)~~ The lesser of the amount established in OAR 340-32-~~4500~~130, Table ~~3~~1 or OAR 340-32-5400, Table 3, or 1,000 pounds ~~for each Hazardous Air Pollutant~~;
  - (e) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.
- (6) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.
- (7) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340-28-1700 through 340-28-1790 and includes the application review report.
- (8) "Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.
- (9) "Applicable requirement" means all of the following as they apply to emissions units in a federal

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- operating permit program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:
- (a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR Part 52 (July 1, 1993);
  - (b) Any standard or other requirement adopted under OAR 340-20-047 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;
  - (c) Any term or condition in an ACDP, OAR 340-28-1700 through 340-28-1790, ~~issued before a federal operating permit application is submitted for the source~~ including any term or condition of any preconstruction permits issued pursuant to OAR 340-28-1900 through 340-28-2000, New Source Review), until or unless the Department revokes or modifies the term or condition by a permit modification;
  - (d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-28-800 through 340-28-820, ~~issued before a federal operating permit application is submitted for the source~~ until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;
  - (e) Any term or condition in a Notice of Approval, OAR 340-28-2270, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;
  - ~~(f)~~ Any standard or other requirement under section 111 of the Act, including section 111(d);
  - ~~(f)~~g) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r) (7) of the Act;
  - ~~(g)~~h) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
  - ~~(h)~~i) Any requirements established pursuant to section 504(b) or section 114(a) (3) of the Act;
  - ~~(i)~~j) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;
  - ~~(j)~~k) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;
  - ~~(k)~~l) Any standard or other requirement for tank vessels, under section 183(f) of the Act;
  - ~~(l)~~m) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;
  - ~~(m)~~n) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a federal operating permit; and
  - ~~(n)~~o) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.
- (10) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-28-2420 or OAR 340-28-2610 from one emission point and from an area within a major source. For routine process emissions, emissions of each pollutant in OAR 340-28-2420 or OAR 340-28-2610 from each emission point included in an ACDP or federal operating program permit shall be an assessable emission.
- (11) "Baseline Emission Rate" means the average actual emission rate during the baseline period. Baseline emission rate shall not include increases due to voluntary fuel switches or increased hours of operation that have occurred after the baseline period.
- (12) "Baseline Period" means either calendar years 1977 or 1978. The Department shall allow the use of a prior time period upon a determination that it is more representative of normal source operation.
- (13) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible

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emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event, shall the application of BACT result in emissions of any air contaminant which would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard shall, to the degree possible, set forth the emission reduction achievable and shall provide for compliance by prescribing appropriate permit conditions.

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

(15) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. ~~Category~~ Categorically insignificant activities must comply with all applicable requirements.

(a) ~~Exempt insignificant mixture usage~~ constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;

(b) evaporative and tail pipe emissions from on-site motor vehicle operation;

(c) ~~natural gas, propane, and distillate oil space heating rated at less than 0.4 million British Thermal Units/hour;~~ distillate oil, kerosene, and gasoline fuel

burning equipment rated at less than or equal to 0.4 million Btu/hr;

(d) natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;

~~(d)-e~~ office activities;  
~~(e)-f~~ food service activities;  
~~(f)-g~~ janitorial activities;  
~~(g)-h~~ personal care activities;  
~~(h)-i~~ groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;

~~(i)-j~~ on-site laundry activities;  
~~(j)-k~~ on-site recreation facilities;  
~~(k)-l~~ instrument calibration;  
~~(l)-m~~ maintenance and repair shop;  
~~(m)-n~~ automotive repair shops or storage garages;

~~(n)-o~~ air ~~conditioning~~ cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

~~(o)-p~~ refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;

~~(p)-q~~ bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;

~~(q)-r~~ temporary construction activities ~~excluding fugitive dust~~;

~~(r)-s~~ warehouse activities;  
~~(s)-t~~ accidental fires;  
~~(t)-u~~ ~~electric~~ air vents from air compressors;

~~(u)-v~~ air purification systems;  
~~(v)-w~~ continuous emissions monitoring vent lines;  
~~(w)-x~~ demineralized water tanks;  
~~(x)-y~~ ~~demineralizer vents~~ pre-treatment of municipal water, including use of deionized water purification systems; ~~+~~

~~(y)~~ ~~cafeteria or office waste dumpsters;~~

(z) electrical charging stations;  
(aa) fire brigade training;  
(bb) instrument air dryers and distribution;

(cc) process raw water filtration systems; ~~+~~

~~(dd)~~ ~~process sewer floor drains or open trenches;~~

~~(ee)~~ ~~dd~~ pharmaceutical packaging;  
~~(ff)~~ ~~ee~~ fire suppression; ~~+~~ ~~and~~ ~~+~~  
~~(gg)~~ ~~ff~~ blueprint making; ~~+~~ ~~+~~

(gg) routine maintenance, repair,

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- and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;
- (hh) electric motors;
- (ii) storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;
- (ij) on-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;
- (kk) natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;
- (ll) pressurized tanks containing gaseous compounds;
- (mm) vacuum sheet stacker vents;
- (nn) emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;
- (oo) log ponds;
- (pp) storm water settling basins;
- (qq) fire suppression and training;
- (rr) paved roads and paved parking lots within an urban growth boundary;
- (ss) hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;
- (tt) health, safety, and emergency response activities;
- (uu) emergency generators and pumps used only during loss of primary equipment or utility service;
- (vv) non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;
- (ww) non-contact steam condensate flash tanks;
- (xx) non-contact steam vents on condensate receivers, deaerators and similar equipment;
- (yy) boiler blowdown tanks;
- (zz) industrial cooling towers that do not use chromium-based water treatment chemicals;
- (aaa) ash piles maintained in a wetted condition and associated handling systems and activities;
- (bbb) oil/water separators in effluent treatment systems;
- (ccc) combustion source flame safety purging on startup;
- (ddd) broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;
- (eee) stock cleaning and pressurized pulp washing, excluding open stock washing systems; and
- (fff) white water storage tanks.
- (16) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.
- (17) "CFR" means Code of Federal Regulations.
- (18) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-31-120.
- (19) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:
- (a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or
- (b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.
- (20) "Commission" or "EQC" means Environmental Quality Commission.
- (21) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.
- (22) "Construction":
- (a) except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;
- (b) as used in OAR 340-28-1900

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- through 340-28-2000 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.
- (23) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems and continuous parameter monitoring systems.
- (24) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM<sub>10</sub>, sulfur dioxide, carbon monoxide, or lead.
- (25) "Department"
- (a) as used in OAR 340-28-100 through 340-28-2000 and OAR 340-28-2400 through 340-28-2550 means Department of Environmental Quality;
- (b) as used in OAR 340-28-2100 through 340-28-2320 and OAR 340-28-2560 throughout 340-28-2740 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Pollution Authority.
- (26) "Director" means the Director of the Department or the Director's designee.
- (27) "Draft permit" means the version of a federal operating permit for which the Department or Lane Regional Air Pollution Authority offers public participation under OAR 340-28-2290 or the EPA and affected State review under OAR 340-28-2310.
- (28) "Effective date of the program" means the date that the EPA approves the federal operating permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.
- (29) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (30) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.
- (31) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.
- (32) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Sources shall use an emission factor approved by EPA or the Department.
- (33) "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
- (34) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340-28-1900 through 340-28-2000, New Source Review, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.
- (35) "Emission Reporting Form" means a paper or electronic form developed by the Department that shall be completed by the permittee to report calculated emissions, actual emissions or permitted emissions for interim emission fee assessment purposes.
- (36) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.
- (a) A part of a source is any machine, equipment, raw material, product, or byproduct which produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that

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- emits air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:
- (A) the group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply, and
  - (B) the emissions from the emissions unit are quantifiable.
- (b) Emissions units may be defined on a pollutant by pollutant basis where applicable.
  - (c) The term emissions unit is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.
  - (d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-28-1930~~4~~ ~~or~~, OAR 340-28-1940, or OAR 340-28-2270, or for purposes of determining the applicability of any New Source Performance Standard (NSPS).
- (37) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.
- (38) "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified shall be approved by EPA unless EPA has delegated authority for the approval to the Department.
- (39) "Event" means excess emissions which arise from the same condition and which occur during a single calendar day or continue into subsequent calendar days.
- (40) "Excess emissions" means emissions which are in excess of a permit limit or any applicable air quality rule.
- ~~[(41)] "Exempt Insignificant Mixture Usage" means use, consumption, or generation of insignificant mixtures which the Department does not consider integral to the primary business activity, excluding fuels, raw materials,~~
- ~~and end products.~~
- ~~[(42)]~~41 "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.
- ~~[(43)]~~42 "Federal operating permit" means any permit covering a federal operating permit program source that is issued, renewed, amended, or revised pursuant to OAR 340-28-2100 through 340-28-2320.
- ~~[(44)]~~43 "Federal operating permit program" means a program approved by the Administrator under 40 CFR Part 70 July 1, 1993.
- ~~[(45)]~~44 "Federal operating permit program source" means any source subject to the permitting requirements, OAR 340-28-2100 through 340-28-2320, as provided in OAR 340-28-2110.
- ~~[(46)]~~45 "Final permit" means the version of a federal operating permit issued by the Department or Lane Regional Air Pollution Authority that has completed all review procedures required by OAR 340-28-2200 through 340-28-2320.
- ~~[(47)]~~46 "Fugitive Emissions":
- (a) except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.
  - (b) as used to define a major federal operating permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- ~~[(48)]~~47 "General permit" means a federal operating permit that meets the requirements of OAR 340-28-2170.
- ~~[(49)]~~48 "Growth Increment" means an allocation of some part of an airshed's capacity to accommodate future new major sources and major modifications of sources.
- ~~[(50)]~~49 "Immediately" means as soon as possible but in no case more than one hour after the beginning of the excess emission period.
- ~~[(51)]~~50 "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of ~~exempt insignificant mixture usage~~



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- ~~or~~ aggregate insignificant emissions.
- (+52-51) "Insignificant Change" means an off-permit change defined under OAR 340-28-2220(2)(a) to either a significant or an insignificant activity which:
- (a) does not result in a redesignation from an insignificant to a significant activity;
  - (b) does not invoke an applicable requirement not included in the permit; and
  - (c) does not result in emission of regulated air pollutants not regulated by the source's permit.
- (+53) ~~"Insignificant Mixture" means a chemical mixture containing not more than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of this chapter, and not greater than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens.~~
- (+54-52) "Interim Emission Fee" means \$13 per ton for each assessable emission subject to emission fees under OAR 340-28-2420 for calculated, actual or permitted emissions released during calendar years 1991 and 1992.
- (+55-53) "Large Source" as used in OAR 340-28-1400 through 340-28-1450 means any stationary source whose actual emissions or potential controlled emissions while operating full-time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL shall be used to determine actual emissions.
- (+56-54) "Late Payment" means a fee payment which is postmarked after the due date.
- (+57-55) "Lowest Achievable Emission Rate" or LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice
- by such class or category of source, whichever is more stringent. In no event, shall the application of this term permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.
- (+58-56) "Major Modification" means any physical change or change of operation of a source that would result in a net significant emission rate increase for any regulated air pollutant. This criteria also applies to any pollutants not previously emitted by the source. Calculations of net emission increases shall take into account all accumulated increases and decreases in actual emissions occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340-28-1900 through 340-28-2000 for that pollutant, whichever time is more recent. Emissions from insignificant activities shall be included in the calculation of net emission increases. Emission decreases required by rule shall not be included in the calculation of net emission increases. If accumulation of emission increases results in a net significant emission rate increase, the modifications causing such increases become subject to the New Source Review requirements, including the retrofit of required controls.
- (+59-57) "Major Source":
- (a) except as provided in subsections (b) and (c) of this section, means a source which emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate, as defined in this rule. Emissions from insignificant activities shall be included in determining if a source is a major source.
  - (b) as used in OAR 340-28-2100 through 340-28-2320, Rules Applicable to Sources Required to Have Federal Operating Permits, 340-28-2560 through 340-28-2740, Federal Operating Permit Fees, and OAR 340-28-1740, Synthetic Minor Sources, means any

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stationary source, or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control), belonging to a single major industrial grouping or are supporting the major industrial group and that are described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which is defined as:

- (i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants which has been listed pursuant to OAR 340-32-130, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such

units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

- (ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
- (B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:
- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);

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| (xvi)   | Primary lead smelters;  |  |
| (xvii)  | Fuel conversion plants;   | in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;  |
| (xviii) | Sintering plants;   |  |
| (xix)   | Secondary metal production plants;  |  |
| (xx)    | Chemical process plants;  |  |
| (xxi)   | Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;  |  |
| (xxii)  | Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;   | (ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;  |
| (xxiii) | Taconite ore processing plants;   |  |
| (xxiv)  | Glass fiber processing plants;  | (iii) For carbon monoxide nonattainment areas that are classified as "serious," and  |
| (xxv)   | Charcoal production plants;   |  |
| (xxvi)  | Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or  | (I) that are classified as "serious," and<br><br>(II) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide;  |
| (xxvii) | All other stationary source categories regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category;   |  |
| (C)     | A major stationary source as defined in part D of Title I of the Act, including:  | (iv) For particulate matter (PM <sub>10</sub> ) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM <sub>10</sub> .   |
| (i)     | For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references | (c) as used in OAR 340-28-2400 through 340-28-2550, Major Source Interim Emission Fees, means a permitted stationary source or group of stationary sources located within a contiguous area and under common control or any stationary facility or source of air pollutants which directly emits, or is permitted to emit:<br><br>(A) One hundred tons per year or |

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- more of any regulated pollutant, or
- (B) Fifty tons per year or more of a VOC and is located in a serious ozone nonattainment area.
- (+60+58) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.
- (+61+59) "Nitrogen Oxides" or "NO<sub>x</sub>" means all oxides of nitrogen except nitrous oxide.
- (+62+60) "Nonattainment Area" means a geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Environmental Quality Commission or the EPA.
- ~~(+63)~~ ~~"Non exempt Insignificant Mixture Usage" means use, consumption, or generation of insignificant mixtures which the Department considers integral to the primary business activity, including fuels, raw materials, and end products.~~
- (+64+61) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.
- (+65+62) "Offset" means an equivalent or greater emission reduction which is required prior to allowing an emission increase from a new major source or major modification of a source.
- (+66+63) "Ozone Season" means the contiguous 3 month period of the year during which ozone exceedances typically occur (i.e., June, July, and August).
- (+67+64) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual, (January, 1992).
- (+68+65) "Permit" means an Air Contaminant Discharge Permit or a federal operating permit issued pursuant to this Division.
- (+69+66) "Permit modification" means a revision to a permit that meets the applicable requirements of OAR 340-28-1700 through 340-28-1900 through 340-28-2000, or OAR 340-28-2240 through 340-28-2260.
- (+70+67) "Permit revision" means any permit modification or administrative permit amendment.
- (+71+68) "Permitted Emissions" as used in OAR 340-28-2400 through 340-28-2550, and OAR 340-28-2560 through 340-28-2740 means each assessable emission portion of the PSEL.
- (+72+69) "Permittee" means the owner or operator of the facility, in whose name the operation of the source is authorized by the ACDP or the federal operating permit.
- (+73+70) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.
- (+74+71) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one assessable emission.
- (+75+72) "PM<sub>10</sub>":
- (a) when used in the context of emissions, means finely divided solid or liquid material, including condensable particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual (January, 1992);
- (b) when used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with 40 CFR Part 50, Appendix J (July, 1993).
- (+76+73) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including

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- air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the Administrator. This definition does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.
- (~~77~~74) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.
- (~~78~~75) "Proposed permit" means the version of a federal operating permit that the Department or Lane Regional Air Pollution Authority proposes to issue and forwards to the Administrator for review in compliance with OAR 340-28-2310.
- (~~79~~76) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60, 61 or 63 (July 1, 1993).
- (~~80~~77) "Regional Authority" means Lane Regional Air Pollution Authority.
- (~~81~~78) "Regulated air pollutant" or "Regulated Pollutant":
- (a) as used in OAR 340-28-100 through 340-28-2320 means:
- (A) Nitrogen oxides or any VOCs;
- (B) Any pollutant for which a national ambient air quality standard has been promulgated;
- (C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;
- (D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
- (E) Any pollutant listed under OAR 340-32-130 or OAR 340-32-5400.
- (b) as used in OAR 340-28-2400 through 340-28-2550 means PM<sub>10</sub>, Sulfur Dioxide (SO<sub>2</sub>), Oxides of Nitrogen (NO<sub>x</sub>), Lead (Pb), VOC, and Carbon Monoxide (CO); and any other pollutant subject to a New Source Performance Standard (NSPS) such as Total Reduced Sulfur (TRS) from kraft pulp mills and Fluoride (F) from aluminum mills.
- (c) as used in OAR 340-28-2560 through 340-28-2740 means any regulated air pollutant as defined in 340-28-110(~~81~~78) except the following:
- (A) Carbon monoxide;
- (B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or
- (C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.
- (~~82~~79) "Renewal" means the process by which a permit is reissued at the end of its term.
- (~~83~~80) "Responsible official" means one of the following:
- (a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
- (A) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- (B) the delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Pollution Authority;
- (b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or
- (d) For affected sources:

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| <p>(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and</p> <p>(B) The designated representative for any other purposes under the federal operating permit program.</p>   | <p>(<del>91</del>88)</p>  | <p>and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.</p> <p>"Section 112(r) (7)" means that subsection of the FCAA that requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.</p>  |
| <p>(<del>84</del>81) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:</p> <p>(a) Emissions from ships and trains coming to or from a facility;</p> <p>(b) Emissions from off-site support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.</p> | <p>(<del>92</del>89)</p> <p>(<del>93</del>90)</p> <p>(<del>94</del>91)</p> <p>(<del>95</del>92)</p> | <p>"Section 114(a) (3)" means that subsection of the FCAA that requires enhanced monitoring and submission of compliance certifications for major sources.</p> <p>"Section 129" means that section of the FCAA that requires the EPA to establish emission standards and other requirements for solid waste incineration units.</p> <p>"Section 129(e)" means that subsection of the FCAA that requires solid waste incineration units to obtain federal operating permits.</p> <p>"Section 182(f)" means that subsection of the FCAA that requires states to include plan provisions in the State Implementation Plan for NO<sub>x</sub> in ozone nonattainment areas.</p> <p>"Section 182(f) (1)" means that subsection of the FCAA that requires states to apply those plan provisions developed for major VOC sources and major NO<sub>x</sub> sources in ozone nonattainment areas.</p> <p>"Section 183(e)" means that subsection of the FCAA that requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.</p> <p>"Section 183(f)" means that subsection of the FCAA that requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.</p> <p>"Section 184" means that section of the FCAA that contains regulations for the control of interstate ozone air pollution.</p> <p>"Section 302" means that section of the FCAA that contains definitions for general and administrative purposes in the Act.</p> <p>"Section 302(j)" means that subsection of the FCAA that contains definitions of "major stationary source" and "major emitting facility."</p> <p>"Section 328" means that</p> |
| <p>(<del>85</del>82) "Section 111" means that section of the FCAA that includes Standards of Performance for New Stationary Sources (NSPS).</p>  | <p>(<del>96</del>93)</p>  | <p>"Section 111(d)" means that subsection of the FCAA that requires states to submit plans to the EPA which establish standards of performance for existing sources and provides for the implementation and enforcement of such standards.</p>  |
| <p>(<del>86</del>83) "Section 111(d)" means that subsection of the FCAA that requires states to submit plans to the EPA which establish standards of performance for existing sources and provides for the implementation and enforcement of such standards.</p>   | <p>(<del>97</del>94)</p>  | <p>"Section 112" means that section of the FCAA that contains regulations for Hazardous Air Pollutants (HAP).</p>   |
| <p>(<del>87</del>84) "Section 112" means that section of the FCAA that contains regulations for Hazardous Air Pollutants (HAP).</p>  | <p>(<del>98</del>95)</p>  | <p>"Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.</p>   |
| <p>(<del>88</del>85) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.</p>  | <p>(<del>99</del>96)</p>  | <p>"Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.</p>  |
| <p>(<del>89</del>86) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.</p>   | <p>(<del>100</del>97)</p> <p>(<del>101</del>98)</p>   | <p>"Section 112(e)" means that subsection of the FCAA that directs the EPA to establish</p>   |
| <p>(<del>90</del>87) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish</p>  | <p>(<del>102</del>99)</p>   | <p>"Section 112(e)" means that subsection of the FCAA that directs the EPA to establish</p>   |

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section of the FCAA that contains regulations for air pollution from outer continental shelf activities.

- (~~103~~100) "Section 408(a)" means that subsection of the FCAA that contains regulations for the Title IV permit program.
- (~~104~~101) "Section 502(b)(10) change" means a change that contravenes an express permit term but is not a change that:
- (a) would violate applicable requirements;
  - (b) would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or
  - (c) is a Title I modification.
- (~~105~~102) "Section 504(b)" means that subsection of the FCAA that states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.
- (~~106~~103) "Section 504(e)" means that subsection of the FCAA that contains regulations for permit requirements for temporary sources.
- (~~107~~104) "Significant Air Quality Impact" means an ambient air quality impact which is equal to or greater than those set out in **Table 1**. For sources of VOC or NO<sub>x</sub>, a major source or major modification will be deemed to have a significant impact if it is located within 30 kilometers of an ozone nonattainment area and is capable of impacting the nonattainment area.

**Table 1**  
**OAR 340-28-110**

**Significant Ambient Air Quality Impact  
Which is Equal to or Greater Than:**

Pollutant	Pollutant Averaging Time			
	Annual	24-Hour	8-Hour	3-Hour 1-Hour
SO <sub>2</sub>	1.0 ug/m <sup>3</sup>	5 ug/m <sup>3</sup>		25 ug/m <sup>3</sup>
TSP or PM <sub>10</sub>	.2 ug/m <sup>3</sup>	1.0 ug/m <sup>3</sup>		
NO <sub>2</sub>	1.0 ug/m <sup>3</sup>			
CO mg/m <sup>3</sup>			0.5 mg/m <sup>3</sup>	2

(~~108~~105) "Significant emission rate", except as provided in subsections (a) through (c) of this section, means emission rates equal to or greater than the rates specified in **Table 2**.

**Table 2**  
**OAR 340-28-110**

**Significant Emission Rates for Pollutants  
Regulated Under the Clean Air Act**

Significant Pollutant	Emission Rate
(A) Carbon Monoxide	100 tons/year
(B) Nitrogen Oxides (NO <sub>x</sub> )	40 tons/year
(C) Particulate Matter	25 tons/year
(D) PM <sub>10</sub>	15 tons/year
(E) Sulfur Dioxide	40 tons/year
(F) VOC	40 tons/year
(G) Lead	0.6 ton/year
(H) Mercury	0.1 ton/year
(I) Beryllium	0.0004 ton/year
(J) Asbestos	0.007 ton/year
(K) Vinyl Chloride	1 ton/year
(L) Fluorides	3 tons/year
(M) Sulfuric Acid Mist	7 tons/year
(N) Hydrogen Sulfide	10 tons/year
(O) Total reduced sulfur (including hydrogen sulfide)	10 tons/year
(P) Reduced sulfur compounds (including hydrogen sulfide)	10 tons/year
(Q) Municipal waste combustor organics (measured as total tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 ton/year
(R) Municipal waste combustor metals (measured as particulate matter)	15 tons/year

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(S) Municipal waste combustor acid gases 40 tons/year (measured as sulfur dioxide and hydrogen chloride)

(a) For the Medford-Ashland Air Quality Maintenance Area, and the Klamath Falls Urban Growth Area, the Significant Emission Rate for particulate matter is defined in Table 3. For the Klamath Falls Urban Growth Area, the Significant Emission Rates in Table 3 for particulate matter apply to all new or modified sources for which permit applications have not been submitted prior to June 2, 1989.

Table 3  
OAR 340-28-110

Significant Emission Rates for the Nonattainment Portions of the Medford-Ashland Air Quality Maintenance Area and the Klamath Falls Urban Growth Area

Emission Rate

Air Contaminant kilogram	Annual		Day		Hour
	Kilograms	(lbs)	(tons)	Kilogram	(lbs)
Particulate Matter (10.0) or PM <sub>10</sub>	4,500		(5.0)	23 (50.0)	4.6

- (b) For regulated air pollutants not listed in Table 2 or 3, the Department shall determine the rate that constitutes a significant emission rate.
- (c) Any new source or modification with an emissions increase less than the rates specified in Table 2 or 3 associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m<sup>3</sup> (24 hour average) shall be deemed to be emitting at a significant emission rate.

~~(109)~~106) "Significant Impairment" occurs when visibility impairment in the judgment of the Department interferes with the management, protection, preservation, or enjoyment of the visual experience of visitors within a Class I area. The determination shall be made on a case-by-case basis considering the recommendations of the Federal Land Manager; the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered with respect to visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

~~(110)~~107) "Small Source" means any stationary source with a regular ACDP (not a letter permit) or a minimal source permit) or a federal operating permit which is not classified as a large source.

~~(111)~~108) "Source":  
(a) except as provided in subsection (b) of this section, means any building, structure, facility, installation or combination thereof which emits or is capable of emitting air contaminants to the atmosphere and is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control.  
(b) as used in OAR 340-28-1900 through 340-28-2000, New



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- Source Review, and the definitions of "BACT", "Commenced", "Construction", "Emission Limitation", "Emission Standard", "LAER", "Major Modification", "Major Source", "Potential to Emit", and "Secondary Emissions" as these terms are used for purposes of OAR 340-28-1900 through 340-28-2000, includes all pollutant emitting activities which belong to a single major industrial group (i.e., which have the same two-digit code) as described in the **Standard Industrial Classification Manual**, (U.S. Office of Management and Budget, 1987) or are supporting the major industrial group.
- (~~112~~109) "Source category":
- (a) except as provided in subsection (b) of this section, means all the pollutant emitting activities which belong to the same industrial grouping (i.e., which have the same two-digit code) as described in the **Standard Industrial Classification Manual**, (U.S. Office of Management and Budget, 1987).
- (b) as used in OAR 340-28-2400 through 340-28-2550, Major Source Interim Emission Fees, and OAR 340-28-2560 through 340-28-2740, Federal Operating Permit Fees, means a group of major sources determined by the Department to be using similar raw materials and having equivalent process controls and pollution control equipment.
- (~~113~~110) "Source Test" means the average of at least three test runs during operating conditions representative of the period for which emissions are to be determined, conducted in accordance with the Department's Source Sampling Manual or other Department approved methods.
- (~~114~~111) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.
- (~~115~~112) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant.
- (~~116~~113) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.
- (~~117~~114) "Synthetic minor source" means a source which would be classified as a major source under OAR 340-28-110, but for physical or operational limits on its potential to emit air pollutants contained in an ACDP issued by the Department under OAR 340-28-1700 through 340-28-1790.
- (~~118~~115) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:
- (a) a major modification subject to OAR 340-28-1930, Requirements for Sources in Nonattainment Areas;
- (b) a major modification subject to OAR 340-28-1940, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas ;
- (c) a change which is subject to a New Source Performance Standard under Section 111 of the FCAA; or
- (d) a modification under Section 112 of the FCAA.
- (~~119~~116) "Total Suspended Particulate" or "TSP" means particulate matter as measured by the reference method described in 40 CFR Part 50, Appendix B (July 1, 1993).
- (~~120~~117) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H<sub>2</sub>S).
- (~~121~~118) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-28-630. For existing sources, the emission limit established shall be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established shall be

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typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations shall be based on information known to the Department considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required.

- (~~122~~-119) "Unavoidable" or "could not be avoided" means events which are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.
- (~~123~~-120) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment which may cause an excess emission.
- (~~124~~-121) "Verified Emission Factor" means an emission factor approved by the Department and developed for a specific major source or source category and approved for application to that major source by the Department.
- (~~125~~-122) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.
- (~~126~~-123) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.
- (a) This includes any such organic compound other than the following, which

have been determined to have negligible photochemical reactivity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (~~12~~)(HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

- (A) Cyclic, branched, or linear, completely fluorinated alkanes;
- (B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
- (C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
- (D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- (b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds, as listed in subsection (a), may be excluded as VOC if the

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- amount of such compounds is accurately quantified, and such exclusion is approved by the Department.
- (c) As a precondition to excluding these compounds, as listed in subsection (a), as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 47, f. 8-31-72, ef. 9-15-72; DEQ 63, f. 12-20-73, ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from OAR 340-20-033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & ef. 1-30-92; DEQ 27-1992, f. & ef. 11-12-92; Renumbered from OAR 340-20-145; Renumbered from OAR 340-20-225; Renumbered from OAR 340-20-305; Renumbered from OAR 340-20-355; Renumbered from OAR 340-20-460; Renumbered from OAR 340-20-520, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

[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.]

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notify the Department by telephone of a maintenance event and shall be subject to the requirements under Upsets and Breakdowns in OAR 340-28-1430 if the permittee fails to:

- (a) Obtain Department approval of maintenance procedures in accordance with section (1) of this rule; or
- (b) Notify the Department of a maintenance event which may result in excess emissions in accordance with OAR 340-28-1420(3).

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91;  
Renumbered from OAR 340-20-365, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

**Upsets and Breakdowns**  
**340-28-1430**

- (1) For upsets or breakdowns caused by an emergency and resulting in emissions in excess of technology-based standards, the owner or operator may be entitled to an affirmative defense to enforcement if:
  - (a) the Department is notified immediately of the emergency condition; and
  - (b) the owner or operator fulfills requirements outlined in the Emergency Provision in OAR 340-28-1460.
- (2) In the case of all other upsets and breakdowns, the following requirements apply:
  - (a) For large sources, as defined by OAR 340-28-110, the first onset per calendar day of any excess emissions event due to upset or breakdown, other than those described in section (1) of this rule, shall be reported to the Department immediately unless otherwise specified by permit condition. Based on the severity of the event, the Department will either require submittal of a written report pursuant to OAR 340-28-1440(1) and (2), or a recording of the event in the upset log as required in OAR 340-28-1440(3).
  - (b) The owner or operator of a small source, as defined by OAR 340-28-110, need not report excess emissions events due to upset or breakdown immediately unless otherwise required by: permit condition; written notice by the Department; subsection (1) (a) of this rule; or if the excess emission is of a nature that

could endanger public health. Based on the severity of the event, the Department will either require submittal of a written report pursuant to OAR 340-28-1440(1) and (2), or a recording of the event in the upset log as required in OAR 340-28-1440(3).

- (3) During any period of excess emissions due to upset or breakdown, the Department may require that an owner or operator immediately proceed to reduce or cease operation of the equipment or facility until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department would be taken upon consideration of the following factors:
  - (a) Potential risk to the public or environment;
  - (b) Whether shutdown could result in physical damage to the equipment or facility, or cause injury to employees;
  - (c) Whether any Air Pollution Alert, Warning, Emergency, or yellow or red woodstove curtailment period exists; or
  - (d) If continued excess emissions were determined by the Department to be avoidable.
- (4) In the event of any on-going period of excess emissions due to upset or breakdown, the owner or operator shall cease operation of the equipment or facility no later than 48 hours after the beginning of the excess emission period, if the condition causing the emissions is not corrected within that time. The owner or operator need not cease operation if he or she can obtain Department's approval of procedures that will be used to minimize excess emissions until such time as the condition causing the excess emissions is corrected or brought under control. Approval of these procedures shall be based on the following information supplied to the Department:
  - (a) The reasons why the condition(s) causing the excess emissions cannot be corrected or brought under control. Such reasons shall include but not be limited to equipment availability and difficulty of repair or installation;
  - (b) Information as required in OAR 340-28-1410(1) (b), (c), and (d).
- (5) Approval of the above procedures by the Department shall be based upon determination that said procedures are consistent with good pollution control practices,

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and will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The permittee shall record all excess emissions in the upset log as required in section ~~(4)(2)~~ of this rule. At any time during the period of excess emissions the Department may require the owner or operator to cease operation of the equipment or facility, in accordance with OAR 340-28-1430(3). In addition, approval of these procedures shall not absolve the permittee from enforcement action if the approved procedures are not followed, or if excess emissions occur that are determined by the Department to be avoidable, pursuant to OAR 340-28-1450.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91;  
Renumbered from OAR 340-20-370, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

**Reporting Requirements**  
**340-28-1440**

- (1) For any excess emissions event, the Department may require the owner or operator to submit a written excess emission report for each calendar day of the event. If required, this report shall be submitted within fifteen (15) days of the date of the event and shall include the following:
  - (a) The date and time the event was reported to the Department;
  - (b) Whether the event occurred during startup, shutdown, maintenance, or as a result of a breakdown or malfunction;
  - (c) Information as described in OAR 340-28-1450(1) through (5);
  - (d) The final resolution of the cause of the excess emissions; and
  - (e) Where applicable, evidence supporting any claim that emissions in excess of technology-based limits were due to an emergency pursuant to OAR 340-28-1460.
- (2) Based on the severity of event, the Department may waive the 15 day reporting requirement, and specify either a shorter or longer time period for report submittal. The Department may also waive the submittal of the written report, if in the judgement of the Department, the period or magnitude of excess emissions was minor. In such cases the owner or

- (3) Large and small source owners or operators shall keep an upset log of all planned and unplanned excess emissions. The upset log shall include all pertinent information as required in section (1) of this rule and shall be kept by the permittee for five (5) calendar years.
- (4) At each annual reporting period specified in a permit, or sooner if required by the Department, the permittee shall submit:
  - (a) A copy of upset log entries for the reporting period, and
  - (b) Where applicable, current procedures to minimize emissions during startup, shutdown, or maintenance as outlined in OAR 340-28-1410 and OAR 340-28-1420. The owner or operator shall specify in writing whether these procedures are new, modified, or have already been approved by the Department.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan adopted by the EQC under OAR 340-20-047.]

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91;  
Renumbered from OAR 340-20-375, DEQ 13, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

**Enforcement Action Criteria**

- 340-28-1450** In determining if a period of excess emissions is avoidable, and whether enforcement action is warranted, the Department, based upon information submitted by the owner or operator, shall consider whether the following criteria are met:
- (1) Where applicable, the owner or operator submitted a description of any emergency which may have caused emissions in excess of technology-based limits and sufficiently demonstrated, through properly signed, contemporaneous operating logs, upset logs, or other relevant evidence that an emergency caused the excess emissions and that all causes of the emergency were identified.
  - (2) Notification occurred immediately pursuant to OAR 340-28-1430(1)(a), (2), or (3).
  - (3) The Department was furnished with complete details of the event, including, but not limited to:
    - (a) The date and time of the beginning of the excess emissions event and the duration or best estimate of the time until return to normal operation;
    - (b) The equipment involved;
    - (c) Steps taken to mitigate

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**New Source Review**

**Applicability**

**340-28-1900**

- (1) No owner or operator shall begin construction of a major source or a major modification of an air contaminant source without having received an ACDP from the Department and having satisfied OAR 340-28-1900 through 340-28-2000 of these rules.
- (2) Owners or operators of proposed non-major sources or non-major modifications are not subject to these New Source Review rules. Such owners or operators are subject to other Department rules including Highest and Best Practicable Treatment and Control Required, OAR 340-28-600 through 340-28-640, Notice of Construction and Approval of Plans, OAR 340-28-800 through 340-28-820, ACDPs, OAR 340-28-1700 through 340-28-1790, Emission Standards for Hazardous Air Contaminants, OAR 340-25-450 through 340-25-485, and Standards of Performance for New Stationary Sources, OAR 340-25-505 through 340-25-545.

[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 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-20-220, DEQ 13-1993, f. & ef. 9-24-93

**Procedural Requirements**

**340-28-1910**

- (1) Information Required. The owner or operator of a proposed major source or major modification shall submit all information necessary to perform any analysis or make any determination required under these rules. Such information shall include, but not be limited to:
  - (a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
  - (b) An estimate of the amount and type of each air contaminant emitted by the source in terms of hourly, daily, and yearly rates, showing the calculation procedure;
  - (c) A detailed schedule for construction of the source or modification;
  - (d) A detailed description of the air pollution control equipment and emission reduction processes which are planned for the source or modification, and any other information necessary to

- (e) determine that BACT or LAER technology, whichever is applicable, would be applied; To the extent required by these rules, an analysis of the air quality and/or visibility impact of the source or modification, including meteorological and topographical data, specific details of models used, and other information necessary to estimate air quality impacts; and
  - (f) To the extent required by these rules, an analysis of the air quality and/or visibility impacts, and the nature and extent of all commercial, residential, industrial, and other source emission growth which has occurred since January 1, 1978, in the area the source or modification would affect.
  - (g) The owner or operator of a source for which a federal operating permit has been issued who applies for a permit to construct or modify under OAR 340-28-1900 through 340-28-2000 may request that an enhanced New Source Review process be used, including the external review procedures required under OAR 340-28-2290 and OAR 340-28-2310 instead of the notice procedures under this rule to allow for subsequent incorporation of the construction permit as an administrative amendment. All information required under OAR 340-28-2120 shall be submitted as part of any such request.
- (2) Other Obligations:
- (a) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to OAR 340-28-1900 through 340-28-2000 or with the terms of any approval to construct, or any owner or operator of a source or modification subject to OAR 340-28-1900 who commences construction without applying for and receiving an ACDP, shall be subject to appropriate enforcement action;
  - (b) Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the scheduled time. The Department may extend the

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- 18-month period upon satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date;
- (c) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan and any other requirements under local, state or federal law.
- (d) Approval to construct a source under an ACDP issued under paragraph (3)(b)(I) of this rule shall authorize construction and operation of the source, except as prohibited in subsection (e) of this rule, until the later of:
- (A) One year from the date of initial startup of operation of the major source or major modification, or
- (B) If a timely and complete application for a federal operating permit is submitted, the date of final action by the Department on the federal operating permit application.
- (e) Where an existing federal operating permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.
- (3) Public Participation:
- (a) Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted. The date of the receipt of a complete application shall be, for the purpose of this section, the date on which the Department received all required information;
- (b) Notwithstanding the requirements of OAR 340-14-020 or OAR 340-28-2120, but as expeditiously as possible and at least within six months after receipt of a complete application, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:
- (A) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved;
- (B) Make available for a 30-day period in at least one location a copy of the permit application, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination;
- (C) Notify the public, by advertisement in a newspaper of general circulation in the area in which the proposed source or modification would be constructed, of the application, the preliminary determination, the extent of increment consumption that is expected from the source or modification, the opportunity for a public hearing and for written public comment and, if applicable, that an enhanced New Source Review process, including the external review procedures required under OAR 340-28-2290 and OAR 340-28-2310, is being used to allow for subsequent incorporation of the operating approval into a federal operating permit as an administrative amendment;
- (D) Send a copy of the notice of opportunity for public comment to the applicant and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: The chief executives of the city and county where the source or modification would be located, any comprehensive regional land use planning agency, any State, Federal Land Manager, or Indian Governing Body whose lands may be affected by emissions from the source or modification, and the EPA;
- (E) Upon determination that significant interest exists, or upon written requests for a hearing from ten (10) persons or from an organization or organizations representing at least ten persons, provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or

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- modification, alternatives to the source or modification, the control technology required, and other appropriate considerations. For energy facilities, the hearing may be consolidated with the hearing requirements for site certification contained in OAR Chapter 345, Division 15;
- (F) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 working days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification;
- (G) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section;
- (H) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source or modification.
- (I) After the effective date of Oregon's program to implement the federal operating permit program, the owner or operator of a source subject to OAR 340-28-2110 who has received a permit to construct or modify under OAR 340-28-1900 through 340-28-2000, shall submit an application for a federal operating permit within one year of initial startup of the construction or modification, unless the federal operating permit prohibits such construction

or change in operation. The federal operating permit application shall include the following information:

- (i) information required by OAR 340-28-2120, if not previously included in the ACDP application;
- (ii) a copy of the existing ACDP;
- (iii) information on any changes in the construction or operation from the existing ACDP, if applicable; and
- (iv) any monitoring or source test data obtained during the first year of operation.

[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 25-1981, f. & ef. 9-8-81; DEQ 18-1984, f. & ef. 10-16-84; DEQ 13-1988, f. & cert. ef. 6-17-88; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-20-230, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

#### Review of New Sources and Modifications for Compliance With Regulations

**340-28-1920** The owner or operator of a proposed major source or major modification shall demonstrate the ability of the proposed source or modification to comply with all applicable requirements of the Department, including NSPS, OAR 340-25-505 through 340-25-530, and NESHAP, OAR 340-25-450 through 340-25-485, and shall obtain an ACDP pursuant to OAR 340-28-1700 through 340-28-1790.

[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 25-1981, f. & ef. 9-8-81; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-20-235, DEQ 13-1993 f. & ef. 9-24-93

#### Requirements for Sources in Nonattainment Areas

##### **340-28-1930**

Proposed new major sources and major modifications which would emit a nonattainment pollutant within a designated nonattainment areas, including VOC or NO<sub>x</sub> in a designated Ozone Nonattainment Area, shall meet the requirements listed below:

- (1) LAER. The owner or operator of the proposed major source or



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from the proposed source or modification would have an adverse impact on visibility of any Federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment for a Class I area. If the Department concurs with such demonstration, the permit shall not be issued.

[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 18-1984, f. & ef. 10-16-84; DEQ 14-1985, f. & ef. 10-16-85; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from 340-20-276, DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

**Rules Applicable to Sources Required to Have Federal Operating Permits**

**Policy and Purpose**

**340-28-2100** These rules establish a program to implement Title V of the FCAA for the State of Oregon as part of the overall industrial source control program.

- (1) All sources subject to OAR 340-28-2100 through 340-28-2320 shall have a federal operating permit that assures compliance by the source with all applicable requirements in effect as of the date of permit issuance.
- (2) The requirements of the federal operating permit program, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to the permitting of affected sources under the national acid rain program, except as provided herein.
- (3) All sources subject to OAR 340-28-2100 through 340-28-2320 are exempt from the following:
  - (a) registration as required by ORS 468A.050 and OAR 340-28-500 through 340-28-520,
  - (b) Notice of Construction and Approval of Plans, OAR 340-28-800 through 340-28-820;
  - (c) Air Contaminant Discharge Permits, OAR 340-28-1700 through 340-28-1790, unless required by OAR 340-28-1720(2), OAR 340-28-1720(4), or OAR 340-28-1900(1); and
  - (d) OAR 340, Division 14.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Applicability**

**340-28-2110**

- (1) OAR 340-28-2100 through 340-28-2320 apply to the following sources:
  - (a) Any major source;
  - (b) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the FCAA;
  - (c) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the FCAA;
  - (d) Any affected source under Title IV; and
  - (e) Any source in a source category designated by the Commission pursuant to OAR 340-28-2110.
- (2) The owner or operator of a source with a federal operating permit whose potential to emit later falls below

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- the emission level that causes it to be a major source, and which is not otherwise required to have a federal operating permit, may submit a request for revocation of the federal operating permit. Granting of the request for revocation does not relieve the source from compliance with all applicable requirements or ACDP requirements.
- (3) Synthetic minor sources.
- (a) A source which would otherwise be a major source subject to OAR 340-28-2100 through 340-28-2320 may choose to become a synthetic minor source by limiting its emissions below the emission level that causes it to be a major source through production or operational limits contained in an ACDP issued by the Department under 340-28-1700 through 340-28-1790.
- (b) The reporting and monitoring requirements of the emission limiting conditions contained in the ACDPs of synthetic minor sources issued by the Department under 340-28-1700 through 340-28-1790 shall meet the requirements of OAR 340-28-0 through 340-28-1140.
- (c) Synthetic minor sources who request to increase their potential to emit above the major source emission rate thresholds shall become subject to OAR 340-28-2100 through 340-28-2320 and shall submit a permit application under OAR 340-28-2120 in accordance with OAR 340-28-1740.
- (d) Synthetic minor sources that exceed the limitations on potential to emit are in violation of OAR 340-28-2(1)(a).
- (4) Source category exemptions.
- (a) The following source categories are exempted from the obligation to obtain a federal operating permit:
- (A) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and
- (B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation
- (b) All sources listed in OAR 340-28-2110(1) that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(c) of the FCAA, are exempted by the Department from the obligation to obtain a federal operating permit.
- (c) Any source listed in OAR 340-28-2110(1) exempt from the requirement to obtain a permit under this rule may opt to apply for a federal operating permit.
- (5) Emissions units and federal operating permit program sources.
- (a) For major sources, the Department shall include in the permit all applicable requirements for all relevant emissions units in the major source, including any equipment used to support the major industrial group at the site.
- (b) For any nonmajor source subject to the federal operating permit program under OAR 340-28-2110(1) ~~or (4)~~ and not exempted under OAR 340-28-2110(4), the Department shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the federal operating permit program.
- (6) Fugitive emissions. Fugitive emissions from a federal operating permit program source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.
- (7) Insignificant activity emissions. All emissions from insignificant activities, including categorically insignificant activities and aggregate insignificant emissions, shall be included in the determination of the applicability of any requirement.
- ~~(7)E~~ Federal operating permit program sources that are required to obtain an ACDP, OAR 340-28-1700 through 340-28-1790, or a Notice of Approval, OAR 340-28-2270, because of a Title I modification, shall operate in compliance with the federal operating permit ~~except as otherwise provided for in~~ until the federal operating permit is revised to incorporate the ACDP or the Notice of Approval for the Title I modification.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

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**Permit Applications**

**340-28-2120**

- (1) Duty to apply. For each federal operating permit program source, the owner or operator shall submit a timely and complete permit application in accordance with this rule.
- (a) Timely application.
- (A) A timely application for a source that is in operation as of the effective date of the federal operating permit program is one that is submitted 12 months after the effective date of the federal operating permit program in Oregon or on or before such earlier date as the Department may establish. If an earlier date is established, the Department will provide at least six (6) months for the owner or operator to prepare an application. A timely application for a source that is not in operation or that is not subject to the federal operating permit program as of the effective date of the federal operating permit program is one that is submitted within 12 months after the source becomes subject to the federal operating permit program.
- (B) Any federal operating permit program source required to have obtained a permit prior to construction under the ACDP program, OAR 340-28-1700 through 340-28-1790; New Source Review program, OAR 340-28-1900 through 340-28-2000; or the construction/operation modification rule, OAR 340-28-2270; shall file a complete application to obtain the federal operating permit or permit revision within 12 months after commencing operation. Commencing operation shall be considered initial startup. Where an existing federal operating permit would prohibit such construction or change in operation, the owner or operator shall obtain a permit revision before commencing operation.
- (C) Any federal operating permit program source owner or operator shall follow the appropriate procedures under OAR 340-28-2100 through 340-28-2320 prior to commencement of operation of a source permitted under the construction/operation modification rule, OAR 340-28-2270.
- (D) For purposes of permit renewal, a timely application is one that is submitted at least 12 months prior to the date of permit expiration, or such other longer time as may be approved by the Department that ensures that the term of the permit will not expire before the permit is renewed. If more than 12 months is required to process a permit renewal application, the Department shall provide no less than six (6) months for the owner or operator to prepare an application. In no event shall this time be greater than 18 months.
- (E) Applications for initial phase II acid rain permits shall be submitted to the Department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.
- (F) Applications for Compliance Extensions for Early Reductions of HAP shall be submitted before proposal of an applicable emissions standard issued under section 112(d) of the FCAA and shall be in accordance with provisions prescribed in OAR 340-32-300 through 340-32-380.
- (b) Complete application.
- (A) To be deemed complete, an application shall provide all information required pursuant to section (3) of this rule. The application shall include six (6) copies of all required forms and exhibits in hard copy and one (1) copy in electronic format as specified by the Department. Applications for permit revision need to supply information required under OAR 340-28-2120(3) only if it is related to the proposed change. Information required under section (3) of this rule shall be sufficient to evaluate the subject source and its application and to determine all applicable requirements. A responsible official shall certify the submitted information is in accordance with section (5) of this rule.
- (B) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits, clearly identified, will not be accepted by the Department for filing and shall be returned to the

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- applicant for completion.
- (C) If the Department determines that additional information is necessary before making a completeness determination, it may request such information in writing and set a reasonable deadline for a response. The application will not be considered complete for processing until the adequate information has been received. When the information in the application is deemed adequate, the applicant will be notified that the application is complete for processing.
- (D) Unless the Department determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete, except as otherwise provided in OAR 340-28-2200(1)(e). If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response. If the additional information is not provided by the deadline specified, the application shall be determined to be incomplete, and the application shield shall cease to apply.
- (E) Applications determined or deemed to be complete shall be submitted by the Department to the EPA as required by OAR 340-28-2310(1)(a).
- (F) The source's ability to operate without a permit, as set forth in 340-28-2200(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Department.
- (2) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.
- (3) Standard application form and required information. Applications shall be submitted on forms and in electronic formats specified by the Department. Information as described below for each emissions unit at a federal operating permit program source shall be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, including those requirements that apply to categorically insignificant activities, or to evaluate the fee amount required. The application shall include the elements specified below:
- (a) Identifying information, including company name and address, plant name and address if different from the company's name, owner's name and agent, and telephone number and names of plant site manager/contact.
- (b) A description of the source's processes and products by Standard Industrial Classification Code including any associated with each alternative operating scenario identified by the owner or operator and related flow chart(s).
- (c) The following emissions-related information for all requested alternative operating scenarios identified by the owner or operator:
- (A) All emissions of pollutants for which the source is major, all emissions of regulated air pollutants and all emissions of pollutants listed in OAR 340-32-130. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under section (3) of this rule. The Department shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed.
- (B) Identification and description of all points of emissions described in paragraph (3)(c)(A) of this rule in sufficient detail to establish the basis for fees

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- and applicability of requirements of the FCAA and state rules.
- (C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method and to establish PSELS for all regulated air pollutants except as restricted by OAR 340-28-1050 and OAR 340-28-1060.
- (i) An applicant may request that a period longer than hourly be used for the short term PSEL provided that the requested period is consistent with the means for demonstrating compliance with any other applicable requirement and the PSEL requirement, and:
- (I) The requested period is no longer than the shortest period of the Ambient Air Quality Standards for the pollutant, which shall be no longer than daily for VOC and NO<sub>x</sub>, or
- (II) The applicant demonstrates that the requested period, if longer than the shortest period of the Ambient Air Quality Standards for the pollutant, is the shortest period compatible with source operations.
- (ii) The requirements of the applicable rules shall be satisfied for any requested increase in PSELS, establishment of baseline emissions rates, requested emission reduction credit banking, or other PSEL changes.
- (D) Additional information as determined to be necessary to establish any alternative emission limit in accordance with OAR 340-28-1030, if the permit applicant requests one.
- (E) The application shall include a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants
- from those activities which are designated insignificant because of ~~non-exempt insignificant mixture usage or~~ aggregate insignificant emissions. Owners or operators that use more than 100,000 pounds per year of a mixture that contains not greater than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of this chapter, and not greater than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens shall contact the supplier and manufacturer of the mixture to try and obtain information other than Material Safety Data Sheets in order to quantify emissions.
- (F) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel sulfur content, fuel use, raw materials, production rates, and operating schedules.
- (G) Any information on pollution prevention measures and cross-media impacts the owner or operator wants the Department to consider in determining applicable control requirements and evaluating compliance methods; and
- (H) Where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Department to establish operational and maintenance requirements under OAR 340-28-620 (1) and (2).
- (I) Identification and description of air pollution control equipment, including estimated efficiency of the control equipment, and compliance monitoring devices or activities.
- (J) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the federal operating permit program source.
- (K) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to OAR

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- 340-28-1110.
- (L) Calculations on which the information in items (A) through (K) above is based.
  - (d) A plot plan showing the location of all emissions units identified by Universal Transverse Mercator or "UTM" as provided on United States Geological Survey maps and the nearest residential or commercial property.
  - (e) The following air pollution control requirements:
    - (A) Citation and description of all applicable requirements, and
    - (B) Description of or reference to any applicable test method for determining compliance with each applicable requirement.
  - (f) The following monitoring, recordkeeping, and reporting requirements:
    - (A) A proposed Enhanced Monitoring Protocol as required by the FCAA;
    - (B) All emissions monitoring and analysis procedures or test methods required under the applicable requirements;
    - (C) Proposed periodic monitoring to determine compliance where an applicable requirement does not require periodic testing or monitoring;
    - (D) The proposed use, maintenance, and installation of monitoring equipment or methods, as necessary;
    - (E) Documentation of the applicability of the proposed Enhanced Monitoring Protocol, such as test data and engineering calculations;
    - (F) Proposed consolidation of reporting requirements, where possible;
    - (G) A proposed schedule of submittal of all reports; and
    - (H) Other similar information as determined by the Department to be necessary to protect human health or the environment or to determine compliance with applicable requirements.
  - (g) Other specific information that may be necessary to implement and enforce other applicable requirements of the FCAA or state rules or of OAR 340-28-2100 through 340-28-2320 or to determine the applicability of such requirements.
  - (h) An explanation of any proposed exemptions from otherwise applicable requirements.
  - (i) A copy of any existing permit attached as part of the permit application. Owners or operators may request that the Department make a determination that an existing permit term or condition is no longer applicable by supplying adequate information to support such a request. The existing permit term or condition shall remain in effect unless or until the Department determines that the term or condition is no longer applicable by permit modification.
  - (j) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing off-permit changes for permit renewals.
  - (k) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing section 502(b)(10) changes for permit renewals.
  - (l) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing emissions trading under the PSEL including but not limited to proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable if the applicant requests such trading.
  - (m) Additional information as determined to be necessary by the Department to define permit terms and conditions implementing emissions trading, to the extent that the applicable requirements provide for trading without a case-by-case approval of each emissions trade if the applicant requests such trading.
  - (n) A compliance plan that contains all the following:
    - (A) A description of the compliance status of the source with respect to all applicable requirements.
    - (B) A description as follows:
      - (i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
      - (ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
      - (iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative

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- description of how the source will achieve compliance with such requirements.
- (C) A compliance schedule as follows:
- (i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
  - (ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
  - (iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance and interim measures to be taken by the source to minimize the amount of excess emissions during the scheduled period. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- (D) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.
- (E) The compliance plan content requirements specified in this section shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.
- (o) Requirements for compliance certification, including the following:
- (A) A certification of compliance with all applicable requirements by a responsible official consistent with section (5) of this rule and section 114(a) (3) of the FCAA;
  - (B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
  - (C) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and
  - (D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA or state rules.
- (p) A Land Use Compatibility Statement (LUCS), if applicable,

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to assure that the type of land use and activities in conjunction with that use have been reviewed and approved by local government before a permit is processed and issued.

- (q) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the FCAA.
  - (r) For purposes of permit renewal, the owner or operator shall submit all information as required in section (3) of this rule. The owner or operator may identify information in its previous permit application for emissions units that should remain unchanged and for which no changes in applicable requirements have occurred and provide copies of the previous permit application for only those emissions units.
- (4) Quantifying Emissions
- (a) When quantifying emissions for purposes of a permit application, modification, or renewal an owner or operator shall use the most representative data available or required in a permit condition. The Department shall consider the following data collection methods as acceptable for determining air emissions:
    - (A) Continuous emissions monitoring system data obtained in accordance with the Department's Continuous Monitoring Manual (January, 1992);
    - (B) Source testing data obtained in accordance with the Department's Source Sampling Manual (January, 1992) except where material balance calculations are more accurate and more indicative of an emission unit's continuous operation than limited source test results (e.g. a volatile organic compound coating operation);
    - (C) Material balance calculations;
    - (D) Emission factors subject to Department review and approval; and
    - (E) Other methods and calculations subject to Department review and approval.
  - (b) When continuous monitoring or source test data has previously been submitted to and approved by the Department for a particular emissions unit, that information shall be used for quantifying

emissions. Material balance calculations may be used as the basis for quantifying emissions when continuous monitoring or source test data exists if it can be demonstrated that the results of material balance calculations are more indicative of actual emissions under normal continuous operating conditions. Emission factors or other methods may be used for calculating emissions when continuous monitoring data, source test data, or material balance data exists if the owner or operator can demonstrate that the existing data is not representative of actual operating conditions. When an owner or operator uses emission factors or other methods as the basis of calculating emissions, a brief justification for the validity of the emission factor or method shall be submitted with the calculations. The Department shall review the validity of the emission factor or method during the permit application review period. When an owner or operator collects emissions data that is more representative of actual operating conditions, either as required under a specific permit condition or for any other requirement imposed by the Department, the owner or operator shall use that data for calculating emissions when applying for a permit modification or renewal. Nothing in this provision shall require owners or operators to conduct monitoring or testing solely for the purpose of quantifying emissions for permit applications, modifications, or renewals.

- (5) Any application form, report, or compliance certification submitted pursuant to OAR 340-28-2100 through 340-28-2320 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under OAR 340-28-2100 through 340-28-2320 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

**Standard Permit Requirements**

**340-28-2130** Each permit issued under OAR 340-28-2100 through 340-28-2320 shall include the following elements:

- (1) Emission limitations and standards,



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including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

- (a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
  - (b) For sources regulated under the national acid rain program, the permit shall state that, where an applicable requirement of the FCAA or state rules is more stringent than an applicable requirement of regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable by the EPA.
  - (c) For any alternative emission limit established in accordance with OAR 340-28-1030, the permit shall contain an equivalency determination and provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
- (2) Permit duration. The Department shall issue permits for a fixed term of 5 years in the case of affected sources, and for a term not to exceed 5 years in the case of all other sources.
- (3) Monitoring and related recordkeeping and reporting requirements.
- (a) Each permit shall contain the following requirements with respect to monitoring:
    - (A) A monitoring protocol to provide accurate and reliable data that:
      - (i) is representative of actual source operation;
      - (ii) is consistent with the averaging time in the permit emission limits;
      - (iii) is consistent with monitoring requirements of other applicable requirements; and
      - (iv) can be used for compliance certification and enforcement.
    - (B) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the FCAA;
    - (C) Where the applicable requirement does not require

- periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to OAR 340-28-2130(3)(c). Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Continuous monitoring and source testing shall be conducted in accordance with the Department's Continuous Monitoring Manual (January, 1992) and the Source Sampling Manual (January, 1992), respectively. Other monitoring shall be conducted in accordance with Department approved procedures. The monitoring requirements may include but shall not be limited to any combination of the following:
- (i) continuous emissions monitoring systems (CEMS);
  - (ii) continuous opacity monitoring systems (COMS);
  - (iii) continuous parameter monitoring systems (CPMS);
  - (iv) continuous flow rate monitoring systems (CFRMS);
  - (v) source testing;
  - (vi) material balance;
  - (vii) engineering calculations;
  - (viii) recordkeeping; or
  - (ix) fuel analysis; and
- (D) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
- (E) A condition that prohibits any person from knowingly rendering inaccurate any required monitoring device or method.**
- ~~(E)~~ (F) Methods used to determine actual emissions for fee purposes shall also be used for compliance determination and can be no less rigorous than the requirements of OAR 340-

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- 28-2160. For any assessable emission for which fees are paid on actual emissions, the compliance monitoring protocol shall include the method used to determine the amount of actual emissions.
- (~~F~~G) Monitoring requirements shall commence on the date of permit issuance unless otherwise specified in the permit.
- (b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:
- (A) Records of required monitoring information that include the following:
- (i) The date, place as defined in the permit, and time of sampling or measurements;
  - (ii) The date(s) analyses were performed;
  - (iii) The company or entity that performed the analyses;
  - (iv) The analytical techniques or methods used;
  - (v) The results of such analyses;
  - (vi) The operating conditions as existing at the time of sampling or measurement; and
  - (vii) The records of quality assurance for continuous monitoring systems (including but not limited to quality control activities, audits, calibrations drifts);
- (B) Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
- (C) Recordkeeping requirements shall commence on the date of permit issuance unless otherwise specified in the permit.
- (c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require the following:
- (A) Submittal of four (4) copies of reports of any required monitoring at least every 6 months, completed on forms approved by the Department. Unless otherwise approved in writing by the Department, six month periods are January 1 to June 30, and July 1 to December 31. The reports required by this rule shall be submitted within 30 days after the end of each reporting period, unless otherwise approved in writing by the Department. Two copies of the report shall be submitted to the Air Quality Division, one copy to the regional office, and one copy to the EPA. All instances of deviations from permit requirements shall be clearly identified in such reports.
- (i) The semi-annual report shall be due on July 30, unless otherwise approved in writing by the Department, and shall include the semi-annual compliance certification, OAR 340-28-2160.
  - (ii) The annual report shall be due on February 15, unless otherwise approved in writing by the Department, but shall be due no later than March 15, and shall consist of the annual reporting requirements as specified in the permit; the emission fee report; the emission statement, if applicable, OAR 340-28-1520; the excess emissions upset log, OAR 340-28-1440; the annual certification that the risk management plan is being properly implemented, OAR 340-32-5400; and the semi-annual compliance certification, OAR 340-28-2160.
- (B) Prompt reporting of deviations from permit requirements that do not cause excess emissions,

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- including those attributable to upset conditions, as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken.  
"Prompt" means within seven (7) days of the deviation.  
Deviations that cause excess emissions, as specified in OAR 340-28-1400 through 340-28-1460 shall be reported in accordance with OAR 340-28-1440.
- (C) Submittal of any required source test report within 30 days after the source test.
- (D) All required reports shall be certified by a responsible official consistent with OAR 340-28-2120(5).
- (E) Reporting requirements shall commence on the date of permit issuance unless otherwise specified in the permit.
- (d) The Department may incorporate more rigorous monitoring, recordkeeping, or reporting methods than required by applicable requirements in a federal operating permit if they are contained in the permit application, are determined by the Department to be necessary to determine compliance with applicable requirements, or are needed to protect human health or the environment.
- (4) A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder.
- (a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.
- (b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
- (c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.
- (5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
- (6) Provisions stating the following:
- (a) The permittee shall comply with all conditions of the federal operating permit. Any permit condition noncompliance constitutes a violation of the FCAA and state rules and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- (b) The need to halt or reduce activity shall not be a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- (c) The permit may be modified, revoked, reopened and reissued, or terminated for cause as determined by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- (d) The permit does not convey any property rights of any sort, or any exclusive privilege.
- (e) The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the EPA along with a claim of confidentiality.
- (7) A provision to ensure that a federal operating permit program source pays fees to the Department consistent with the fee schedule.
- (8) Terms and conditions for reasonably anticipated alternative operating scenarios identified by the owner or operator in its application as approved by the Department. Such terms and conditions:
- (a) Shall require the owner or operator, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
- (b) Shall extend the permit shield described in OAR 340-28-2190 to all terms and conditions under each such alternative operating scenario; and
- (c) Shall ensure that the terms and

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conditions of each such alternative operating scenario meet all applicable requirements and the requirements of OAR 340-28-2100 through 340-28-2320.

- (9) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with the PSELs. Such terms and conditions:
- (a) Shall include all terms required under OAR 340-28-2130 and OAR 340-28-2160 to determine compliance;
  - (b) Shall extend the permit shield described in OAR 340-28-2190 to all terms and conditions that allow such increases and decreases in emissions;
  - (c) Shall ensure that the trades are quantifiable and enforceable;
  - (d) Shall ensure that the trades are not Title I modifications;
  - (e) Shall require a minimum 7-day advance, written notification to the Department and the EPA of the trade that shall be attached to the Department's and the source's copy of the permit. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and
  - (f) Shall meet all applicable requirements and requirements of OAR 340-28-2100 through 340-28-2320.
- (10) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emission trade. Such terms and conditions:
- (a) Shall include all terms required under OAR 340-28-2130 and OAR 340-28-2160 to determine compliance;
  - (b) Shall extend the permit shield described in OAR 340-28-2190 to all terms and conditions that allow such increases and decreases in emissions; and
  - (c) Shall meet all applicable requirements and requirements of OAR 340-28-2100 through 340-28-2320.
- (11) Terms and conditions allowing for off-permit changes, OAR 340-28-2220(2).
- (12) Terms and conditions allowing for section 502(b)(10) changes, OAR 340-28-2220(3).

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**State-enforceable Requirements**

**340-28-2140** The Department shall specifically designate as not being federally enforceable any terms and conditions included in the permit that are not required under the FCAA or under any of its applicable requirements. Terms and conditions so designated are subject to the requirements of OAR 340-28-2120 through 340-28-2300, other than those contained in OAR 340-28-2150. All terms and conditions in a federal operating permit are enforceable by the Department.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Federally-enforceable Requirements**

**340-28-2150** The Department shall specifically designate as being federally enforceable under the FCAA any terms and conditions included in the permit that are required under the FCAA or under any of its applicable requirements. Federally enforceable conditions are subject to enforcement actions by the EPA and citizens.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Compliance Requirements**

- 340-28-2160** All federal operating permits shall contain the following elements with respect to compliance:
- (1) Consistent with OAR 340-28-2130(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.
  - (2) A requirement that any document (including but not limited to reports) required by a federal operating permit shall contain a certification by a responsible official or the designated representation for the acid rain portion of the permit that meets the requirements of OAR 340-28-2120(5).
  - (3) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Department or an authorized representative to perform the following:
    - (a) Enter upon the permittee's premises where a federal operating permit program source is located or emissions-related activity is conducted, or where records shall be kept under the conditions of the permit;
    - (b) Have access to and copy, at reasonable times, any records that shall be kept under the

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**General Permits**

**340-28-2170**

- (1) The Department may, after notice and opportunity for public participation provided under OAR 340-28-2290, issue general permits covering numerous similar sources in specific source categories as defined in section (2) of this rule. General permits shall comply with all requirements applicable to other federal operating permits.
- (2) The owner or operator of an existing major HAP source which meets all of the following criteria may apply to be covered under the terms and conditions of a general permit:
  - (a) the source is a major source under section 112 of the Act only;
  - (b) no emissions standard for existing sources, promulgated pursuant to section 112(d) of the FCAA or OAR 340-32-2500 through OAR 340-32-5000, applies to the source; and
  - (c) the Department does not consider the source to be a problem source based on its complaint record and compliance history.
- (3) Notwithstanding the shield provisions of OAR 340-28-2190, the source shall be subject to enforcement action for operation without a federal operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for affected sources under the national acid rain program unless provided in regulations promulgated under Title IV of the FCAA.
- (4)
  - (a) Federal operating permit program sources that would qualify for a general permit shall apply to the Department for coverage under the terms of the general permit or shall apply for a federal operating permit consistent with OAR 340-28-2120.
  - (b) The Department may, in the general permit, provide for applications which deviate from the requirements of OAR 340-28-2120, provided that such applications meet the requirements of Title V of the FCAA and include all information necessary to determine qualification for, and compliance with, the general permit.
  - (c) Without repeating the public participation procedures required under OAR 340-28-2290, the Department shall grant an owner's or operator's request for authorization to operate under a general permit if the source meets the applicability criteria for the general permit, but such a grant shall not be a final permit action for purposes of judicial review.

- (5) When an emissions limitation applicable to a general permit source is promulgated by the EPA pursuant to 112(d), or adopted by the state pursuant to OAR 340-32-500 through OAR 340-32-5000, the source shall:
  - (a) immediately comply with the provisions of the applicable emissions standard; and
  - (b)
    - (A) within 12 months of standard promulgation, apply for an operating permit, pursuant to OAR 340-28-2120, if three (3) or more years are remaining on the general permit term; or
    - (B) apply for an operating permit at least 12 months prior to permit expiration, pursuant to OAR 340-28-2120, if less than three (3) years remain on the general permit term.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Temporary Sources**

**340-28-2180** The Department may issue a single permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the permit. No affected source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

- (1) Conditions that will assure compliance with all applicable requirements at all authorized locations;
- (2) Requirements that the owner or operator notify the Department at least 10 days in advance of each change in location;
- (3) Conditions that assure compliance with land use compatibility; and
- (4) Conditions that assure compliance with all other provisions of OAR 340-28-2100 through 340-28-2320.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Permit Shield**

**340-28-2190**

- (1) Except as provided in OAR 340-28-2100 through 340-28-2320, the Department shall expressly include in a federal operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:
  - (a) Such applicable requirements are included and are specifically identified in the permit; or
  - (b) The Department, in acting on the permit application or revision,

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- determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
- (2) A federal operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
- (3) Changes made to a permit in accordance with OAR 340-28-2230(1)(h) and OAR 340-28-2260 shall be shielded.
- (4) Nothing in this rule or in any federal operating permit shall alter or affect the following:
- (a) The provisions of ORS 468.115 (enforcement in cases of emergency) and ORS 468.035;
  - (b) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
  - (c) The applicable requirements of the national acid rain program, consistent with section 408(a) of the FCAA; or
  - (d) The ability of the Department to obtain information from a source pursuant to ORS 468.095 (investigatory authority, access to records).
- (E) The EPA has received a copy of the proposed permit and any notices required under OAR 340-28-2310(1) and (2), and has not objected to issuance of the permit under OAR 340-28-2310(3) within the time period specified therein or such earlier time as agreed to with the Department if no changes were made to the draft permit.
- (b) When a multiple-source permit includes air contaminant sources subject to the jurisdiction of the Department and the Regional Authority, the Department may require that it shall be the permit issuing agency. In such cases, the Department and the Regional Authority shall otherwise maintain and exercise all other aspects of their respective jurisdictions over the permittee.
- (c) Denial of a Permit. If the Department proposes to deny issuance of a permit, permit renewal, permit modification, or permit amendment, it shall notify the applicant by registered or certified mail of the intent to deny and the reasons for denial. The denial shall become effective 60 days from the date of mailing of such notice unless within that time the applicant requests a hearing. Such a request for hearing shall be made in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to the applicable provisions of ORS Chapter 183.
- (d) The Department or Lane Regional Air Pollution Authority is the permitting authority for purposes of the 18 month requirement contained in 42 USC § 7661b(c) and this subsection. Except as provided under the initial transition plan or under regulations promulgated under Title IV of the FCAA or under OAR 340-28-2100 through 340-28-2320 for the permitting of affected sources under the national acid rain program, the Department shall take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application. In the case of any complete permit application containing an early reductions demonstration pursuant to OAR 340-32-300, the Department shall take final action within 9 months of receipt.
- (e) The Department shall promptly provide notice to the applicant

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Permit Issuance**  
**340-28-2200**

- (1) Action on application.
- (a) A permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:
- (A) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under OAR 340-28-2170;
  - (B) Except for modifications qualifying for minor permit modification procedures under OAR 340-28-2250, the Department has complied with the requirements for public participation under OAR 340-28-2290;
  - (C) The Department has complied with the requirements for notifying and responding to affected States under OAR 340-28-2310(2);
  - (D) The conditions of the permit provide for compliance with all applicable requirements and the requirements of OAR 340-28-2100 through 340-28-

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of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. For modifications processed through minor permit modification procedures, OAR 340-28-2250(2), the Department shall not require a completeness determination.

- (f) The Department shall provide a review report that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this report to the EPA and to any other person who requests it.
- (g) The submittal of a complete application shall not affect the requirement that any source have a Notice of Approval in accordance with OAR 340-28-2270 or a preconstruction permit in accordance with OAR 340-28-1700 through 340-28-1790 or OAR 340-28-1900 through 340-28-2000.
- (h) Failure of the Department to take final action on a complete application or failure of the Department to take final action on an EPA objection to a proposed permit within the appropriate time shall be considered to be a final order for purposes of ORS Chapter 183.
- (i) If the final permit action being challenged is the Department's failure to take final action, a petition for judicial review may be filed any time before the Department denies the permit or issues the final permit.
- (2) Requirement for a permit.
- (a) Except as provided in OAR 340-28-2200(2)(b), OAR 340-28-2220(3), and OAR 340-28-2250(2)(d), no federal operating permit program source may operate after the time that it is required to submit a timely and complete application after the effective date of the program, except in compliance with a permit issued under a federal operating permit program.
- (b) If a federal operating permit program source submits a timely and complete application for permit issuance (including for renewal), the source's failure to have a federal operating permit is not a violation of OAR 340-28-2100 through 340-28-2320 until the Department takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the

completeness determination made pursuant to OAR 340-28-2200(1)(e), and as required by OAR 340-28-2120(1)(b), the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. If the final permit action being challenged is the Department's failure to take final action, a petition for judicial review may be filed any time before the Department denies the permit or issues the final permit.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

#### Permit Renewal and Expiration 340-28-2210

- (1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and the EPA review, that apply to initial permit issuance; and
- (2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with OAR 340-28-2200(2) and OAR 340-28-2120(1)(a)(D). If a timely and complete renewal application has been submitted, the existing permit shall remain in effect until final action has been taken on the renewal application to issue or deny a permit.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

#### Operational Flexibility

**340-28-2220** Operational flexibility provisions allow owners or operators to make certain changes at their facility without a permit modification. The following sections describe the provisions and the procedures owners or operators shall follow to utilize operational flexibility.

- (1) Alternative Operating Scenarios. Owners or operators may identify as many reasonably anticipated alternative operating scenarios in the permit application as possible and request the approval of the Department for incorporation of the scenarios in the permit.
- (a) Alternative operating scenarios mean the different conditions, including equipment configurations or process parameters, under which a source can operate that:
- (A) require different terms and conditions in the permit to

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- determine compliance, or
- (B) ~~emit different regulated air pollutants; trigger different applicable requirements;~~
- (b) Alternative operating scenarios shall be identified in the permit application, approved by the Department; and listed in the permit.
- (c) Changes between approved alternative operating scenarios listed in the permit can be made at any time. Owners or operators shall contemporaneously record in a log at the permitted facility any change from one alternative operating scenario to another.
- (d) Owners or operators are not required to submit the record of changes of alternative operating scenarios on a periodic basis but shall make the record available or submit the record upon the request of the Department.
- (e) The permit shield shall extend to all alternative operating scenarios listed in the permit.
- (2) Off-permit Changes. Changes that qualify as off-permit do not require Department approval.
- (a) Off-permit changes mean changes to a source that:
- (A) are not addressed or prohibited by the permit;
- (B) are not Title I modifications;
- (C) are not subject to any requirements under Title IV of the FCAA;
- (D) meet all applicable requirements;
- (E) do not violate any existing permit term or condition; and
- (F) may result in emissions of regulated air pollutants subject to an applicable requirement, but not otherwise regulated under the permit or may result in insignificant changes as defined in OAR 340-28-110.
- (b) Off-permit changes can be made at any time. Owners or operators shall contemporaneously submit written notice to the Department and the EPA, except for changes that qualify as insignificant under OAR 340-28-110. The written notice shall contain:
- (A) a description of the change;
- (B) the date on which the change will occur;
- (C) any change in emissions within the PSELs;
- (D) pollutants emitted;
- (E) any applicable requirement that would apply as a result of the change;
- (F) verification that the change is not addressed or prohibited by the permit;
- (G) verification that the change is not a Title I modification, such as an explanation that the change does not meet any of the Title I modification criteria;
- (H) verification that the change is not subject to any requirements under Title IV of the FCAA; and
- (I) verification that the change does not violate any existing permit term or condition.
- (c) The permittee shall keep a record describing off-permit changes made at the facility that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those off-permit changes.
- (d) Written notifications of off-permit changes shall be attached to the Department's and the source's copy of the permit.
- (e) Terms and conditions that result from off-permit changes shall be incorporated into the permit upon permit renewal, if applicable.
- (f) The permit shield of OAR 340-28-2190 shall not extend to off-permit changes.
- (3) Section 502(b)(10) Changes. Changes that qualify as section 502(b)(10) changes do not require permit revision.
- (a) Section 502(b)(10) changes mean changes that contravene an express permit term. Such changes do not include:
- (A) changes that would violate applicable requirements (including but not limited to increases in PSELs);
- (B) changes that contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and
- (C) changes that are Title I modifications.
- (b) Section 502(b)(10) changes can be made at any time. Owners or operators shall submit a minimum 7-day advance, written notification to the Department and the EPA. The written notice shall contain:
- (A) a description of the change;
- (B) the date on which the change will occur;
- (C) any change in emissions within the PSELs;
- (D) any permit term or condition that is no longer applicable as a result of the change;
- (E) any new terms or conditions applicable to the change;



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- (F) verification that the change does not cause or contribute to a violation of any applicable requirements, such as an explanation that the permit term or condition that is being contravened is not based on an applicable requirement;
  - (G) verification that the change does not cause or contribute to an exceedance of the PSELS, such as calculations of emissions resulting from the change in relation to the PSEL; and
  - (H) verification that the change is not a Title I modification, such as an explanation that the change does not meet any of the Title I modification criteria.
- (c) Written notifications of section 502(b)(10) changes shall be attached to the Department's and the source's copy of the permit.
  - (d) Terms and conditions that result from section 502(b)(10) changes shall be incorporated into the permit upon permit renewal, if applicable.
  - (e) The permit shield shall not extend to section 502(b)(10) changes.
- (4) The Department may initiate enforcement if a change under operational flexibility has been initiated and does not meet the applicable operational flexibility criteria.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Administrative Permit Amendments  
340-28-2230**

- (1) An "administrative permit amendment" is a permit revision that:
- (a) Corrects typographical errors;
  - (b) Identifies a change in the name, address, or phone number of the responsible official(s) identified in the permit, or provides a similar minor administrative change at the source;
  - (c) Allows for a change in the name of the permittee;
  - (d) Allows for a change in ownership or operational control of a source where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;
  - (e) Requires more frequent monitoring
- (f) or reporting by the permittee;
  - (f) Allows for a change in the date for reporting or source testing requirements for extenuating circumstances, except when required by a compliance schedule;
  - (g) Relaxes monitoring, reporting or recordkeeping due to a permanent source shutdown for only the emissions unit(s) being shutdown;
  - (h) Incorporates into the federal operating permit the requirements from preconstruction review permits authorized under OAR 340-28-1900 through 340-28-2000 or OAR 340-28-2270, provided that the procedural requirements followed in the preconstruction review are substantially equivalent to the requirements of OAR 340-28-2200 through 340-28-2290 and OAR 340-28-2310 that would be applicable to the change if it were subject to review as a permit modification, compliance requirements are substantially equivalent to those contained in OAR 340-28-2130 through 340-28-2190, and no changes in the construction or operation of the facility that would require a permit modification under OAR 340-28-2240 through 340-28-2260 have taken place; or
  - (i) Corrects baseline or PSELS when more accurate emissions data is obtained but does not increase actual emissions; ~~or~~
  - ~~(j) Corrects minor misinterpretations of an applicable requirement upon Department approval.~~
- (2) Administrative permit amendments for purposes of the national acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA.
- (3) Administrative permit amendment procedures. An administrative permit amendment shall be made by the Department consistent with the following:
- (a) The owner or operator shall promptly submit an application for an administrative permit amendment upon becoming aware of the need for one on forms provided by the Department along with a copy of the draft amendment.
  - (b) The Department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that it designates any such permit revisions as having been made pursuant to this rule.
  - (c) The Department shall issue the administrative permit amendment

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in the form of a permit addendum for only those conditions that will change.

- (d) The Department shall submit a copy of the permit addendum to the EPA.
  - (e) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.
  - (f) If the source fails to comply with its draft permit terms and conditions upon submittal of the application and until the Department takes final action, the existing permit terms and conditions it seeks to modify may be enforced against it.
- (4) The Department shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in OAR 340-28-2190 only for administrative permit amendments made pursuant to OAR 340-28-2230(1)(h) which meet the relevant requirements of OAR 340-28-2130 through 340-28-2320 for significant permit modifications.
- (5) If it becomes necessary for the Department to initiate an administrative amendment to the permit, the Department shall notify the permittee of the intended action by certified or registered mail. The action shall become effective 20 days after the date of mailing unless within that time the permittee makes a written request for a hearing. The request shall state the grounds for the hearing. Any hearing held shall be conducted pursuant to the applicable provisions of ORS Chapter 183.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Permit Modification**

**340-28-2240** A permit modification is any revision to a federal operating permit that cannot be accomplished under the Department's provisions for administrative permit amendments under OAR 340-28-2230. A permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Minor Permit Modifications**

**340-28-2250**

- (1) Criteria.
  - (a) Minor permit modification procedures may be used only for those permit modifications that:
    - (A) Do not violate any applicable

- requirement;
  - (B) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
  - (C) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
  - (D) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:
    - (i) A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and
    - (ii) An alternative emissions limit approved pursuant to OAR 340-32-300 through 340-32-380;
  - (E) Do not increase emissions over the PSEL;
  - (F) Are not Title I modifications; and
  - (G) Are not required by OAR 340-28-2260 to be processed as a significant modification.
- (b) Notwithstanding OAR 340-28-2250(1)(a), minor permit modification procedures may be used for permit modifications involving the use of emissions trading and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Oregon State Implementation Plan or in applicable requirements promulgated by the EPA.
- (2) Minor permit modification procedures. A minor permit modification shall be made by the Department consistent with the following:
    - (a) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of OAR 340-28-2120(3), shall be submitted on forms and electronic formats provided by the Department, and shall include the following additional information:
      - (A) A description of the change, the change in emissions resulting from the change, and any new applicable requirements that will apply

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- permit compliance terms and conditions irrelevant.
- (2) Significant permit modifications shall be subject to all requirements of OAR 340-28-2100 through 340-28-2320, including those for applications, public participation, review by affected States, and review by the EPA, as they apply to permit issuance and permit renewal.
- (3) Major modifications, as defined in OAR 340-28-110, shall require an ACDP under OAR 340-28-1900 through 340-28-2000.
- (4) Modifications at sources which are major hazardous air pollutant sources that cause increases of emissions of HAP greater than de minimis are subject to OAR 340-28-2270 and OAR 340-32-4500.

any regulated air pollutant, excluding those pollutants listed in OAR 340-32-130 or 340-32-5400, is increased on an hourly basis at full production, including air pollution control equipment; or

~~(B) Any alternative operating scenario is changed or added to that would affect the method of the compliance certification;~~

~~(C) B~~ The performance of any pollution control equipment used to comply with a Department requirement is degraded causing an increase of ~~emissions~~ the amount of any air pollutant emitted or which results in the emission of any air pollutant not previously emitted (excluding routine maintenance);

~~(D) The performance of any monitoring equipment required by the Department is changed (excluding routine maintenance); or~~

~~(E) The source becomes subject to a new applicable requirement.~~

(c) No owner or operator shall make any physical change in, or change in the method of operation of, a major source that increases the actual emissions of any hazardous air pollutant (HAP) emitted by such source by more than a de minimis amount or which results in the emission of any HAP not previously emitted by more than a de minimis amount, without first notifying the Department in writing and obtaining approval if the source becomes subject to OAR 340-32-4500.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Construction/Operation Modifications  
340-28-2270**

- ~~(1) Scope. This regulation shall apply to the following classes of sources of regulated air pollutants:~~
- (a) Any ~~emissions unit~~ stationary source having emissions to the atmosphere; and
- (b) Any air pollution control equipment used to comply with a Department requirement;
- ~~(c) Any monitoring equipment required by the Department.~~

- ~~(2) Requirement.~~
- (a) No owner or operator shall construct, fabricate, erect, install, establish, develop or operate a new stationary source of regulated air pollutants or air pollution control equipment of any class listed in OAR 340-28-2270 ~~(1)~~ without first notifying the Department in writing and obtaining approval.

- (b) No owner or operator shall ~~modify~~ make any physical change or change in the method of operation that the source is physically unable to accommodate or replace any stationary source of regulated air pollutants or air pollution control equipment of any class listed in OAR 340-28-2270 ~~(1)~~, covered by a permit under OAR 340-28-2100 through 340-28-2320, without first notifying the Department in writing and obtaining approval if:

- (A) Any ~~emissions unit is changed or added to that would increase that emissions potential to emit~~ stationary source's maximum capacity to emit

(3) Procedure.

(a) Notice. Any owner or operator required to obtain approval for a new, modified, or replaced stationary source of regulated air pollutants or air pollution control equipment of any class listed in OAR 340-28-2270 ~~(1)~~ shall notify the Department in writing on a form supplied by the Department.

(b) Submission of Plans and Specifications. The Department shall require the submission of plans and specifications for any stationary source of regulated air pollutants or air pollution control equipment of any class listed in OAR 340-28-

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- 2270 (~~2~~1) being constructed or modified and its relationship to the production process. The following information shall be required for a complete application for a Notice of Approval:
- (A) Name, address, and nature of business;
  - (B) Name of local person responsible for compliance with these rules;
  - (C) Name of person authorized to receive requests for data and information;
  - (D) A description of the constructed or modified source;
  - (E) A description of the production processes and a related flow chart for the constructed or modified source;
  - (F) A plot plan showing the location and height of the constructed or modified ~~air~~ contaminant stationary source. The plot plan shall also indicate the nearest residential or commercial property;
  - (G) Type and quantity of fuels used;
  - (H) The change in the amount, quantities emitted, nature and duration of regulated air pollutant emissions;
  - (I) Any information on pollution prevention measures and cross-media impacts the owner or operator wants the Department to consider in determining applicable control requirements and evaluating compliance methods;
  - (J) Where the operation or maintenance of air pollution control equipment and emission reduction processes can be adjusted or varied from the highest reasonable efficiency and effectiveness, information necessary for the Department to establish operational and maintenance requirements under OAR 340-28-620 (1) and (2);
  - (K) Estimated efficiency of air pollution control equipment under present or anticipated operating conditions;
  - ~~+(L) Amount and method of refuse disposal;~~
  - ~~+(M)L~~ Land Use Compatibility Statement signed by a local (city or county) planner either approving or disapproving construction or modification to the source if required by the local planning agency; Corrections and revisions to the plans and specifications to insure compliance with applicable rules, orders and statutes; and Sufficient information for the Department to determine applicable emission limitations and requirements for hazardous air pollutant sources.
- (c) Notice of Approval:
- (A) For construction or modification of any stationary source of regulated air pollutants or air pollution control equipment of any class listed in OAR 340-28-2270 (~~2~~1) that does not increase emissions above the facility-wide PSEL; or does not increase the amount of any air pollutant emitted by any individual stationary source above the significant emission rate, excluding any emissions decreases; or does not establish a federally enforceable limit on potential to emit; or does not establish a new applicable requirement as a result of a TACT determination under OAR 340-28-630 or a MACT determination under OAR 340-32-4500:
    - (i) The Department shall, upon determining that the proposed construction or modification is, in the opinion of the Department, in accordance with the provisions of applicable rules, order, and statutes, notify the owner or operator that construction may proceed within 60 days of receipt of the required information;
    - (ii) A Notice of Approval to proceed with construction or modification shall allow the owner or operator to construct or modify the stationary source or air pollution control equipment listed in OAR 340-28-2270 (1) and operate it in accordance with provisions under OAR 340-28-2220, 340-28-2230 or 340-28-2240, whichever is applicable.
    - (iii) A Notice of Approval to proceed with

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- construction or modification shall not relieve the owner or operator of the obligation of complying with applicable emission standards and orders.
- (B) For construction or modification of any stationary source ~~of regulated air pollutants~~ or air pollution control equipment ~~of any class~~ listed in OAR 340-28-2270 ~~(+2)1~~ that increases emissions above the facility-wide PSEL; or increases the amount of any air pollutant emitted by any individual stationary source above the significant emission rate, excluding any emissions decreases; or establishes a federally enforceable limit on potential to emit; or establishes a new applicable requirement as a result of a TACT determination under OAR 340-28-630 or a MACT determination under OAR 340-32-4500:
- (i) The Department shall upon determining that the proposed construction or modification is in the opinion of the Department in accordance with the provisions of applicable rules, order, and statutes, issue public notice as to the intent to issue an approval for construction or modification within 180 days of receipt of the required information;
- (ii) The public notice shall allow at least thirty (30) days for written comment from the public, and from interested State and Federal agencies, prior to issuance of the approval. Public notice shall include the name and quantities of new or increased emissions for which permit limits are proposed, or new or increased emissions which exceed significant emission rates established by the Department.
- (iii) In addition to the information required under OAR 340-11-007, public notices for approval of construction or modification shall contain a determination of:
- (I) Whether the proposed permitted emission would have a significant impact on a Class I airshed;
- (II) Whether each proposed emission is a criteria pollutant and whether the area in which the source is located is designated as attainment or nonattainment for that pollutant; and
- (III) For each major source within an attainment area for which dispersion modeling has been performed as a requirement of the Notice of Approval, an indication of what impact each proposed permitted emission would have on the Prevention of Significant Deterioration Program within that attainment area.
- (iv) The owner or operator may request that the external review procedures required under OAR 340-28-2290 and OAR 340-28-2310 be used instead of the notice procedures under paragraph (ii) and (iii) of this rule to allow for subsequent incorporation of the Notice of Approval as an administrative amendment. The public notice shall state that the external review procedures are being used, if the

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- applicant requests them.
- (v) If, within 30 days after commencement of the public notice period, the Department receives written requests from ten (10) persons, or from an organization or organizations representing at least ten persons, for a public hearing to allow interested persons to appear and submit oral or written comments on the proposed provisions, the Department shall provide such a hearing before taking final action on the application, at a reasonable place and time and on reasonable notice. Requests for public hearing shall clearly identify the air quality concerns in the draft permit.
- (vi) The Department shall give notice of any public hearing at least 30 days in advance of the hearing. Notice of such a hearing may be given, in the Department's discretion, either in the public notice under 340-28-2290 (1) or in such other manner as is reasonably calculated to inform interested persons.
- (vii) After the public notice period and the public hearing, if requested, ~~if~~ the Department shall, upon determining that the proposed construction or modification is, in the opinion of the Department, in accordance with the provisions of applicable rules, order, and statutes, notify the owner or operator that construction may proceed ~~after the public notice period~~.
- (viii) A Notice of Approval to proceed with construction or modification shall allow the owner or operator to construct or modify the stationary source or air pollution control equipment listed in OAR 340-28-2270(1) and operate it in accordance with provisions under OAR 340-28-2220, 340-28-2230, or 340-28-2240, whichever is applicable.
- (ix) A Notice of Approval to proceed with construction or modification shall not relieve the owner or operator of the obligation of complying with applicable emission standards and orders.
- (d) Order Prohibiting Construction.
- (i) If within the 60 day or 180 day review period, whichever is applicable, the Director determines that the proposed construction or modification is not in accordance with applicable statutes, rules, regulations and orders, the Director shall issue an order prohibiting the construction or modification of the ~~air contamination~~ stationary source or air pollution control equipment listed in OAR 340-28-2270(1). Said order is to be forwarded to the owner by certified mail. The Department shall issue public notice as to the intent to prohibit construction in accordance with OAR 340-28-2270(3)(c)(B)(ii) and (iii).
- (ii) Failure to issue such order within the 60 day review period shall be considered a determination that the proposed construction, installation, or establishment may proceed, provided that it is in accordance with plans, specifications, and any corrections or revisions thereto, or other information, if any, previously submitted, and provided further that it shall not relieve the owner of the obligation of complying with applicable emission standards and orders.

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- (e) Hearing. Pursuant to law, an owner or operator against whom an order prohibiting construction is directed may within 20 days from the date of mailing of the order, demand a hearing. The demand shall be in writing, state the grounds for hearing, and be mailed to the Director of the Department. The hearing shall be conducted pursuant to the applicable provisions of ORS Chapter 183.
- (f) Notice of Completion. Within thirty (30) days, or other period specified in the federal operating permit, after any owner or operator has constructed or modified ~~a(n air contamination)~~ stationary source or air pollution control equipment [as defined under] listed in OAR 340-28-2270 (1), that owner or operator shall so report in writing on a form furnished by the Department, stating the date of completion of construction or modification and the date the stationary source or air pollution control equipment was or will be put in operation.
- (g) Incorporation into a Federal Operating Permit.
- (A) Where a federal operating permit would allow incorporation of such construction or modification as an off-permit change [OAR 340-28-2220(2)] or a section 502(b)(10) change [OAR 340-28-2220(3)]:
- (i) The owner or operator of the ~~air contamination~~ stationary source or air pollution control equipment listed in OAR 340-28-2270(1) shall submit to the Department the applicable notice, and
- (ii) The Department shall incorporate the construction or modification at permit renewal, if applicable.
- (B) Where a federal operating permit would allow incorporation of such construction or modification as an administrative amendment [OAR 340-28-2230], the owner or operator of the stationary source or air pollution control equipment listed in OAR 340-28-2270(1) may:
- (i) submit the permit application information required under OAR 340-28-2[~~12~~]230(3) with the information required under OAR 340-28-2270(3)(b) upon becoming aware of the need for an administrative amendment; and
- (ii) request that the external review procedures required under OAR 340-28-2290 and OAR 340-28-2310 be used instead of the notice procedures under OAR 340-28-2270(3)(c)(B)(ii) and (iii) to allow for subsequent incorporation of the construction permit as an administrative amendment.
- (C) Where a federal operating permit would require incorporation of such construction or modification as a minor permit modification [OAR 340-28-2250] or a significant permit modification [OAR 340-28-2260], the owner or operator of the stationary source or air pollution control equipment listed in OAR 340-28-2270(1) shall submit the permit application information required under OAR 340-28-2120(3) within one year of initial startup of the construction or modification, except as prohibited in paragraph (D) of this rule.
- (D) Where an existing federal operating permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.

[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 13-1993, f. & ef. 9-24-93; DEQ 19-1993, f. & ef. 11-4-93

#### Reopenings

##### 340-28-2280

#### (1) Reopening for cause.

- (a) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
- (A) Additional applicable requirements under the FCAA

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3. Ambient air monitoring a.  
\$2,000  
review

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**Pollutants Subject to Emission Fees**  
**340-28-2610**

- (1) The Department shall assess emission fees on assessable emissions up to and including 4,000 tons per year for each regulated pollutant for fee purposes.
- (2) If the emission fee on PM<sub>10</sub> emissions is based on the PSEL for a major source that does not have a PSEL for PM<sub>10</sub>, the Department shall assess the emission fee on the PSEL for TSP.
- (3) The owner or operator shall determine each assessable emission separately.
- (4) The owner or operator shall pay emission fees on all assessable emissions from each emission source included in the permit or application review report.
- (5) The owner or operation shall not pay emission fees on Hazardous Air Pollutants already covered by a Criteria Pollutant.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**Exclusions**  
**340-28-2620**

- (1) The Department shall not assess emission fees on newly permitted major sources that have not begun initial operation.
- (2) The Department shall not assess emission fees on carbon monoxide. However, sources that emit or are permitted to emit 100 tons or more per year of carbon monoxide are subject to the emission fees on all other regulated air pollutants pursuant to OAR 340-28-2560.
- (3) The Department shall not assess emission fees, OAR 340-28-2610, if there are no emissions of a regulated pollutant from an emission unit for the entire calendar year.
- (4) If an owner or operator of a major source operates an assessable emission ~~point~~/unit for less than 5% of the permitted operating schedule, the owner or operator may elect to report emissions based on a proration of the PSEL for the actual operating time.
- (5) The Department shall not assess emission fees on emissions categorized as credits or

unassigned PSELs within a federal operating permit. However, credits and unassigned PSELs shall be included in determining whether a source is a federal operating permit program source, as defined in OAR 340-28-110(41).

- (6) The Department shall not assess emission fees on categorically insignificant emissions as defined in OAR 340-28-110(15).

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**References**

**340-28-2630** Reference documents used in OAR 340-28-2560 through 340-28-2740 include the Department Source Sampling Manual and the Department Continuous Monitoring Manual.

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

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**Election For Each Assessable Emission**  
**340-28-2640**

- (1) The owner or operator shall make an election to pay emission fees on either actual emissions or permitted emissions for each year for each assessable emission and notify the Department in accordance with OAR 340-28-2660.
- (2) The owner or operator may elect to pay emission fees on permitted emissions for hazardous air pollutants. An owner or operator may elect a Hazardous Air Pollutant PSEL in accordance with OAR 340-28-1050. The HAP PSEL shall only be used for fee purposes.
- (3) If an owner or operator fails to notify the Department of the election for an assessable emission, the Department shall assess emission fees for the assessable emission based on permitted emissions. If the permit does not identify a PSEL for an assessable emission, the Department shall develop a PSEL.
- (4) An owner or operator may elect to pay emission fees on the aggregate limit for insignificant emissions that are not categorically exempt insignificant emissions.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94



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**Emission Reporting**  
**340-28-2650**

- (1) For the purpose of assessing emission fees the owner or operator shall submit the following information on a form(s) developed by the Department for each assessable emission in tons per year, reported as follows:
  - (a) Particulate Matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as defined in OAR 340-28-110(71), as PM<sub>10</sub> or if permit specifies Total Suspended Particulate (TSP) then as TSP,
  - (b) Sulfur Dioxide as SO<sub>2</sub>,
  - (c) Oxides of Nitrogen (NO<sub>x</sub>) as Nitrogen Dioxide (NO<sub>2</sub>),
  - (d) Total Reduced Sulfur (TRS) as H<sub>2</sub>S in accordance with OAR 340-25-150(15),
  - (e) Volatile Organic Compounds as:
    - (A) VOC for material balance emission reporting, or
    - (B) Propane (C<sub>3</sub>H<sub>8</sub>), unless otherwise specified by permit, or OAR Chapter 340, or a method approved by the Department, for emissions verified by source testing.
  - (f) Fluoride as F.
  - (g) Lead as Pb.
  - (h) Hydrogen Chloride as Hcl.
  - (i) Estimate of Hazardous Air Pollutants as specified in a Department approved test method.
- (2) The owner or operator electing to pay emission fees on actual emissions shall report emissions as follows:
  - (a) Round up to the nearest whole ton for emission values 0.5 and greater, and
  - (b) Round down to the nearest whole ton for emission values less than 0.5.
- (3) The owner or operator electing to pay emission fees on actual emissions shall:
  - (a) Submit complete information on the forms including all assessable emissions, emission ~~points~~ units and sources, and
  - (b) Submit documentation necessary to support emission calculations.
- (4) The owner or operator electing to pay on actual emissions for an assessable emission shall report total emissions including those

- (5) emissions in excess of 4,000 tons for each assessable emission. The owner or operator electing to pay on permitted emissions for an assessable emission shall submit a statement to the Department that they shall pay on the PSEL in effect for the calendar year for which they are paying, in accordance with OAR 340-28-2640 and 340-28-2650.
- (6) If more than one permit is in effect for a calendar year for a major source, the owner or operator electing to pay on permitted emissions shall pay on the PSEL(s) in effect for each day of that calendar year.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**Emission Reporting And Fee Procedures**  
**340-28-2660**

- (1) The owner or operator shall submit the form(s), including the owner's or operator's election for each assessable emission, to the Department with the annual permit report in accordance with annual reporting procedures.
- (2) The owner or operator may request that information, other than emission information, submitted pursuant to OAR 340-28-2560 through 340-28-2740 be exempt from disclosure in accordance with OAR 340-28-400.
- (3) Records developed in accordance with these rules are subject to inspection and entry requirements in OAR 340-28-2160. The owner or operator shall retain records for a period of at least 5 years in accordance with OAR 340-28-2130(3)(b)(B).
- (4) The Department may accept information submitted or request additional information from the owner or operator. The owner or operator shall submit additional actual emission information requested by the Department within thirty (30) days of receiving a request from the Department. The Department may approve a request from an owner or operator for an extension of time of up to thirty days to submit additional information under extenuating circumstances.
- (5) If the Department determines the actual emission information submitted for any assessable emission does not meet the criteria in OAR 340-28-2560 through 340-28-2740, the Department shall assess the emission fee on the permitted emission for that assessable

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Stat. Auth.: ORS Ch. 468 & 468A  
 Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

for each quantity of fuel, tons

**Determining VOC Emissions Using Material Balance**

**340-28-2700** The owner or operator may determine the amount of VOC emissions for an assessable emission by using material balance. The owner or operator using material balance to calculate VOC emissions shall determine the amount of VOC added to the process, the amount of VOC consumed in the process and/or the amount of VOC recovered in the process by testing in accordance with **40 Code of Federal Regulations (CFR) Part 60 EPA Method 18, 24, 25**, a material balance method, or an equivalent plant specific method specified in the federal operating permit using the following equation:

$$VOC_{tot} = VOC_{add} - VOC_{cons}$$

Where:

$VOC_{tot}$  = Total VOC emissions, tons

$VOC_{add}$  = VOC added to the process, tons

$VOC_{cons}$  = VOC consumed and/or recovered from the process, tons

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

Stat. Auth.: ORS Ch. 468 & 468A  
 Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**Determining Sulfur Dioxide Emissions Using Material Balance**

**340-28-2710**

- (1) Sulfur dioxide emissions for major sources may be determined by measuring the sulfur content of fuels and assuming that all of the sulfur in the fuel is oxidized to sulfur dioxide.
- (2) The owner or operator shall ensure that ASTM methods were used to measure the sulfur content in fuel for each quantity of fuel burned.
- (3) The owner or operator shall determine sulfur dioxide emissions for each quantity of fuel burned, determining quantity by a method that is reliable for the source, by performing the following calculation:

$$SO_2 = \%S/100 \times F \times 2$$

Where:

$SO_2$  = Sulfur dioxide emissions

$\%S$  = Percent sulfur in the fuel being burned, % (w/w).

$F$  = Amount of fuel burned, based on a quantity measurement, tons

$2$  = Pounds of sulfur dioxide per pound of sulfur

- (4) For coal-fired steam generating units the following equation shall be used by owners or operators of major sources to account for sulfur retention:

$$SO_{2adj} = SO_2 \times 0.97$$

Where:

$SO_{2adj}$  = Sulfur dioxide adjusted for sulfur retention (40 CFR Part 60, Appendix A, Method 19, Section 5.2)

$SO_2$  = Sulfur dioxide emissions from each quantity burned (OAR 340-28-2690(3))

- (5) Total sulfur dioxide emissions for the year shall be the sum total of each quantity burned calculated in accordance with OAR 340-28-2710(3) divided by 2000 pounds per ton.

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

**Verified Emission Factors Using Source Testing**

**340-28-2720**

- (1) To verify emission factors used to determine assessable emissions the owner or operator shall either perform source testing in accordance with the Department's Source Sampling Manual or other methods approved by the Department for source tests. Source tests shall be conducted in accordance with testing procedures on file at the Department and the pretest plan submitted at least fifteen (15) days in advance and approved by the Department. All test data and results shall be submitted for review to the Department within thirty (30) days after testing.

**NOTE:** It is recommended that the owner or operator notify the Department and obtain pre-approval of the Emission Factor source testing program prior to or as part of the submittal of the first source test notification.

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- (2) The owner or operator shall conduct or have conducted at least three compliance source tests, each consisting of at least three individual test runs for a total of at least nine test runs.
- (3) The owner or operator shall monitor and record or have monitored and recorded applicable process and control device operating data.
- (4) The owner or operator shall perform or have performed a source test either:
- (a) In each of three quarters of the year with no two successive source tests performed any closer than thirty (30) days apart, or
  - (b) At equal intervals over the operating period if the owner or operator demonstrates and the Department approves that:
    - (A) The process operates or has operated for part of the year, or
    - (B) The process is or was not subject to seasonal variations.
- (5) The owner or operator shall conduct or have conducted the source tests to test the entire range of operating levels. At least one test shall be conducted at minimum operating conditions, one test at normal or average operating levels, and one test at anticipated maximum operating levels. If the process rate is constant, all tests shall be conducted at that rate. The owner or operator shall submit documentation to the Department demonstrating a constant process rate.
- (6) The owner or operator shall determine or have determined an emission factor for each source test by dividing each test run emissions, in pounds per hour, by the applicable process rate during the source test run. At least nine emission factors shall be plotted against the respective process rates and a regression analysis performed to determine the best fit equation and the correlation coefficient ( $R^2$ ). If the correlation coefficient is less than 0.50, which would indicate that there is a relatively weak relationship between emissions and process rates, the arithmetic average and standard deviation of at least nine emission factors shall be determined.
- (7) The owner or operator shall determine the Emissions Estimate Adjustment Factor (EEAF) as follows:

- (a) If the correlation coefficient ( $R^2$ ) of the regression analysis is greater than 0.50, the EEAF shall be  $1 + (1 - R^2)$ .
- (b) If the correlation coefficient ( $R^2$ ) is less than 0.50, the EEAF shall be:

$$EEAF = 1 + SD/EF_{avg}$$

Where:

SD = Standard Deviation

$EF_{avg}$  = Average of the Emission Factors

- (8) The owner or operator shall determine actual emissions for emission fee purposes using one of the following methods:

- (a) If the regression analysis correlation coefficient is less than 0.50, the actual emissions shall be the average emission factor determined from at least nine test runs multiplied by the EEAF multiplied by the total production for the entire year, or

$$AE = EF_{avg} \times EEAF \times P$$

Where:

AE = Actual Emissions

$EF_{avg}$  = Average of the Emission Factors

EEAF = Estimated Emissions Adjustment Factor

P = Total production for the year

- (b) If the regression analysis correlation coefficient is greater than 0.50 the following calculations shall be performed:
  - (A) Determine the average emission factor (EF) for each production rate category (maximum =  $EF_{max}$ , normal =  $EF_{norm}$ , and minimum =  $EF_{min}$ ).
  - (B) Determine the total annual production and operating hours, production time ( $PT_{tot}$ ), for the calendar year.
  - (C) Determine the total hours operating within the maximum production rate category ( $PT_{max}$ ).

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- (D) The maximum production rate category is any operation rate greater than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2). Determine the total hours while operating within the normal production rate category ( $PT_{norm}$ ). The normal production rate category is defined as any operating rate less than the average of at least three maximum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2) and any operating rate greater than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by two (2).
- (E) Determine the total hours while operating within the minimum production rate category ( $PT_{min}$ ). The minimum production rate category is defined as any operating rate less than the average of at least three minimum operating rates during the source testing plus the average of at least three normal operating rates during the source testing divided by

- (F) two (2). Actual emissions equals  $EEAF \times (PT_{max}/PT_{tot})XEF_{max} + (PT_{norm}/PT_{tot})XEF_{norm} + (PT_{min}/PT_{tot})XEF_{min}$ .
- (9) The owner or operator shall determine emissions during startup and shutdown, and for emissions greater than normal, during conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions. The owner or operator shall apply 340-28-2720(9)(a) or 340-28-2720(9)(b)(c) and (d) in developing emission factors. The owner or operator shall apply the emission factor obtained to the total time the assessable emission ~~point~~ unit operated in these conditions.
- (a) All emissions during startup and shutdown, and emissions greater than normal shall be assumed equivalent to operation without an air pollution control device, unless accurately demonstrated by the owner or operator and approved by the Department in accordance with OAR 340-28-2720(9)(b), (9)(c), (9)(d), and (9)(e). The emission factor plus the EEAF shall be adjusted by the air pollution control device collection efficiency as follows:

$$\text{Actual emission factor} = (\text{EF} \times \text{EEAF}) / (1 - \text{PCDE})$$

Where:

EF	=	Emission Factor
EEAF	=	Emission Estimate Adjustment Factor
PCDE	=	Pollution Control Device Collection Efficiency Unless otherwise approved by the Department, the pollution control device collection efficiencies used in this calculation shall be:

Particulate Matter:

ESP or baghouse	0.90
High energy wet scrubber	0.80
Low energy wet scrubber	0.70
Cyclonic separator	0.50

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Acid gases:  
Wet or dry scrubber 0.90

VOCs:  
Incinerator 0.98

Carbon absorber 0.95

(b) During process startups a Department approved source test shall be performed to determine an average startup factor. The average of at least three tests runs plus the standard deviation shall be used to determine actual emissions during startups.

(c) During process shutdowns a Department approved source test shall be performed to determine an emission factor for shutdowns. The average of at least three test runs plus the standard deviation shall be used to determine actual emissions during shutdowns.

(d) During routine maintenance activity the owner or operator shall:

- (A) Perform routine maintenance activity during source testing for verified emission factors, or
- (B) Determine emissions in accordance with Section (a) of this rule.

(e) The emission factor need not be adjusted if the owner or operator demonstrates to the Department that the pollutant emissions do not increase during startup and shutdown, and for conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions (eg. NO<sub>x</sub> emissions during an ESP failure).

(10) A verified emission factor developed pursuant to OAR 340-28-2560 through 340-28-2740 and approved by the Department can not be used if a process change occurs that would affect the accuracy of the verified emission factor.

(11) The owner or operator may elect to use verified emission factors for source categories if the Department determines the

- following criteria are met:
- (a) The verified emission factor for a source category shall be based on verified emission factors from at least three individual sources within the source category,
  - (b) Verified emission factors from sources within a source category shall be developed in accordance with OAR 340-28-2720,
  - (c) The verified emission factors from the sources shall not differ from the mean by more than twenty percent, and
  - (d) The source category verified emission factor shall be the mean of the source verified emission factors plus the average of the source emission estimate adjustment factors.

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

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**Late And Underpayment of Fees**  
**340-28-2730**

- (1) Notwithstanding any enforcement action, the owner or operator shall be subject to a late payment fee of:
  - (a) Two hundred dollars (\$200) for payments postmarked more than seven (7) or less than thirty (30) days late, and
  - (b) Four hundred dollars (\$400) for payments postmarked on or over thirty (30) days late.
- (2) Notwithstanding any enforcement action, the Department may assess an additional fee of the greater of four hundred (\$400) or twenty percent (20%) of the amount underpaid for substantial underpayment.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**Failure to Pay Fees**

**340-28-2740** Any owner or operator that fails to pay fees imposed by the Department under these rules shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986.

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

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## DIVISION 32

## HAZARDOUS AIR POLLUTANTS

## General Provisions for Stationary Sources

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340-32-105	Applicability
340-32-110	Delegation of authority
340-32-120	Definitions
340-32-130	List of Hazardous Air Pollutants
340-32-140	Amending the List of Hazardous Air Pollutants

## Permit Application Requirements

340-32-210	Applicability
340-32-220	Permit Application
340-32-230	Permit to Construct or Modify
340-32-240	Permit to Operate
340-32-250	General Permits
340-32-260	Quantification of Emissions
340-32-270	Source Emission Tests

Compliance Extensions for Early  
Reductions

340-32-300	Applicability
340-32-310	Permit Application Procedures for Early Reductions
340-32-320	General Provisions for Compliance Extensions
340-32-330	Determination of Early Reductions Unit
340-32-340	Demonstration of Early Reduction
340-32-350	Review of Base Year Emissions
340-32-360	Early Reduction Demonstration Evaluation
340-32-370	Approval of Applications
340-32-380	Rules for Special Situations

## Emission Standards

340-32-500	Emissions Limitation for New Major Sources
340-32-2500	Emissions Limitation for Existing Major Sources
340-32-4500	Requirements for Modifications of Existing Major Sources
340-32-5000	Requirements for Area Sources
340-32-5400	Accidental Release Prevention

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**Emission Standards and Procedural  
Requirements for Hazardous Air  
Contaminants Regulated Prior to  
the 1990 Amendments to the  
Federal Clean Air Act**

340-32-5500	Applicability
340-32-5510	General Requirements
340-32-5520	Federal Regulations Adopted by Reference
340-32-5530	Emission Standards for Radon Emissions from Underground Uranium Mines
340-32-5540	Emission Standards for Beryllium
340-32-5550	Emission Standards for Mercury
340-32-5560	Emission Standard for Vinyl Chloride
340-32-5570	Emission Standards for Benzene
340-32-5580	Emission Standards for Arsenic
340-32-5590	Definitions for Asbestos Emission Standards and Procedural Requirements
340-32-5600	Emission Standards and Procedural Requirements for Asbestos
340-32-5610	Asbestos Inspection Requirements for Federal Operating Permit Program Sources
340-32-5620	Asbestos Abatement Projects
340-32-5630	Asbestos Abatement Notifications Requirements
340-32-5640	Asbestos Abatement Work Practices and Procedures
340-32-5650	Asbestos Disposal Requirements

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**DIVISION 32  
HAZARDOUS AIR POLLUTANTS**

**General Provisions for Stationary Sources**

**Policy and Purpose**

**340-32-100** The Environmental Quality Commission finds that certain air contaminants for which there are no ambient air quality standards may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness or to irreversible ecological damage, and are therefore considered to be hazardous air pollutants. It shall be the policy of the Commission that no person may cause, allow, or permit emissions into the ambient air of any hazardous substance in such quantity, concentration, or duration determined by the Commission to be injurious to public health or the environment. The purpose of this Division is to establish emissions limitations on sources of these air contaminants. In order to reduce the release of these hazardous air pollutants and protect public health and the environment, it is the intent of the Commission to adopt by rule within this Division the source category specific requirements that are promulgated by the EPA. Furthermore, it is hereby declared the policy of the Commission that the standards contained in this Division are considered minimum standards, and as technology advances, protection of public health and the environment warrants, more stringent standards may be adopted and applied.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Applicability**

**340-32-105**

- (1) The provisions of this Division shall apply to any new, modified, or existing source that emits or has the potential to emit any HAP listed in Table 1 of OAR 340-32-130.
- (2) The owner or operator of the following types of sources shall comply

with the applicable standards set forth in OAR 340-32-400 through 340-32-5000 and OAR 340-32-5500 through 340-32-5650:

- (a) any existing major source of HAP;
- (b) any new major source of HAP that proposes to construct;
- (c) any existing major source of HAP that proposes a modification;
- (d) any existing source currently having an Air Contaminant Discharge Permit that becomes a major source of HAP;
- (e) any existing unpermitted source that becomes a major source of HAP; or
- (f) any area source of HAP for which a standard has been adopted.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; Renumber from OAR 340-32-210, DEQ 18-1993, f. & ef. 11-4-93

**Delegation of Authority**

**340-32-110**

- (1) The Lane Regional Air Pollution Authority (LRAPA) is authorized to implement and enforce, within its boundaries, this Division.
- (2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as stringent as a corresponding provision in this Division. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of this Division upon receipt of delegation from EPA or approval of such provisions under Section 112(1) of the federal Clean Air Act. Authorization provided under this section may be withdrawn for cause by the Commission.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**Definitions**

**340-32-120** As used in this Division:

- (1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous



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substance into the ambient air from a stationary source.

(2) "Act" and "FCAA" mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(3) "Actual Emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) Actual emissions shall equal the average rate at which the source actually emitted the pollutant and which is representative of normal source operation. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the specified time period.

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

(c) For purposes of OAR 340-32-300 through OAR 340-32-380 actual emissions shall equal the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction.

(4) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(5) "Artificially or substantially greater emissions" means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

(6) "Base year emissions" for purposes of Early Reductions only (OAR 340-32-300), means actual emissions in the calendar year 1987 or later.

(7) "Commission" means the Oregon

Environmental Quality Commission.

(8) "Department" means the Department of Environmental Quality.

(9) "Director" means the Director of the Department or Regional authority, and authorized deputies or officers.

(10) "Early Reductions Unit" means a single emission point or group of emissions points defined as a unit for purposes of an alternative emissions limit issued under OAR 340-32-300 through 380.

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

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

(13) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or regional authority, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

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

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that

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- emits air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:
- (A) the group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply, and
  - (B) the emissions from the emissions unit are quantifiable.
- (b) Emissions units may be defined on a pollutant by pollutant basis where applicable.
- (c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.
- (d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-28-1930 ~~or~~, OAR 340-28-1940, or OAR 340-28-2270, or for purposes of determining the applicability of a New Source Performance Standard (NSPS).
- (15) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.
- (16) "EPA Conditional Method" means any method of sampling and analyzing for air pollutants which has been validated by the EPA but which has not been published as an EPA reference method.
- (17) "EPA Reference Method" means any method of sampling and analyzing for an air pollutant as described in 40 CFR Part 60, 61, or 63 (July 1, 1993).
- (18) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.
- (19) "Existing source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.
- (20) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- (21) "Fugitive emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.
- (22) "Generally Available Control Technology (GACT)" means an alternative emission standard promulgated by EPA for non-major sources of hazardous air pollutants which provides for the use of control technology or management practices which are generally available.
- (23) "Hazardous air pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.
- (24) "High-Risk Pollutant" means any air pollutant listed in Table 2 of OAR 340-32-340 for which exposure to small quantities may cause a high risk of adverse public health effects.
- (25) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air

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- pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.
- (26) "Manufacture" as used in OAR 340-32-240 means to produce, prepare, compound, or import a substance. This includes the coincidental production of a substance as a byproduct or impurity.
- (27) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.
- (28) "Modification" means any physical change in, or change in the method of operation of, a major source that increases the actual emissions of any HAP emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.
- (29) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or the effective date of this Division, whichever is earlier.
- (30) "Not feasible to prescribe or enforce a numerical emission limit" means a situation in which the Department determines that a pollutant or stream of pollutants listed in OAR 340-32-130 cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any state or federal law or regulation; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.
- (31) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.
- (32) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.
- (33) "Process" as used in OAR 340-32-240 means the preparation of a substance, including the intentional incorporation of a substance into a product after its manufacture, for distribution in commerce.
- (34) "Regional authority" means Lane Regional Air Pollution Authority.
- (35) "Regulated Air Pollutant" as used in this Division means:
- (a) any pollutant listed under OAR 340-32-130 or OAR 340-32-5400; or
  - (b) Any pollutant that is subject to a standard promulgated pursuant to section 129 of the Act.

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- (36) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, and quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include but are not limited to:
- (a) Emissions from ships and trains coming to or from a facility;
  - (b) Emissions from offsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.
- (37) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.
- (38) "Section 112(b) means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.
- (39) "Section 112(d) means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.
- (40) "Section 112(e) means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.
- (41) "Section 112(n) means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.
- (42) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.
- (43) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.
- (44) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in section 129(g) of the FCAA.
- (45) "Stationary Source"
- (a) as used in OAR 340-32-100 through 340-32-5000 and OAR 340-32-5500 through 340-32-5650 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.
  - (b) as used in OAR 340-32-5400 means any buildings, structures, equipment, installations, or substance emitting stationary activities:
    - (A) that belong to the same industrial group;
    - (B) that are located on one or more 2contiguous properties;
    - (C) that are under the control of the same person (or persons under common control); and
    - (D) from which an accidental release may occur.
- (46) "Use" as used in OAR 340-32-240 means the consumption of a chemical that does not fall under the definitions of "manufacture" or "process". This may include the use of a chemical as a manufacturing aid, cleaning or degreasing aid, or waste treatment aid.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**List of Hazardous Air Pollutants**  
340-32-130 For purposes of this Division the Commission adopts by reference the pollutants, including groups of substances and mixtures, listed

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**Permit Application Requirements**

Hist.: DEQ 13-1993, f. & ef, 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**340-32-150 through 340-32-200 [Reserved]**

**Applicability**

**340-32-210**

- (1) The provisions of this Division shall apply to any new, modified, or existing source that emits or has the potential to emit any HAP listed in Table 1 of OAR 340-32-130.
- (2) The owner or operator of the following types of sources shall comply with the standards set forth in OAR 340-32-400 through OAR 340-32-5000:
  - (a) any existing major source of HAP;
  - (b) any new major source of HAP that proposes to construct;
  - (c) any existing major source of HAP that proposes a modification;
  - (d) any existing source currently having an Air Contaminant Discharge Permit that becomes a major source of HAP;
  - (e) any existing unpermitted source that becomes a major source of HAP; or
  - (f) any area source of HAP for which a standard has been adopted.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Permit Application**

**340-32-220**

- (1) The owner or operator of a HAP source subject to OAR 340-32-400 through 340-32-4500 or 340-32-5500 through 340-32-5650 shall comply with the appropriate application requirements for construction permits, OAR 340-32-230 and operating permits, OAR 340-32-240.
- (2) Notwithstanding the provisions of OAR Chapter 340, Divisions 28 and 32, no stationary source shall be required to apply for, or operate pursuant to, a federal operating permit issued under OAR 340-28-2100 through 340-28-2320 solely because such source is subject to the provisions of OAR 340-32-5400, Accidental Release Prevention.

[Note: Rules specifying the full procedures and specific requirements for permitting can be found in OAR Chapter 340, Division 28.]

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

**Permit to Construct or Modify**

**340-32-230**

- (1) On or after the effective date of the program no owner or operator shall:
  - (a) construct a new major source that will be subject to the federal operating permit program without obtaining an Air Contaminant Discharge Permit (ACDP) pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 prior to construction;
  - (b) modify any existing major source operating under a federal operating permit without obtaining a preconstruction notice of approval as described in OAR 340-28-2270 prior to modifying;
  - (c) modify any existing source operating under an ACDP which will become a major source after modifying, without obtaining a permit modification pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 prior to modifying;
  - (d) modify any existing source not currently operating under any permit which will become a major source after modifying, without obtaining an ACDP pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 prior to modifying;
  - (e) modify any existing source operating under an ACDP as a synthetic minor pursuant to OAR 340-28-1740 which will become a major source after modifying, without:
    - (A) obtaining a federal operating permit pursuant to OAR 340-28-2100 through 340-28-2320 for those sources proposing to change an enforceable condition in the permit prior to operating as a major source; or
    - (B) obtaining a modified ACDP pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 for those sources proposing to construct or modify any emissions unit prior to construction or modification.
- (2) Prior to the effective date of the program for a major source and at any time for an area source subject to OAR 340-32-5500 through 340-32-5600

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or 340-32-5650, no owner or operator shall:

- (a) construct a new source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 without obtaining an ACDP pursuant to OAR 340-28-1700 through 340-28-179170;
  - (b) modify any existing source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 such that HAP emissions are increased without obtaining a modified ACDP pursuant to OAR 340-28-1700 through 340-28-179170;
  - (c) modify any existing source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 such that HAP emissions are not increased without obtaining a notice of construction approval pursuant to OAR 340-28-800 through 340-28-820.
- (3) All applicants for construction or modification of a major source of HAP shall determine and report to the Department potential emissions of HAP listed in Table 1 (OAR 340-32-130).

(4) Where an existing federal operating permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef, 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**Permit to Operate  
340-32-240**

- (1) On and after the effective date of the program or at such earlier date as the Department may establish pursuant to OAR 340-28-2120, no owner or operator shall operate a new, existing, or modified major source of HAP emissions without applying for an operating permit as described below.

- (a) The following types of HAP sources shall, within 12 months after initial startup of the construction or modification, comply with the federal operating permit application procedures of OAR 340-28-2100 through 340-28-2320:
  - (A) new major sources as described in OAR 340-32-230(1)(a);
  - (B) existing sources operating

under an ACDP as described in OAR 340-32-230(1)(c);

- (C) existing sources previously unpermitted as described in OAR 340-32-230(d);
  - (D) existing synthetic minor sources operating under an ACDP as described in OAR 340-32-230(1)(e)(B).
- (b) Any existing major sources as described under OAR 340-32-230(1)(b) shall:
- (A) immediately upon receiving its preconstruction notice of approval, comply with the operating permit procedures described under OAR 340-28-2230 Administrative Amendments, if the source has complied with the enhanced provisions of OAR 340-28-2290 and OAR 340-28-2310;
  - (B) within 12 months of commencing operation comply with the permit application procedures under OAR 340-28-2250 when the modification qualifies as a minor modification or OAR 340-28-2260 when the modification qualifies as a significant modification; or
  - (C) at the time of permit renewal comply with the permit application procedures under OAR 340-28-2220(2) when the modification qualifies as an off permit change or OAR 340-28-2220(3) when the modification qualifies as a "Section 502(b)(10)" change.
- (c) Any synthetic minor source as described in OAR 340-32-230(1)(e)(A) shall, prior to commencing operation, apply for and obtain the required federal operating permit according to the procedures of OAR 340-28-2100 through 340-28-2320.
- (d) Any existing major source shall comply with the federal operating permit application procedures of OAR 340-28-2100 through 340-28-2320 upon becoming subject to the federal operating permit program.
- (2) All ~~major source~~ federal operating permit applicants shall include in the application:
- (a) all emissions of HAP listed in Table 1 (OAR 340-32-130) in accordance with OAR 340-28-2120(3) Standard Application Form and Required Information, and OAR

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340-28-2120(4) Quantifying Emissions;

- (b) an estimate of the use of additional substances, listed in OAR 340, Chapter 135, Appendix 1 and in OAR 340-32-5400 Table 3, that are manufactured, processed, or used at the facility and that could reasonably be expected to be emitted from the source;

(A) The estimated annual manufacture, processing, or use of each chemical shall be reported within the following ranges: "Not Present"; "Insignificant Use" (less than 1,000 pounds); "1,001 - 10,000 pounds"; "10,000 - 20,000 pounds"; "20,001 - 50,000 pounds"; and "Over 50,000 pounds".

(B) The owner or operator shall provide estimates of the usage of these additional chemicals based on readily available information. The owner or operator is not required to estimate the "manufacture" of any chemical from combustion or manufacturing processes for which there are no verifiable emission factors, mass balance calculation methods, or for which no EPA approved testing, sampling, or monitoring method exists. The use of chemicals in the following categories are exempt from quantification:

- (i) aggregate insignificant emissions as defined under OAR 340-28-110(5) and categorically insignificant activities as defined under OAR 340-28-110(15) ~~for insignificant mixture usage as defined under OAR 340-28-110(50)†~~;
- (ii) products and fuels for maintaining motor vehicles used onsite; or
- (iii) chemicals used in a manufactured item that are not released under normal circumstances of processing at the facility;

(C) Nothing in paragraphs (A) or

(B) above shall require a source to conduct monitoring or testing solely for the purpose of estimating annual usage of the additional substances.

- (3) Prior to the effective date of the program for a major source and at any time for an area source, no owner or operator shall operate a new, existing, or modified stationary source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 without first obtaining a permit pursuant to OAR 340-28-1700 through 340-28-1799†70.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef, 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**General Permits**  
**340-32-250**

- (1) The owner or operator of an existing major HAP source that meets all of the following criteria may apply to be covered under the terms and conditions of a general permit for the applicable source category in accordance with OAR 340-28-2170:
- (a) the source is a major source as defined in OAR 340-32-120(25) of the Act only;
  - (b) no emissions standard for existing sources, promulgated pursuant to section 112(d) or OAR 340-32-2500, applies to the source; and
  - (c) the Department does not consider the source a problem source based on the source's complaint record and compliance history.
- (2) When an emissions limitation applicable to a source with a general permit is promulgated by the EPA pursuant to 112(d), or adopted by the state pursuant to OAR 340-32-500 through OAR 340-32-2500, the source shall:
- (a) immediately comply with the provisions of the applicable emissions standard; and
  - (b) apply for an operating permit pursuant to OAR 340-28-2120 within 12 months of promulgation of an applicable emissions standard if 3 or more years are remaining on the general permit term, or at least 12 months prior to permit expiration if less than 3 years remain on the

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**Compliance Extensions for Early Reductions**

**Applicability**

340-32-300 The requirements of OAR 340-32-300 through OAR 340-32-380 apply to an owner or operator of an existing source who wishes to obtain a compliance extension and an alternative emission limit from a standard issued under section 112(d) of the FCAA. Any owner or operator of a facility who elects to comply with a compliance extension and alternative emission limit issued under this section must complete a permit application as prescribed in OAR 340-32-310.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Permit Application Procedures for Early Reductions**

**340-32-310**

- (1) To apply for an alternative emission limitation under OAR-340-32-300, an owner or operator of the source shall file a permit application with the Department.
- (2) Except as provided in (3) of this rule, the permit application shall contain a demonstration of early reduction in HAP emissions as prescribed; the information required in OAR-340-32-340 and shall comply with additional permit application procedures as prescribed in OAR 340-28-2100 through OAR 340-28-2320.
- (3) Permit applications for Early Reductions shall be submitted ~~prior to the date of proposal of an~~ no later than 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act provided that the reduction was achieved prior to the date of proposal of the standard.
- (4) The post reduction emissions information required under OAR 340-32-340(5) (b), OAR 340-32-340(5) (c), and OAR 340-32-340(5) (e) shall not be filed as part of the source's initial permit application but shall be filed later as a supplement to the application. This supplementary information shall be filed no earlier than one year after the date early reductions had to be achieved according to OAR 340-32-320(1) (b) and no later than 13 months after such

~~date.~~  
~~+(4)+(5)~~

If a source test is the supporting basis for establishing post-reduction emissions points in the ~~source~~ Early Reductions Unit, [but the test results are not available by the deadline for submittal of a permit application the owner or operator shall provide the supporting basis no later than 120 days after the applicable deadline for submittal of the permit application] the test results shall be submitted by the applicable deadline for submittal of a permit application as specified in section (3) of this rule.

~~+(5)+(6)~~

The Department shall review and decide on permit applications for early reductions according to the provisions of OAR 340-28-2100 through 2320 .

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**General Provisions for Compliance Extensions**

**340-32-320**

- (1) The Department shall by permit, issued in accordance with OAR 340-28-2100 through 2320, allow an existing source to meet an alternative emission limitation for an Early Reductions Unit in lieu of an emission limitation promulgated under section 112(d) of the FCAA for a period of six years from the compliance date of the otherwise applicable standard provided the owner or operator demonstrates:
  - (a) according to the requirements of OAR 340-32-340 that the ~~source~~ Early Reductions Unit has achieved a reduction of at least 90 percent (95 percent or more in the case of HAP that are particulate) in emissions of:
    - (A) total HAP from the ~~source~~ Early Reductions Unit; or
    - (B) total HAP from the ~~source~~ Early Reductions Unit as adjusted for high-risk pollutant weighing factors (Table 2), if applicable.
  - (b) that such reduction was achieved



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before the otherwise applicable standard issued under section 112(d) of the FCAA was first proposed.

- (2) A source granted an alternative emission limitation shall comply with an applicable standard issued under section 112(d) of the FCAA immediately upon expiration of the six year compliance extension period specified in section (1) of this rule.
- (3) For each facility issued a permit under section (1) of this rule, there shall be established as part of the permit an enforceable alternative emission limitation for HAP for each Early Reductions Unit reflecting the reduction that qualified the Early Reductions Unit for the alternative emission limitation.
- (4) Any source that has received an alternative emissions limit from EPA, either pursuant to 40 CFR 63.75 **Enforceable Commitments** dated December 29, 1992, or as a Title V specialty permit, shall have the alternative emission limit(s) incorporated as an applicable requirement in its operating permit pursuant to OAR 340-28-2230 upon permit issuance or renewal.
- (5) If a source fails to submit a timely and complete application according to OAR 340-28-2120, or does not adequately demonstrate the required reductions in emissions pursuant to OAR 340-32-340, the Department shall not approve the source's application for a compliance extension and alternative emission limit, and the source is required to comply with any applicable emission standard established pursuant to 112(d) of the FCAA by the compliance date prescribed in the applicable standard.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Determination of Early Reductions Unit  
340-32-330**

An alternative emission limitation may be granted under this section to an existing Early Reductions Unit as defined below provided that ~~{the source achieves the}~~ a 90 percent (or 95% in the case of particulate emissions) reduction in base year HAP emissions is achieved. For the purposes of compliance extensions for early reductions only, an "Early

Reductions Unit" includes any of the following:

- (1) a building structure, facility, or installation identified as a source under any proposed or promulgated standard issued under 112(d) of the FCAA;
- (2) all portions of an entire contiguous plant site under common ownership or control that emit hazardous air pollutants;
- (3) any portion of an entire contiguous plant site under common ownership or control that emits HAP and can be identified as a facility, building, structure, or installation for the purposes of establishing standards under section 112(d) of the FCAA; or
- (4) any individual emission point or combination of emission points within a contiguous plant site under common control, provided that the base year emissions of HAP from such point or aggregation of points is at least 10 tons per year where the total base year emissions of HAP from the entire contiguous plant site is greater than 25 tons, or at least 5 tons per year where the total base year emissions of HAP from the entire contiguous plant site is equal to or less than 25 tons.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Demonstration of Early Reduction  
340-32-340**

- (1) For purposes of determining emissions for Early Reductions, "Actual emissions" means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.
- (2) An owner or operator applying for an alternative emission limitation shall demonstrate achieving early reductions as required by OAR 340-32-320(1) by following the procedures in this rule.
- (3) An owner or operator shall establish the Early Reductions Unit for the purposes of a compliance extension and alternative emission limit by documenting the following

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information:

- (a) a description of the Early Reductions Unit including a site plan of the entire contiguous plant site under common control that contains the Early Reductions Unit, markings on the site plan locating the parts of the site that constitute the Early Reductions Unit, and the activity at the Early Reductions Unit that causes HAP emissions;
- (b) a complete list of all emission points of HAP in the Early Reductions Unit, including identification numbers and short descriptive titles; and
- (c) a statement showing that the Early Reductions Unit conforms to one of the allowable definition options from OAR 340-32-330. For an Early Reductions Unit conforming to the option in OAR 340-32-330(4), the total base year emissions from the Early Reductions Unit, as determined pursuant to this section, shall be demonstrated to be at least:
  - (A) 5 tons per year, for cases in which total HAP emissions from the entire contiguous plant site under common control are 25 tons per year or less as required under section (12) of this rule; or
  - (B) 10 tons per year in all other cases.
- (4) An owner or operator shall establish base year emissions for the Early Reductions Unit by providing the following information:
  - (a) the base year chosen, where the base year shall be 1987 or later;
  - (b) the best available data accounting for actual emissions, during the base year, of all HAP from each emission point listed in the Early Reductions Unit in subsection (3) (b) of this rule;
  - (c) the supporting basis for each emission number provided in subsection (4) (b) of this rule including:
    - (A) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, a discussion of the validity of the method for measuring the subject emissions, and evidence that the testing was conducted in accordance with the Department's Source Sampling Manual or Continuous Monitoring Manual; and
    - (B) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used; and
    - (d) Evidence that the emissions provided under section (4) (b) of this rule are not artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.
- (5) An owner or operator shall establish post-reduction emissions by providing the following information:
  - (a) For the emission points listed in the Early Reductions Unit in subsection (3) (b) of this rule a description of all control measures employed to achieve the emission reduction required by OAR 340-32-320(1) (a);
  - (b) ~~{The best available data on an annual basis accounting for actual emissions, after the base year and following employment of emission reduction measures,}~~ The best available data accounting for actual emissions, during the year following the applicable emission reduction deadline as specified in OAR 340-32-320(1) (b), of all HAP from each emission point in the Early Reductions Unit listed in subsection (3) (b) of this rule;
  - (c) The supporting basis for each emission number provided in subsection (5) (b) of this rule including:
    - (A) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, a discussion of the validity of the method for measuring the subject emissions, and evidence that the testing was conducted in accordance with the Department's Source Sampling

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- Manual or Continuous Monitoring Manual; and
- (B) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used;
- ~~+(d) Evidence that all emission reductions used for the early reductions demonstration were achieved prior to proposal of an applicable standard issued under section 112(d) of the FCAA.~~

~~+(e)~~ (d) Evidence that there was no increase in radionuclide emissions from the source.

- (6) (a) An owner or operator shall demonstrate that both total base year emissions and total base year emissions adjusted for high-risk pollutants (Table 2), as applicable, have been reduced by at least 90 percent for gaseous HAP emitted and 95 percent for particulate HAP emitted by determining the following for gaseous and particulate emissions separately:
- (A) Total base year emissions, calculated by summing all base year emission data from subsection (4) (b) of this rule;
- (B) Total post-reduction emissions, calculated by summing all post-reduction emission data from subsection (5) (b) of this rule;
- (C) Total base year emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from subsection (4) (b) of this rule by the appropriate weighing factor for the pollutant from Table 2 and then summing all weighted emission data; and
- (D) Total post-reduction emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a

pollutant from subsection (5) (b) of this rule by the appropriate weighing factor for the pollutant from Table 2 and then summing all weighted emission data.

- (E) Percent reductions, calculated by dividing the difference between base year and post-reduction emissions by the base year emissions. Separate demonstrations are required for total gaseous and particulate emissions, and total gaseous and particulate emissions adjusted for high-risk pollutants.

(b) If any points in the ~~source~~ Early Reductions Unit emit both particulate and gaseous pollutants, as an alternative to the demonstration required in subsection (6) (a) of this rule, an owner or operator may demonstrate:

- (A) A weighted average percent reduction for all points emitting both particulate and gaseous pollutants where the weighted average percent reduction is determined by

$$\%_w = \frac{0.9 (\sum M_g) + 0.95 (\sum M_p)}{\sum M_g + \sum M_p}$$

where  $\%_w$  = the required weighted percent reduction  
 $EM_g$  = the total mass rate (eg., kg/yr) of all gaseous emissions  
 $EM_p$  = the total mass rate of all particulate emissions; and

- (B) The reductions required in subsection (6) (a) of this rule for all other points in each Early Reductions Unit.

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**Table 2**  
**List of Early Reductions High-Risk Pollutants**  
**(OAR 340-32-340)**

<u>CAS Number</u>	<u>Chemical Name</u>	<u>Weighing Factor</u>
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
79107	Acrylic acid	10
107131	Acrylonitrile	10
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
107302	Chloromethyl methyl ether	10
334883	Diazomethane	10
132649	Dibenzofurans	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene	<del>100</del> 10
302012	Hydrazine	100
101688	Methylene diphenyl diisocyanate (MDI)	10
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10
0	Arsenic compounds	100
0	Beryllium compounds	10
0	Cadmium compounds	10
0	Chromium compounds	100
0	Coke oven emissions	10
0	Manganese compounds	10
0	Mercury compounds	100
0	Nickel compounds	10

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- (7) If lower rates or hours are used to achieve all or part of the emission reduction, any HAP emissions that occur from a compensating increase in rates or hours from the same activity elsewhere within the plant site that contains the Early Reductions Unit shall be counted in the post-reduction emissions from the Early Reductions Unit. If emission reductions are achieved by shutting down process equipment and the shutdown equipment is restarted or replaced anywhere within the plant site, any hazardous air pollutant emissions from the restarted or replacement equipment shall be counted in the post-reduction emissions for the Early Reductions Unit.
- (8) The best available data representing actual emissions for the purpose of establishing base year or post-reduction emissions under this rule shall consist of documented results from source tests using an EPA Reference Method, EPA Conditional Method, or the owner's or operator's source test method that has been validated pursuant to Method 301 of 40 CFR Chapter I Part 63 Appendix A, dated June 1992. However, if one of the following conditions exists, an owner or operator may submit, in lieu of results from source tests, calculations based on engineering principles, emission factors, or material balance data as actual emission data for establishing base year or post-reduction emissions:
- (a) no applicable EPA Reference Method, EPA Conditional Method, or other source test method exists;
  - (b) it is not technologically or economically feasible to perform source tests;
  - (c) it can be demonstrated to the satisfaction of the Department that the calculations will provide emission estimates of accuracy comparable to that of any applicable source test method;
  - (d) for base year emission estimates only, the base year conditions no longer exist at an emission point in the Early Reductions unit and emission data could not be produced for such an emission point, by performing source tests under currently existing conditions and converting the test results to reflect base year conditions, that is more accurate than an estimate produced by using engineering principles, emission factors, or a material balance; or
- (e) the emissions from one or a set of emission points in the Early Reductions Unit are small compared to total Early Reductions Unit emissions and potential errors in establishing emissions from such points will not have a significant effect on the accuracy of total emissions established for the Early Reductions Unit.
- (9) For base year or post-reduction emissions established under this rule that are not supported by source test data, the source owner or operator shall include the reason source testing was not performed.
- ~~+(10) In cases where emission control measures have been employed less than a year prior to demonstrating emission reductions under this rule, an owner or operator shall extrapolate post-reduction emission rate data to an annual basis and shall describe the extrapolation method as part of the supporting basis required under section (5) of this rule.~~
- ~~+(11)~~ (10) The EPA average emission factors for equipment leaks cannot be used under this subpart to establish base year emissions for equipment leak Early Reductions Units, unless the base year emission number calculated using the EPA average emission factors for equipment leaks also is used as the post-reduction emission number for equipment leaks from the Early Reductions Unit.
- ~~+(12)~~ (11) A source owner or operator shall not establish base year or post-reduction emissions that include any emissions from the Early Reductions Unit exceeding allowable emission levels specified in any applicable law, regulation, or permit condition.
- ~~+(13)~~ (12) For Early Reductions Units subject to paragraph (3)(c)(A) of this rule, an owner or operator shall

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document total base year emissions from an entire contiguous plant site under common control by providing the following information for all HAP from all emission points in the contiguous plant site under common control:

- (a) a complete list of all emission points of HAP;
- (b) the best available data accounting for all HAP emissions during the base year from each HAP emission point;
- (c) total base year emissions calculated by summing all base year emissions data from (b) of this section.

~~[(14)]~~ (13) If a new pollutant is added to the list of HAP or high-risk pollutants, any source emitting such pollutant will not be required to revise an early reduction demonstration pursuant to this rule if alternative emission limits have previously been specified by permit for the Early Reductions Unit as provided for in OAR 340-32-320(1).

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: f. & cert. ef. 9-24-93

**Review of Base Year Emissions**  
340-32-350

- (1) Pursuant to the procedures of this rule, the Department shall review and approve or disapprove base year emissions data submitted in a permit application from an applicant that wishes to participate in the early reduction program. A copy of the permit application shall also be submitted to the EPA Region 10 Office.
- (2) Within 30 days of receipt of base year emission data, the Department shall advise the applicant that:
  - (a) The base year emission data are complete as submitted; or
  - (b) The base year emission data are not complete and include a list of deficiencies that must be corrected before review can proceed.
- (3) Within 60 days of a determination that a base year emission data submission is complete, the

Department shall evaluate the adequacy of the submission with respect to the requirements of OAR 340-32-340(2) through (4) and either:

- (a) Propose to approve the submission and publish a notice in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice, providing the aggregate base year emission data for the source and the rationale for the proposed approval, noting the availability of the nonconfidential information contained in the submission for public inspection in at least one location in the community in which the source is located, providing for a public hearing upon request by at least 10 interested persons, and establishing a 30 day public comment period that can be extended to 60 days upon request by at least 10 interested persons; or

- (b) Propose to disapprove the base year emission data and give notice to the applicant of the reasons for the disapproval. An applicant may correct disapproved base year data and submit revised data for review in accordance with this subsection, except that the review of a revision shall be accomplished within 30 days.

- (4) If no adverse public comments are received by the reviewing agency on proposed base year data for a source, the data shall be considered approved at the close of the public comment period and a notice of the approval shall be sent to the applicant and published by the reviewing agency by advertisement in the area affected.
- (5) If adverse public comments are received and the Department agrees that corrections are needed, the Department shall give notice to the applicant of the disapproval and reasons for the disapproval. An applicant may correct disapproved base year emission data and submit revised emission data. If a revision is submitted by the applicant that, to the satisfaction of the Department, takes into account the adverse comments, the Department will publish by advertisement in the area affected a notice containing the approved base year emission data for

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the source and send notice of the approval to the applicant.

- (6) If adverse public comments are received and the Department determines that the comments do not warrant changes to the base year emission data, the Department will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and the reasons for not accepting the adverse comments. A notice of the approval also shall be sent to the applicant.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: f. & cert. ef. 9-24-93

**Early Reduction Demonstration Evaluation**  
340-32-360

- (1) The Department will evaluate an early reduction demonstration submitted by the ~~source~~ owner or operator in a permit application with respect to the requirements of OAR 340-32-340.
- (2) An application for a compliance extension may be denied if, in the judgement of the Department, the owner or operator has failed to demonstrate that the requirements of OAR 340-32-340 have been met. Specific reasons for denial include, but are not limited to:
- (a) The information supplied by the owner or operator is incomplete;
  - (b) The required 90 percent reduction (95 percent in cases where the HAP is particulate matter) has not been demonstrated;
  - (c) The base year or post-reduction emissions are incorrect, based on methods or assumptions that are not valid, or not sufficiently reliable or well documented to determine with reasonable certainty that required reductions have been achieved; or
  - (d) The emission of HAP or the performance of emission control measures is unreliable so as to preclude determination that the required reductions have been achieved or will continue to be achieved during the extension period.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: f. & cert. ef. 9-24-93

**Approval of Applications**  
340-32-370

- (1) If an early reduction demonstration is approved and other requirements for a complete permit application are met, the Department shall establish by a permit issued pursuant to OAR 340-28-2100 through 2320, enforceable alternative emissions limitations for each Early Reductions Unit reflecting the reduction which qualified the Early Reductions Unit for the extension. However, if it is not feasible to prescribe a numerical emissions limitation for one or more emission points in the Early Reductions Unit, the Department shall establish such other requirements, reflecting the reduction which qualified the Early Reductions Unit for an extension, in order to assure ~~the source achieves~~ that the 90 percent or 95 percent reduction, as applicable, is achieved.
- (2) An alternative emissions limitation or other requirement prescribed pursuant to section (1) of this rule shall be effective and enforceable immediately upon issuance of the permit for the source and shall expire exactly six years after the compliance date of an otherwise applicable standard issued pursuant to section 112(d) of the Act.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Rules for Special Situations**  
340-32-380

- (1) If more than one standard issued under section 112(d) of the FCAA would be applicable to an Early Reductions Unit as defined under OAR 340-32-330, then the date of proposal referred to in OAR 340-32-310(3), OAR 340-32-320(1)(b), and OAR 340-32-340(5)(d), is the date the first applicable standard is proposed.
- (2) Sources emitting radionuclides are not required to reduce radionuclides by 90(95) percent. Radionuclides may not be increased from the source as a result of the early reductions demonstration.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

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prevention techniques, alternative technology, process changes, or other options, as well as emissions control technologies. In some cases GACT may be identical to MACT for major HAP sources in the same source category.

- (b) Any person who proposes to operate an area source after a GACT standard has been promulgated by EPA shall comply with the applicable GACT requirements.
- (c) Any person who proposes to operate an area source after the Commission has adopted an emissions limitation, shall comply with the applicable requirements.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**340-32-5010 through 340-32-5390 [Reserved]**

**Accidental Release Prevention**

**340-32-5400**

- (1) List. For purposes of this rule the Commission adopts by reference the List of Regulated Substances and Thresholds for Accidental Release Prevention 40 CFR Part 68 ~~proposed January 19, 1993~~ dated January 31, 1994 which includes the Department of Transportation Division 1.1 Explosive Substances List (49 CFR 172.101).  
(Table 3)

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93



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**Table 3**  
**List of Regulated Toxic and Flammable Substances**  
**For Purposes of Accidental Release Prevention**  
**(OAR 340-32-5400)**

~~Part A - Regulated Toxic Substances~~

<u>GAS Number</u>	<u>Chemical Name</u>	<u>Threshold Quantity (lbs)</u>
75865	Acetone cyanohydrin	5000
107028	Acrolein	1000
107131	Acrylonitrile	10000
814686	Acrylyl chloride	1000
107186	Allyl alcohol	5000
107119	Allylamine	1000
7664417	Ammonia (anhydrous)	1000
7664417	Ammonia (aqueous sol'n, conc. >20%)	5000
62533	Aniline	5000
7783702	Antimony pentafluoride	1000
7784341	Arsenous trichloride	5000
7784421	Arsine	500
98873	Benzal chloride	1000
98168	Benzenamine,3 (trifluoromethyl )	1000
98077	Benzotrichloride	500
100447	Benzyl chloride	1000
140294	Benzyl cyanide	1000
10294345	Boron trichloride	1000
7637072	Boron trifluoride	1000
353424	Boron trifluoride with methyl ether (1:1)	5000
7726956	Bromine	1000
75150	Carbon disulfide	10000
7782505	Chlorine	1000
10049044	Chlorine dioxide	500
107073	Chloroethanol	1000
67663	Chloroform	10000
542881	Chloromethyl ether	500
107302	Chloromethyl methyl ether	1000
4170303	Crotonaldehyde	10000
123739	Crotonaldehyde,(E)	10000
506774	Cyanogen chloride	1000
108918	Cyclohexylamine	5000
19287457	Diborane	500
110576	Trans 1,4 dichlorobutene	1000
111444	Dichloroethyl ether	10000
75785	Dimethyldichlorosilane	1000
57147	Dimethylhydrazine	5000
2524030	Dimethyl phosphorochloridothioate	1000
106898	Epichlorohydrin	10000
107153	Ethylenediamine	10000
151564	Ethyleneimine	1000
75218	Ethylene oxide	5000
7782414	Fluorine	500

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<u>CAS Number</u>	<u>Chemical Name</u>	<u>Threshold Quantity (lbs)</u>
50000	Formaldehyde	500
107164	Formaldehyde cyanohydrin	5000
110009	Furan	1000
302012	Hydrazine	5000
7647010	Hydrochloric acid (sol'n, conc. $\geq 25\%$ )	5000
74908	Hydrocyanic acid	500
7647010	Hydrogen chloride (anhydrous)	1000
7664393	Hydrogen fluoride	500
7722841	Hydrogen peroxide (conc. $> 52\%$ )	5000
7783075	Hydrogen selenide	500
7783064	Hydrogen sulfide	1000
13463406	Iron, pentacarbonyl	500
78820	Isobutyronitrile	10000
108236	Isopropyl chloroformate	5000
78977	Lactonitrile	5000
126987	Methacrylonitrile	1000
74839	Methyl bromide	5000
74873	Methyl chloride	10000
79221	Methyl chloroformate	1000
60344	Methyl hydrazine	5000
624839	Methyl isocyanate	1000
74931	Methyl mercaptan	1000
556649	Methyl thiocyanate	10000
75796	Methyltrichlorosilane	1000
13463393	Nickel carbonyl	500
7697372	Nitric acid	5000
10102439	Nitric oxide	1000
98953	Nitrobenzene	10000
56382	Parathion	1000
79210	Peracetic acid	1000
594423	Perchloromethylmercaptan	1000
108952	Phenol	10000
75445	Phosgene	500
7803512	Phosphine	1000
10025873	Phosphorus oxychloride	1000
7719122	Phosphorus trichloride	5000
110894	Piperidine	5000
107120	Propionitrile	1000
109615	Propyl chloroformate	5000
75558	Propyleneimine	10000
75569	Propylene oxide	10000
140761	Pyridine, 2-methyl 5-vinyl	1000
7446095	Sulfur dioxide	1000
664939	Sulfuric acid	5000
7783600	Sulfur tetrafluoride	1000
7446119	Sulfur trioxide	1000
75741	Tetramethyllead	1000
509148	Tetranitromethane	1000
108985	Thiophenol	1000
7550450	Titanium tetrachloride	500

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CAS Number	Chemical Name	Threshold Quantity (lbs)
584849	Toluene 2,4 diisocyanate	1000
91087	Toluene 2,6 diisocyanate	1000
26471625	Toluene diisocyanate (unspecified isomer)	1000
15219	Trichloroethylsilane	1000
75774	Trimethylchlorosilane	1000
108054	Vinyl acetate monomer	5000
75014	Vinyl chloride	10000

**Part B - Regulated Flammable Substances**

75070	Acetaldehyde	10000
74862	Acetylene	10000
598732	Bromotrifluorethylene	10000
25167673	Butene	10000
106978	Butane	10000
106989	1 Butane	10000
107017	2 Butane	10000
106990	1,3 Butadiene	10000
590181	2 Butene cis	10000
624646	2 Butene trans	10000
463581	Carbon oxysulfide	10000
557982	2 Chloropropylene	10000
590216	1 Chloropropylene	10000
7791211	Chlorine monoxide	10000
460195	Cyanogen	10000
75194	Cyclopropane	10000
4109960	Dichlorosilane	10000
75376	Difluoroethane	10000
124403	Dimethylamine	10000
463821	2,2 Dimethylpropane	10000
74840	Ethane	10000
74851	Ethylene	10000
75047	Ethylamine	10000
107006	Ethyl acetylene	10000
60297	Ethyl ether	10000
75003	Ethyl chloride	10000
75081	Ethyl mercaptan	10000
109955	Ethyl nitrite	10000
1333740	Hydrogen	10000
75285	Isobutane	10000
78784	Isopentane	10000
78795	Isoprene	10000
75296	Isopropyl chloride	10000
75310	Isopropylamine	10000
4828	Methane	10000
107313	Methyl formate	10000
115106	Methyl ether	10000
563451	3 Methyl 1 butene	10000

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<u>CAS Number</u>	<u>Chemical Name</u>	<u>Threshold Quantity (lbs)</u>
563462	2 Methyl 1 butene	10000
115117	2 Methylpropene	10000
174895	Methylamine	10000
504609	1,3 Pentadiene	10000
109660	Pentane	10000
109671	1 Pentene	10000
627203	2 Pentene(Z)	10000
646048	2 Pentene,(E)	10000
74986	Propane	10000
463490	Propadiene	10000
115071	Propylene	10000
7803625	Silane	10000
116143	Tetrafluoroethylene	10000
75763	Tetramethylsilane	10000
10025782	Trichlorosilane	10000
79389	Trifluorochloroethylene	10000
75503	Trimethylamine	10000
75025	Vinyl fluoride	10000
107255	Vinyl methyl ether	10000
75354	Vinylidene chloride	10000
75387	Vinylidene fluoride	10000
109922	Vinyl ethyl ether	10000
689974	Vinyl acetylene	10000

Part A - Regulated Toxic Substances

<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Acrolein [2-Propenal]</u>	<u>107-02-8</u>	<u>5,000</u>
<u>Acrylonitrile [2-Propenenitrile]</u>	<u>107-13-1</u>	<u>20,000</u>
<u>Acrylyl chloride [2-Propenoyl chloride]</u>	<u>814-68-6</u>	<u>5,000</u>
<u>Allyl alcohol [2-Propen-1-ol]</u>	<u>107-18-6</u>	<u>15,000</u>
<u>Allylamine [2-Propen-1-amine]</u>	<u>107-11-9</u>	<u>10,000</u>
<u>Ammonia(anhydrous)</u>	<u>7664-41-7</u>	<u>10,000</u>
<u>Ammonia(conc 20% or greater)</u>	<u>7664-41-7</u>	<u>20,000</u>
<u>Arsenous trichloride</u>	<u>7784-34-1</u>	<u>15,000</u>
<u>Arsine</u>	<u>7784-42-1</u>	<u>1,000</u>
<u>Boron trichloride [Borane, trichloro-]</u>	<u>10294-34-5</u>	<u>5,000</u>
<u>Boron trifluoride [Borane, trifluoro-]</u>	<u>7637-07-2</u>	<u>5,000</u>
<u>Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[metane]]-T-4-</u>	<u>353-42-4</u>	<u>15,000</u>
<u>Bromine</u>	<u>7726-95-6</u>	<u>10,000</u>

OREGON ADMINISTRATIVE RULES  
CHAPTER 340, DIVISION 32 - DEPARTMENT OF ENVIRONMENTAL QUALITY

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<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Carbendisulfide</u>	<u>75-15-0</u>	<u>20,000</u>
<u>Chlorine</u>	<u>7782-50-5</u>	<u>2,500</u>
<u>Chlorine dioxide [Chlorine oxide (ClO<sub>2</sub>)]</u>	<u>10049-04-4</u>	<u>1,000</u>
<u>Chloroform [Methane, trichloro-]</u>	<u>67-66-3</u>	<u>20,000</u>
<u>Chloromethylether [Methane, oxybis[chloro-]</u>	<u>542-88-1</u>	<u>1,000</u>
<u>Chloromethylmethyl ether [Methane, chloromethoxy-]</u>	<u>107-30-2</u>	<u>5,000</u>
<u>Crotonaldehyde [2-Butenal]</u>	<u>4170-30-3</u>	<u>20,000</u>
<u>Crotonaldehyde, (E)- [2-Butenal, (E)-]</u>	<u>123-73-9</u>	<u>20,000</u>
<u>Cyanogen chloride</u>	<u>506-77-4</u>	<u>10,000</u>
<u>Cyclohexylamine [Cyclohexanamine]</u>	<u>108-91-8</u>	<u>15,000</u>
<u>Diborane</u>	<u>19287-45-7</u>	<u>2,500</u>
<u>Dimethyldichlorosilane [Silane, dichlorodimethyl-]</u>	<u>75-78-5</u>	<u>5,000</u>
<u>1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]</u>	<u>57-14-7</u>	<u>15,000</u>
<u>Epichlorohydrin [Oxirane, (chloromethyl)-]</u>	<u>106-89-8</u>	<u>20,000</u>
<u>Ethylenediamine [1,2-Ethanediamine]</u>	<u>107-15-3</u>	<u>20,000</u>
<u>Ethyleneimine [Aziridine]</u>	<u>151-56-4</u>	<u>10,000</u>
<u>Ethylene oxide [Oxirane]</u>	<u>75-21-8</u>	<u>10,000</u>
<u>Fluorine</u>	<u>7782-41-4</u>	<u>1,000</u>
<u>Formaldehyde(solution)</u>	<u>50-00-0</u>	<u>15,000</u>
<u>Furan</u>	<u>110-00-9</u>	<u>5,000</u>
<u>Hydrazine</u>	<u>302-01-2</u>	<u>15,000</u>
<u>Hydrochloric acid (conc 30% or greater)</u>	<u>7647-01-0</u>	<u>15,000</u>
<u>Hydrocyanic acid</u>	<u>74-90-8</u>	<u>2,500</u>
<u>Hydrogen chloride (anhydrous) [Hydrochloric acid]</u>	<u>7647-01-0</u>	<u>5,000</u>
<u>Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]</u>	<u>7664-39-3</u>	<u>1,000</u>
<u>Hydrogen selenide</u>	<u>7783-07-5</u>	<u>500</u>
<u>Hydrogen sulfide</u>	<u>7783-06-4</u>	<u>10,000</u>
<u>Iron, pentacarbonyl- [Iron carbonyl (Fe(CO)<sub>5</sub>), (TB-5-11)-]</u>	<u>13463-40-6</u>	<u>2,500</u>

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<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Isobutyronitrile [Propanenitrile,2-methyl-]</u>	<u>78-82-0</u>	<u>20,000</u>
<u>Isopropyl chloroformate [Carbonochloridicacid, 1-methylethylester]</u>	<u>108-23-6</u>	<u>15,000</u>
<u>Methacrylonitrile [2-Propenenitrile,2-methyl-]</u>	<u>126-98-7</u>	<u>10,000</u>
<u>Methyl chloride [Methane, chloro-]</u>	<u>74-87-3</u>	<u>10,000</u>
<u>Methyl chloroformate [Carbonochloridicacid, methylester]</u>	<u>79-22-1</u>	<u>5,000</u>
<u>Methyl hydrazine [Hydrazine, methyl-]</u>	<u>60-34-4</u>	<u>15,000</u>
<u>Methyl isocyanate [Methane, isocyanato-]</u>	<u>624-83-9</u>	<u>10,000</u>
<u>Methyl mercaptan [Methanethiol]</u>	<u>74-93-1</u>	<u>10,000</u>
<u>Methyl thiocyanate [Thiocyanic acid, methyl ester]</u>	<u>556-64-9</u>	<u>20,000</u>
<u>Methyltrichlorosilane [Silane, trichloromethyl-]</u>	<u>75-79-6</u>	<u>5,000</u>
<u>Nickel carbonyl</u>	<u>13463-39-3</u>	<u>1,000</u>
<u>Nitric acid (conc 80% or greater)</u>	<u>7697-37-2</u>	<u>15,000</u>
<u>Nitric oxide [Nitrogen oxide (NO)]</u>	<u>10102-43-9</u>	<u>10,000</u>
<u>Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]<sup>1</sup></u>	<u>8014-95-7</u>	<u>10,000</u>
<u>Peracetic acid [Ethaneperoxoicacid]</u>	<u>79-21-0</u>	<u>10,000</u>
<u>Perchloromethylmercaptan[Methanesulfenylchloride, trichloro-]</u>	<u>594-42-3</u>	<u>10,000</u>
<u>Phosgene [Carbonicdichloride]</u>	<u>75-44-5</u>	<u>500</u>
<u>Phosphine</u>	<u>7803-51-2</u>	<u>5,000</u>
<u>Phosphorusoxychloride [Phosphorylchloride]</u>	<u>10025-87-3</u>	<u>5,000</u>
<u>Phosphorustrichloride [Phosphoroustrichloride]</u>	<u>7719-12-2</u>	<u>15,000</u>
<u>Piperidine</u>	<u>110-89-4</u>	<u>15,000</u>
<u>Propionitrile [Propanenitrile]</u>	<u>107-12-0</u>	<u>10,000</u>
<u>Propyl chloroformate [Carbonochloridicacid, propylester]</u>	<u>109-61-5</u>	<u>15,000</u>
<u>Propyleneimine [Aziridine, 2-methyl-]</u>	<u>75-55-8</u>	<u>10,000</u>
<u>Propylene oxide [Oxirane, methyl-]</u>	<u>75-56-9</u>	<u>10,000</u>
<u>Sulfur dioxide (anhydrous)</u>	<u>7446-09-5</u>	<u>5,000</u>

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<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Sulfur tetrafluoride [Sulfur fluoride (SF<sub>4</sub>), (T-4)-]</u>	<u>7783-60-0</u>	<u>2,500</u>
<u>Sulfur trioxide</u>	<u>7446-11-9</u>	<u>10,000</u>
<u>Tetramethyllead [Plumbane, tetramethyl-]</u>	<u>75-74-1</u>	<u>10,000</u>
<u>Tetranitromethane [Methane, tetranitro-]</u>	<u>509-14-8</u>	<u>10,000</u>
<u>Titanium tetrachloride [Titanium chloride (TiCl<sub>4</sub>) (T-4)-]</u>	<u>7550-45-0</u>	<u>2,500</u>
<u>Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]<sup>1</sup></u>	<u>584-84-9</u>	<u>10,000</u>
<u>Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]<sup>1</sup></u>	<u>91-08-7</u>	<u>10,000</u>
<u>Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-]<sup>1</sup></u>	<u>26471-62-5</u>	<u>10,000</u>
<u>Trimethylchlorosilane [Silane, chlorotrimethyl-]</u>	<u>75-77-4</u>	<u>10,000</u>
<u>Vinyl acetate monomer [Acetic acid ethenyl ester]</u>	<u>108-05-4</u>	<u>15,000</u>

<sup>1</sup>The mixture exemption in 40 CFR Part 68.115(b)(1) does not apply to the substance.

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**Part B - Regulated Flammable Substances**

<u>Chemical Name</u>	<u>CAS No.</u>	<u>Threshold Quantity (lbs)</u>
<u>Acetaldehyde</u>	<u>75-07-0</u>	<u>10,000</u>
<u>Acetylene [Ethyne]</u>	<u>74-86-2</u>	<u>10,000</u>
<u>Bromotrifluoroethylene [Ethene, bromotrifluoro-]</u>	<u>598-73-2</u>	<u>10,000</u>
<u>1,3-Butadiene</u>	<u>106-99-0</u>	<u>10,000</u>
<u>Butane</u>	<u>106-97-8</u>	<u>10,000</u>
<u>1-Butene</u>	<u>106-98-9</u>	<u>10,000</u>
<u>2-Butene</u>	<u>107-01-7</u>	<u>10,000</u>
<u>Butene</u>	<u>25167-67-3</u>	<u>10,000</u>
<u>2-Butene-cis</u>	<u>590-18-1</u>	<u>10,000</u>
<u>2-Butene-trans [2-Butene, (E)]</u>	<u>624-64-6</u>	<u>16,000</u>
<u>Carbonoxysulfide [Carbonoxide sulfide (COS)]</u>	<u>463-58-1</u>	<u>10,000</u>
<u>Chlorine monoxide [Chlorine oxide]</u>	<u>7791-21-1</u>	<u>10,000</u>
<u>2-Chloropropylene [1-Propene, 2-chloro-]</u>	<u>557-98-2</u>	<u>10,000</u>
<u>1-Chloropropylene [1-Propene, 1-chloro-]</u>	<u>590-21-6</u>	<u>10,000</u>
<u>Cyanogen [Ethanedinitrile]</u>	<u>460-19-5</u>	<u>10,000</u>
<u>Cyclopropane</u>	<u>75-19-4</u>	<u>10,000</u>
<u>Dichlorosilane [Silane, dichloro-]</u>	<u>4109-96-0</u>	<u>10,000</u>
<u>Difluoroethane [Ethane, 1,1-difluoro-]</u>	<u>75-37-6</u>	<u>10,000</u>
<u>Dimethylamine [Methanamine, N-methyl-]</u>	<u>124-40-3</u>	<u>10,000</u>
<u>2,2-Dimethylpropane [Propane, 2,2-dimethyl-]</u>	<u>463-82-1</u>	<u>10,000</u>
<u>Ethane</u>	<u>74-84-0</u>	<u>10,000</u>
<u>Ethylacetylene [1-Butyne]</u>	<u>107-00-6</u>	<u>10,000</u>
<u>Ethylamine [Ethanamine]</u>	<u>75-04-7</u>	<u>10,000</u>
<u>Ethyl chloride [Ethane, chloro-]</u>	<u>75-00-3</u>	<u>10,000</u>
<u>Ethylene [Ethene]</u>	<u>74-85-1</u>	<u>10,000</u>
<u>Ethyl ether [Ethane, 1,1'-oxybis-]</u>	<u>60-29-7</u>	<u>10,000</u>
<u>Ethyl mercaptan [Ethanethiol]</u>	<u>75-08-1</u>	<u>10,000</u>
<u>Ethyl nitrite [Nitrous acid, ethyl ester]</u>	<u>109-95-5</u>	<u>10,000</u>



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<u>Chemical Name</u>	<u>CAS No.</u>	<u>Threshold Quantity (lbs)</u>
<u>Hydrogen</u>	<u>1333-74-0</u>	<u>10,000</u>
<u>Isobutane [Propane, 2-methyl]</u>	<u>75-28-5</u>	<u>10,000</u>
<u>Isopentane [Butane, 2-methyl-]</u>	<u>78-78-4</u>	<u>10,000</u>
<u>Isoprene [1,3-Butadiene, 2-methyl-]</u>	<u>78-79-5</u>	<u>10,000</u>
<u>Isopropylamine [2-Propanamine]</u>	<u>75-31-0</u>	<u>10,000</u>
<u>Isopropylchloride [Propane, 2-chloro-]</u>	<u>75-29-6</u>	<u>10,000</u>
<u>Methane</u>	<u>74-82-8</u>	<u>10,000</u>
<u>Methylamine [Methanamine]</u>	<u>74-89-5</u>	<u>10,000</u>
<u>3-Methyl-1-butene</u>	<u>563-45-1</u>	<u>10,000</u>
<u>2-Methyl-1-butene</u>	<u>563-46-2</u>	<u>10,000</u>
<u>Methyl ether [Methane, oxybis-]</u>	<u>115-10-6</u>	<u>10,000</u>
<u>Methyl formate [Formic acid, methyl ester]</u>	<u>107-31-3</u>	<u>10,000</u>
<u>2-Methylpropene [1-Propene, 2-methyl-]</u>	<u>115-11-7</u>	<u>10,000</u>
<u>1,3-Pentadiene</u>	<u>504-60-9</u>	<u>10,000</u>
<u>Pentane</u>	<u>109-66-0</u>	<u>10,000</u>
<u>1-Pentene</u>	<u>109-67-1</u>	<u>10,000</u>
<u>2-Pentene, (E)-</u>	<u>646-04-8</u>	<u>10,000</u>
<u>2-Pentene, (Z)-</u>	<u>627-20-3</u>	<u>10,000</u>
<u>Propadiene [1,2-Propadiene]</u>	<u>463-49-0</u>	<u>10,000</u>
<u>Propane</u>	<u>74-98-6</u>	<u>10,000</u>
<u>Propylene [1-Propene]</u>	<u>115-07-1</u>	<u>10,000</u>
<u>Propyne [1-Propyne]</u>	<u>74-99-7</u>	<u>10,000</u>
<u>Silane</u>	<u>7803-62-5</u>	<u>10,000</u>
<u>Tetrafluoroethylene [Ethene, tetrafluoro-]</u>	<u>116-14-3</u>	<u>10,000</u>
<u>Tetramethylsilane [Silane, tetramethyl-]</u>	<u>75-76-3</u>	<u>10,000</u>
<u>Trichlorosilane [Silane, trichloro-]</u>	<u>10025-78-2</u>	<u>10,000</u>
<u>Trifluorochloroethylene [Ethene, chlorotrifluoro-]</u>	<u>79-38-9</u>	<u>10,000</u>
<u>Trimethylamine [Methanamine, N,N-dimethyl-]</u>	<u>75-50-3</u>	<u>10,000</u>
<u>Vinyl acetylene [1-Buten-3-yne]</u>	<u>689-97-4</u>	<u>10,000</u>

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<u>Chemical Name</u>	<u>CAS No.</u>	<u>Threshold Quantity (lbs)</u>
<u>Vinyl chloride [Ethene, chloro-]</u>	<u>75-01-4</u>	<u>10,000</u>
<u>Vinyl ethyl ether [Ethene, ethoxy-]</u>	<u>109-92-2</u>	<u>10,000</u>
<u>Vinyl fluoride [Ethene, fluoro-]</u>	<u>75-02-5</u>	<u>10,000</u>
<u>Vinylidene chloride [Ethene, 1,1-dichloro-]</u>	<u>75-35-4</u>	<u>10,000</u>
<u>Vinylidene fluoride [Ethene, 1,1-difluoro-]</u>	<u>75-38-7</u>	<u>10,000</u>
<u>Vinyl methyl ether [Ethene, methoxy-]</u>	<u>107-25-5</u>	<u>10,000</u>

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- (2) Risk Management Plan. The owner or operator of a stationary source at which a substance listed in Table 3 of this rule is present in greater than the threshold quantity shall prepare and implement a written risk management plan to detect and prevent or minimize accidental releases, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
- (3) Compliance. The owner or operator of a stationary source required to prepare and implement a risk management plan under section (2) of this rule shall:
- (a) register the risk management plan with the EPA;
  - (b) submit copies of the risk management plan to the U.S. Chemical Safety and Hazard Identification Board, the Department, and the Oregon Office of Emergency Management; and
  - (c) submit as part of the compliance certification required under OAR 340-28-2160, annual certification to the Department that the risk management plan is being properly implemented.
- (4) Compliance schedule.
- (a) The owner or operator of a stationary source shall prepare and implement a risk management plan under section (2) of this rule according to the schedule promulgated by the EPA.
  - (b) The owner or operator of a stationary source that adds a listed substance or exceeds the threshold shall prepare and implement a risk management plan according to the schedule promulgated by the EPA.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**340-32-5410 through 340-32-5490** [Reserved]

**Emission Standards and Procedural  
Requirements for Hazardous Air  
Contaminants Regulated Prior to  
the 1990 Amendments to the  
Federal Clean Air Act**

**Applicability**

340-32-5500 OAR 340-32-5500 through 340-32-5650 shall apply to any stationary source identified in OAR 340-32-5530 through 340-32-5650. Compliance with OAR 340-32-5530 through 340-32-5650 shall not relieve the source from compliance with other applicable rules of this Chapter, with applicable provisions of the Oregon Clean Air Implementation Plan, or with any other applicable federal requirement.

[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 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 19-1986, f. & ef. 11-7-86; DEQ 9-1988, f. 5-19-88, cert. ef. 6-1-88 (and corrected 6-3-88); DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-460(1), DEQ 13-1993, f. & cert. ef. 9-24-93; Renumbered from OAR 340-25-460(1), DEQ 18-1993, f. & ef. 11-4-93

**General Requirements**

340-32-5510 Notification of startup. In addition to any other notification requirement, any person owning or operating a new source of emissions subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 shall furnish the Department written notification as follows:

- (1) Notification of the anticipated date of startup of the source not more than 60 days nor less than 30 days prior to the anticipated date.
- (2) Notification of the actual startup date of the source within 15 days after the actual date.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 19-1986, f. & ef. 11-7-86; DEQ 9-1988, f. 5-19-88, cert. ef. 6-1-88 (and corrected 6-3-88); DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1993, f. & cert. ef. 9-24-93; Renumbered from OAR 340-25-460(4), DEQ 18-1993, f. & ef. 11-4-93

**Federal Regulations Adopted by Reference  
340-32-5520**

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maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following:

- (A) Maintenance schedule.
- (B) Recordkeeping plan.
- (d) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department which includes the following:
  - (A) Date and time of each inspection.
  - (B) Presence or absence of visible emissions.
  - (C) Condition of fabric filters, including presence of any tears, holes and abrasions.
  - (D) Presence of dust deposits on clean side of fabric filters.
  - (E) Brief description of corrective actions taken, including date and time.
  - (F) Daily hours of operation for each air cleaning device.
- (e) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.
- (f) Retain a copy of all monitoring and inspection records for at least two years.
- (g) Submit quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.
- (h) Asbestos-containing waste material produced by any asbestos milling operation shall be disposed of according to OAR 340-32-5650.

**Asbestos Inspection Requirements for Federal Operating Permit Program Sources.**

**340-32-5610** This rule applies to renovation and demolition activities at major sources subject to the federal operating permit program as defined in OAR 340-28-110-~~(59)(b)~~.

- (1) To determine applicability of the Department's asbestos regulations, the owner or operator of a renovation or demolition project shall thoroughly inspect the affected area for the presence of asbestos.
- (2) For demolition projects where no asbestos-containing material is present, written notification shall be submitted to the Department on an approved form. The notification shall be submitted by the owner or operator or by the demolition contractor as follows:
  - (a) Submit the notification, as specified in section (3) of this rule, to the Department at least ten days before beginning any demolition project.
  - (b) The Department shall be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification of demolition will be void.
- (3) The following information shall be provided for each notification of demolition:
  - (a) Name, address, and telephone number of the person conducting the demolition.
  - (b) Contractor's Oregon demolition license number, if applicable.
  - (c) Certification that no asbestos was found during the predemolition asbestos inspection and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-32-5620 through OAR 340-32-5650 will be followed.
  - (d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:
    - (A) The age, present and prior use of the facility;
    - (B) Address or location where the demolition project is to be accomplished.
  - (e) Major source owner's or operator's name, address and phone number.
  - (f) Scheduled starting and completion dates of demolition work.
  - (g) Any other information requested

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-465, DEQ 18-1993, f. & ef. 11-4-93

OREGON ADMINISTRATIVE RULES  
CHAPTER 340, DIVISION 32 - DEPARTMENT OF ENVIRONMENTAL QUALITY

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on the Department form.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**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.
  - (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.

**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 for each small-scale asbestos abatement project except for small-scale projects in residential buildings described in section (4) of this rule.
      - (B) \$50 for each project greater than a small-scale asbestos abatement project and less than 260 linear feet or 160 square feet.
      - (C) \$200 for each project greater than 260 linear feet or 160 square feet, and less than 2,600 linear feet or 1,600 square feet.
      - (D) \$500 for each project greater than 2,600 linear feet or 1,600 square feet, and less than 26,000 linear feet or 16,000 square feet.
      - (E) \$750 for each project greater than 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet.
      - (F) \$1,000 for each project greater than 260,000 linear feet or 160,000 square feet.
    - (b) Project notification fees shall be payable with the completed

# OREGON BULLETIN



VOLUME 34, No. 1  
Issue Date: July 1, 1994

This issue contains Notices of Proposed Rulemaking officially filed May 16, 1994, 8:00 a.m. through June 15, 1994, 5:00 p.m. and resumes of the Administrative Rule Orders filed for which the Secretary of State's office has completed filing standards review. Administrative Rule Orders which have been filed but have not yet undergone the review will be published in the next issue of the Oregon Bulletin.



Published by  
**PHIL KEISLING**  
Secretary of State

## NOTICES OF PROPOSED RULEMAKING HEARING

7-25-94	3:00 pm	Blue Mountain Community College Morrow Hall 2411 NW Carden Pendleton, OR
7-26-94	3:00 pm	Morrow Hall, Room M-130 Cascade Natural Gas Building Public Meeting Room 334 NE Hawthorne Bend, OR
7-27-94	5:00 pm	Jackson County Courthouse Auditorium 10 South Oakdale Medford, OR
7-28-94	3:00 pm	Springfield City Hall Council Meeting Room 225 5th Street Springfield, OR

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

\*\*\*\*\*

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
8-1-94	1:00 pm	DEQ Headquarters Room 3A 811 SW Sixth Ave. Portland, OR
<b>Hearing Officer:</b>	Kevin Downing	
<b>Statutory Auth.:</b>	ORS 468.020 & 468.310	
<b>Proposed Adoptions:</b>	340-25-130, 340-22-060, 340-22-225, 340-22-230	
<b>Proposed Amendments:</b>	340-28-110(5), 340-28-110(15), 340-28-110 (51), 340-28-1060(2), 340-28-2120(3), 340-28-2110, 340-28-2120(3)(c)(E), 340-32-240(2)(b)(B), 340-32-300 & 340-32-5400	
<b>Proposed Repeals:</b>	340-28-110(41), 340-28-110(53), 340-28-110(63)	
<b>Last Date for Comment:</b>	8-19-94	
<b>Proposed Effective Date:</b>		
<b>Contact person:</b>	Chris Rich	
<b>Address:</b>	Air Quality Division, 811 SW 6th Avenue, Portland, OR 97204	
<b>Telephone:</b>	(503) 229-6775	

**Hearing Officer:** Charles K. Ashbaker  
**Statutory Auth.:** ORS 454.625, 454.780 & 468.020  
**Proposed Adoptions:** 340-71-162 & 340-71-302  
**Proposed Amendments:** Chapter 340, Divisions 14, 45, 52, 71 & 73  
**Proposed Repeals:** 340-71-350  
**Last Date for Comment:** 8-4-94  
**Proposed Effective Date:**  
**Contact person:** Chris Rich  
**Address:** Water Quality Division, 811 SW 6th Avenue, Portland, OR  
97204  
**Telephone:** (503) 229-6775

**Summary:** The Department is proposing changes to its Federal Operating Permit Program rules contained in Chapter 340, Divisions 28 and 32. These rule changes are in response to experience the Department gained while conducting the pilot permitting project with a group of volunteer industrial sources. During this pilot project, suggestions were made by the sources, EPA, and Department staff to clarify and correct the rule language. EPA has also issued final and amended rules for Early Reductions and Accidental Release chemicals and the Department must update the corresponding OARs. This package also includes several housekeeping changes to correct typographical errors.

This proposal would develop "categorical rules" to exempt from the Federal Operating Permit (FOP) Program smaller air pollution sources which have similar operating characteristics, such as gas stations or auto-body shops. These rules will contain federally enforceable limits on potential to emit (PTE) (e.g., operating hour limits or limits on material usage). They also contain provisions for the Department to require record-keeping and reporting, as well as for registration application fees. This approach limits potential to emit the same way a Synthetic Minor permit does without having to issue individual permits, therefore it reduces the regulatory burden on smaller businesses that emit far below the "major-source" threshold and also helps the Department focus its resources on major sources instead of smaller emitters.

These proposed rules would amend the existing rules for on-site sewage disposal in Oregon. The rules set requirements for siting, construction, and operation of on-site sewage disposal systems. The rules address license requirements for people who install and service on-site sewage disposal systems. The changes would provide flexibility for installation of on-site systems. Operating permits will be required of larger systems or systems that use distinctive technology or are high in waste strength. Technical improvements will be required for some materials and systems, i.e. septic tanks.

These proposed rules are intended to keep pace with changes in the field of on-site sewage disposal. They allow for consideration of new technology. They will allow for increased responsibility of the installer and in turn require increased knowledge of the rules by those people that service and install on-site systems.

Divisions 14, 45 and 52 will be modified to indicate that permitting rules and associated fees for on-site systems are in Divisions 71 and 73.

Agency Contact for This Proposal: Sherman Olson (503) 229-6443 or 1-800-452-4011.

## NOTICES OF PROPOSED RULEMAKING HEARING

Agency Contact for this Proposal: Melissa Hovey (503) 229-6918, John MacKellar (503) 229-6828 or 1-800-452-4011.

of Fish and Wildlife, ensure compliance with wildlife area management plans, and to provide wildlife-oriented recreational opportunities consistent with wildlife area management plans.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

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### Fish and Wildlife, Department of Chapter 635

**Date:** 8-17-94  
**Time:** TBA  
**Location:** Commission Room  
Department of Fish and Wildlife  
2501 SW First Avenue  
Portland, OR 97201

**Hearing Officer:** Oregon Fish and Wildlife Commission  
**Statutory Auth.:** ORS 496.012, 496.138, 496.146, 496.162 & 498.012  
**Proposed Amendments:** Chapter 635, Divisions 43, 45, 51, 53, 54 & 60  
**Last Date for Comment:** 8-17-94  
**Proposed Effective Date:**  
**Contact person:** Jan Ragni (agency), Mary Pottér (division), Ken Durbin (staff)  
**Address:** PO Box 59, Portland, OR 97207  
**Telephone:** (503) 229-5454, ext. 479  
**Summary:** These amendments establish the 1994-95 hunting seasons for upland game birds and waterfowl, and facilitate timely harassment of migratory waterfowl causing damage.

**Date:** 8-4-94  
**Time:** \*1 PM  
**Location:** Mark 205 Motor Inn  
221 NE Chkalov Drive  
Vancouver, WA 98684  
(206) 256-7044

**Hearing Officer:** \*An agenda will be available 10 days prior to the meeting and is available by writing or calling the address below.  
**Statutory Auth.:** ORS 183.325, 506.119, 506.129 & 507.030  
**Proposed Amendments:** Chapter 635, Divisions 41 & 42  
**Last Date for Comment:** 8-4-94  
**Proposed Effective Date:** 8-5-94  
**Contact person:** Jan Ragni  
**Address:** Department of Fish and Wildlife, P.O. Box 59, Portland, OR 97207  
**Telephone:** (503) 229-5400 - exts. 305 & 353  
**Summary:** Consider 1994 Columbia River fall gill-net seasons for Indian and non-Indian Fisheries and consider terminal gill-net fisheries at Youngs Bay.

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Date:** 8-17-94  
**Time:** TBA  
**Location:** Commission Room  
Department of Fish and Wildlife  
2501 SW First Avenue  
Portland, OR 97201

**Hearing Officer:** Oregon Fish and Wildlife Commission  
**Statutory Auth.:** ORS 496.012, 496.138, 496.146, 496.162 & 496.992  
**Proposed Amendments:** Chapter 635, Division 8  
**Last Date for Comment:** 8-17-94  
**Proposed Effective Date:**  
**Contact person:** Jan Ragni (agency), Mary Potter (division), Dan Carleson (staff)  
**Address:** PO Box 59, Portland, OR 97207  
**Telephone:** (503) 229-5454, ext. 476  
**Summary:** These amendments will protect wildlife, fish, lands, appurtenances, management activities and management objectives on lands of the Department

**Date:** 8-17-94  
**Time:** \*8 AM  
**Location:** Department of Fish and Wildlife  
Commission Room  
2501 SW First Avenue  
Portland, OR 97201

**Hearing Officer:** \*The meeting begins at 8 AM; however, there will be more than one agenda item. An agenda will be available 10 days prior to the meeting showing the general order in which items will be heard. The agenda is available by writing or calling the address below.  
**Statutory Auth.:** ORS 496.138, 496.162, 506.119 & 506.129  
**Proposed Amendments:** Chapter 635, Divisions 3 & 13  
**Last Date for Comment:** 8-17-94  
**Proposed Effective Date:** 9-1-94  
**Contact person:** Jan Ragni  
**Address:** Department of Fish and Wildlife, P.O. Box 59, Portland, OR 97207  
**Telephone:** (503) 229-5400 - exts. 305 & 353



*Oregon Department of Environmental Quality*

## A CHANCE TO COMMENT ON...

### Federal Operating Permit Program Rule Amendments and Categorical Rule Exemptions from Federal Operating Permit Program Requirements

Date Issued: 7/11/94  
 Public Hearings: 8/1/94  
 Comments Due: 8/19/94

**WHO IS AFFECTED:** Commercial and industrial sources subject to Federal Operating Permit Program Requirements

**WHAT IS PROPOSED:** The Department is proposing rules which would clarify and correct the rule language in the Federal Operating Permit Program rules contained in Chapter 340, Divisions 28 and 32. The proposed rulemaking also updates the rules for Early Reductions and Accidental Release chemicals to meet EPA requirements, and includes categorical rules to exempt smaller air pollution sources from the Federal Operating Permit Program through the application of collectively applied federally enforceable limits on their potential to emit.

**WHAT ARE THE HIGHLIGHTS:**

- \* A change in the rules regarding categorically insignificant activities to add more activities and clarify the requirements.
- \* Deleting all rules regarding insignificant mixtures.
- \* Amending the Early Reductions and Accidental Release Chemicals rules to address EPA requirements.
- \* Changes to the minor New Source Review rule (OAR 340-28-2270) to ensure EPA approval of the Federal Operating Permit Program.
- \* Amending Divisions 28 and 32 to include typographical corrections and clarifying language.



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

11/1/88

**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.

- \* Adopting categorical rules to exempt smaller air pollution sources with similar operating characteristics from the Federal Operating Permit Program.

**HOW TO  
COMMENT:**

Public Hearings to provide information and receive public comment are scheduled as follows:

Department of Environmental Quality  
811 SW 6th Avenue, Room 3A  
Portland, OR 97204  
August 1, 1994  
1:00 p.m.

Written comments must be received by 5:00 p.m. on August 19, 1994 at the following address:

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

c/o Gregg Lande

Copies 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 229-5655 or calling Oregon toll free 1-800-452-4011.

**WHAT IS THE  
NEXT STEP:**

The Department will evaluate comments received and will make a recommendation to the Environmental Quality Commission. Interested parties can request to be notified of the date the Commission will consider the matter by writing to the Department at the above address.

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State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for

Item A. Federal Operating Permit Program Rule Amendments  
and

Item B. Categorical Rule Exemptions from Federal Operating Permit Program  
Requirements

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

Item A. This proposal is to adopt changes to the Oregon Administrative Rules in order to obtain EPA approval of the Federal Operating Permit Program. It is proposed under the authority of ORS 468.020 and 468A.310.

Item B. This proposal is to adopt new Oregon Administrative Rules to exempt from the Federal Operating Permit Program categories of smaller air pollution sources that have similar operating characteristics. It is proposed under the authority of ORS 468.020 and 468A.310.

2. Need for the Rule

Item A. These rule changes are in response to experience the Department gained while conducting the pilot permitting project with a group of volunteer industrial sources. During this pilot project, suggestions were made by the sources, EPA, and Department staff to clarify and correct the rule language. EPA has also issued final and amended rules for Early Reductions and Accidental Release chemicals and the Department must update the corresponding OARs. Based on preliminary EPA comments, changes were made to the minor New Source Review rule (OAR 340-28-2270) in order to ensure approval of the FOP Program. This package also includes several housekeeping changes to correct typographical errors. The proposed changes included requirements and recommendations from the EPA which will ensure approval of Oregon's FOP Program. In addition, changes to the rule language will clarify the permitting and compliance requirements for industrial sources and the public.

Item B. This proposal would develop "categorical rules" to exempt smaller air pollution sources with similar operating characteristics, such as gas stations or auto-body shops, from the Federal Operating Permit (FOP) Program. These rules will contain federally enforceable limits on potential to emit (PTE) (e.g., operating hour limits or limits on material usage). They also contain provisions for the Department to require record-keeping and reporting, as well as for registration application fees. This approach limits potential to emit the same way a Synthetic Minor permit does without having to issue individual permits, therefore it reduces the regulatory burden on smaller businesses that emit far below the "major-source" threshold and also helps the Department focus its resources on major sources instead of smaller emitters.

### 3. Principal Documents Relied Upon in this Rulemaking

- Item A. ■ Title 40, Chapter I, Subchapter C, Part 68 of the Code of Federal Regulations Accidental Release Prevention Provisions, Subpart C - List of Regulated Substances
- Title 40, Chapter I, Subchapter C, Part 63 of the Code of Federal Regulations Emission Standards for Hazardous Air Pollutants - Amendments to Compliance Extensions for Early Reductions
- Oregon Administrative Rules - Chapter 340, Division 28 - Stationary Source Air Pollution Control and Permitting Procedures
- Oregon Administrative Rules - Chapter 340, Division 32 - Hazardous Air Pollutants
- Item B. ■ Oregon Administrative Rules - Chapter 340, Division 28 - Stationary Source Air Pollution Control and Permitting Procedures
- Oregon Administrative Rules - Chapter 340, Division 32 - Hazardous Air Pollutants
- Oregon Administrative Rules - Chapter 340, Division 22 - General Gaseous Emissions
- Oregon Administrative Rules - Chapter 340, Division 25 - Specific Industrial Standards
- Final EPA Rules, 57 Federal Register 32,250 (July 21, 1992), codified at 40 CFR Part 70
- Federal Clean Air Act Amendments of 1990, 42 USC Sections 7661 et seq.
- Rules and proposed rules from the states of Colorado, New York and Washington for implementing federal operating permitting and provisions for synthetic minor air pollution sources.
- Proposed Air Quality Rules, Part 1 Registration Permit, State of Minnesota Air Pollution Control Agency, March 21, 1994.
- Limiting Potential to Emit in New Source Permitting, U.S. EPA, Air Enforcement Division, Office of Enforcement and Compliance

Monitoring, and U.S. EPA, Stationary Source Compliance Division, OAQPS, June 13, 1989.

- Letter on requirements for implementing an operating permits program under the Clean Air Act (including limiting potential to emit), from John Seitz, Director, U.S. EPA OAQPS, to Charles Fryxell, President, California Air Pollution Control Officers Association, October 8, '93.
- Memorandum on Guidance for State Rules for Optional Federally-Enforceable Emissions Limits Based on Volatile Organic Compound (VOC) Use from D. Kent Berry, Acting Director, Air Quality Management Division, U.S. EPA OAQPS, to Air Division Regional Directors, October 15, 1993.
- Memorandum on Approaches to Creating Federally-Enforceable Emissions Limits from John S. Seitz, Director, U.S. EPA OAQPS, to Regional EPA Air Directors, November 3, 1993.

#### 4. Advisory Committee Involvement

Item A. The Industrial Source Advisory Committee had its first meeting on April 6, 1994. Members received an introduction to the issues and briefly discussed them. The Committee also discussed the issues at the June 2, 1994 meeting and agreed that the Department should proceed with the rulemaking process. After public hearings have been held, the Committee will have another opportunity to discuss issues that were raised during the public comment period and revise the proposed rules if necessary.

The proposed changes to the minor New Source Review rule (OAR 340-28-2270) were based on EPA comments made after the June 2nd ISAC-3 meeting. This issue is scheduled for discussion at the next ISAC-3 meeting on July 27, 1994. After public hearings have been held, the Committee will have another opportunity to discuss issues that were raised during the public comment period and revise the proposed rule if necessary.

Item B. The Industrial Source Advisory Committee had its first meeting on April 6, 1994. Members received an introduction to the issues and briefly discussed them. The Committee also discussed the issues at the June 2, 1994 meeting and agreed that the Department should proceed with the rulemaking process. After public hearings have been held, the Committee will have another opportunity to discuss issues that were raised during the public comment period and revise the proposed rules if necessary.

Similar involvement is planned for the Compliance Advisory Panel of the Air Quality Small Business Assistance Program, which will tentatively have its first meeting in July.

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

- A. Federal Operating Permit Program Rule Amendments  
and  
B. Categorical Rule Exemptions from Federal Operating Permit Program Requirements

Fiscal and Economic Impact Statement

Introduction

- A. This rulemaking proposal is not expected to have a fiscal and economic impact because the requirements in these proposed rules already apply. The amendments are not expected to add significant costs. The proposed rules would adopt federal rule changes necessary to gain EPA approval of the Federal Operating Permit (FOP) Program. The proposed rules also include some housekeeping changes to correct typographical errors. There are no fee rule revisions included in this proposal.
- B. The proposed rules would categorically exempt from the Federal Operating Permit (FOP) Program smaller air pollution sources which have similar operating characteristics, such as gas stations or auto body shops. These rules will contain federally enforceable limits on potential to emit (e.g., operating hour limits or limits on material use). They also contain provisions for instituting registration, record-keeping and reporting as required, as well as for charging a registration fee through the Department's existing Air Contaminant Discharge Permit (ACDP) fee mechanism. The categorical exemption mechanism is intended to reduce the financial and administrative burden of the FOP Program on small businesses and the Department. It is estimated that there are between two and three thousand small businesses in Oregon that would benefit from the proposed rules.

General Public

- A. There should be no significant economic impact to the general public as a result of these proposed rules. The only known costs to the general public would be possible pass-through costs to consumers. However, the FOP Program rules incorporate these costs so no incremental cost is anticipated.
- B. There should be no significant economic impact to the general public as a result of these proposed rules. These rules will eliminate increased costs to small businesses

which would, in the absence of the rules, be forced to pass through higher costs to the public.

### Small Business

- A. Some of the federal standards adopted by reference affect small business. EPA has issued final and amended rules for Early Reductions and Accidental Release chemicals and the Department must update the corresponding OARs. However, these requirements already apply to small businesses. Therefore, the amendments are not expected to have a significant effect on small business.
- B. The proposed rules would reduce the regulatory burden on smaller businesses that emit far below the FOP major-source thresholds. Currently, many small businesses are subject to the complex FOP requirements because of their potential to emit, even though their actual emissions are much lower. In many cases, their emissions are so low that they fall out of the state ACDP program. Under the current rules, the only way for a small business to gain exemption from the FOP Program is to obtain a Synthetic Minor ACDP with federally enforceable limits on its potential to emit. Individual Synthetic Minor permits involve substantially higher fees and take more time and money to comply with than would the proposed categorical rule exemptions.

The proposal provision for a registration application fee would be instituted only if needed to offset administrative costs of federal requirements for implementing categorical rule exemptions. Use of the ACDP filing fee (\$75) is proposed.

### Large Business

- A. Large business is also subject to a number of requirements affected by the proposal. Like small business, however, large business is already subject to these federal requirements. Therefore the proposed amendments are not expected to significantly impact large business.
- B. Large businesses that have low emissions would benefit from the proposed rules in the same way that small businesses would. The categorical exemption would reduce the financial and administrative burden on businesses that emit below the FOP major-source thresholds.

There should be no significant economic impact to large businesses with significant emissions as a result of these proposed rules. It is possible that large businesses would benefit from the reduced pass through costs from suppliers which generally tend to be smaller emitters.

### Local Governments

- A. Local governments that operate emission sources subject to any of these standards, such as Municipal Waste facilities, would be affected in the same way that business is affected. No significant economic impact on local governments is expected.
- B. There should be no significant economic impact to local governments as a result of these proposed rules. It is possible that local governments that operate small boilers or have coating operations with low emissions would benefit from the proposed rules.

### State Agencies

- A. The proposed amendments will be implemented through the Department's Federal Operating Permit Program. In Lane County the amendments will be implemented by the Lane Regional Air Pollution Authority (LRAPA). This workload will be administered within the revenue and staffing previously determined to implement the Federal Operating Permit Program.
- B. The proposed rules would exclude many smaller sources from the FOP Program and the Synthetic Minor Permit Program, reducing fee revenue to those Department programs. However, the reduced funding would be offset by the more efficient use of Department resources. Individual Synthetic Minor permits require significant staff time to administer and to do compliance determinations. The proposed rules would allow the Department to focus its resources on major sources instead of smaller, often insignificant, emitters.

### Assumptions

- A. None.
- B.
  - 1. Smaller sources facing the FOP Program because of their potential to emit will prefer to take categorical exemptions from the FOP Program that contain federally enforceable limits reflecting their actual operations and air emissions.
  - 2. Provisions for a modest registration application fee are necessary to cover Department administrative costs in the event that EPA requires registration, record-keeping and/or reporting in conjunction with categorical rule exemptions.



State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal

for

A. Federal Operating Permit Program Rule Amendments

and

B. Categorical Rule Exemptions from Federal Operating Permit Program Requirements

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.
  - A. After reviewing the Department's Program submittal the Environmental Protection Agency has indicated that revisions in the rules will be necessary to obtain Program approval. EPA has also issued final and amended rules for Early Reductions and Accidental Release chemicals and the Department must update the corresponding OARs (340-32-5400 and 340-32-300). The package also includes several housekeeping changes to correct typographical errors.
  - B. Develop "categorical rules" to exempt from the Federal Operating Permit (FOP) Program smaller air pollution sources which have similar operating characteristics, such as gas stations or auto-body shops. These rules will contain federally enforceable limits on potential to emit (PTE) (e.g., operating hour limits or limits on material usage). They also contain provisions for the Department to require record-keeping and reporting, as well as for registration application fees. This approach limits potential to emit the same way a Synthetic Minor permit does without having to issue individual permits, therefore it reduces the regulatory burden on smaller businesses that emit far below the "major-source" threshold and also helps the Department focus its resources on major sources instead of smaller emitters.
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 Federal Operating Permit rules require that the larger, more complex sources previously issued Air Contaminant Discharge Permits (ACDP), will now be issued an air discharge permit under the Federal Operating rules. From a land use perspective, these rules apply the agency's land use procedure policy for issuing an Approval of Notice of Construction (NC) and issuance of an Air Contaminant Discharge Permit.

- 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):

- A. Yes. The DEQ State Agency Coordination rules, Division 18, require that local governments review and approve a Land Use Compatibility Statement prior to the approval of NCs and prior to the processing and issuance of an air discharge permit. The Federal Operating Permits are subject to this same requirement.
- B. Yes. The DEQ State Agency Coordination rules, Division 18, require that local governments review and approve a Land Use Compatibility Statement prior to the approval of NCs and prior to the processing and issuance of an air discharge permit. The Federal Operating Permits are subject to this same requirement. Sources that are exempt from the Federal Operating Permit rules will be subject to the ACDP requirements.

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

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
  - a. resources, objectives or areas identified in the statewide planning goals, or
  - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

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

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

Not applicable.

Gregory A. Gree  
Division

Robert C. Jones  
Intergovernmental Coord.

6/9/94  
Date

## 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.

**Item A.** Federal Operating Permit Program Rule Amendments and

**Item B.** Categorical Rule Exemptions from Federal Operating Permit Program Requirements.

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

- Item A. - Federal Clean Air Act Amendments of 1990, 42 USC Sections 7661 et seq.
- Final EPA Rules 57 Federal Register 32,250 (July 21, 1992), codified at 40 CFR Part 70
- Title 40, Chapter I, Subchapter C, Part 68 of the Code of Federal Regulations Accidental Release Prevention Provisions, Subpart C -List of Regulated Substances
- Title 40, Chapter I, Subchapter C, Part 63 of the Code of Federal Regulations Emission Standards for Hazardous Air Pollutants - Amendments to Compliance Extensions for Early Reductions

- Item B. - Federal Clean Air Act Amendments of 1990, 42 USC Sections 7661 et seq.
- Final EPA Rules 57 Federal Register 32,250 (July 21, 1992), codified at 40 CFR Part 70.

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

Item A. Not applicable - the federal requirements included in this proposal are administrative.

Item B. 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?*

Item A. The federal requirements address issues that concern industrial sources in Oregon. Although the requirements were developed at the federal level, the interpretation of those requirements and the proposed rules language to implement the requirements was developed for Oregon sources. Many of the proposed amendments are a result of suggestions from participants in the pilot permitting project, which was made up of a group of volunteer industrial sources in Oregon.

Item B. Yes. The proposed categorical rule exemptions would lessen the burden on four types of small businesses by exempting them from the federal operating permit program. This would allow the Department to focus its resources on larger air-pollution sources.

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?*

Item A. Yes.

Item B. Yes.

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

Item A. Yes. Many of the proposed changes are required to be adopted in order for the PEA to grant approval to Oregon's FOP Program.

Item B. No.

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

Item A. Yes

Item B. Yes.

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

Item A. Yes.

Item B. Yes.

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

Item A. Not applicable.

Item B. Not applicable.

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?*

Item A. Not applicable.

Item B. Not applicable.

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

Item A. Not applicable.

Item B. Not applicable.

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

Item A. Yes. Changes to the rules with regards to insignificant activities will lessen the burden on both industrial sources and the Department because the emissions from the activities will not be included in the permit application. The proposed changes to Divisions 28 and 32 would clarify many of the requirements of the rules and would incorporate changes required by the EPA for approval. These changes are anticipated to relieve administrative burdens and uncertainty for both the Department and the regulated community.

Item B. Yes. The proposed categorical rules encourage pollution prevention for sources that want to meet emissions limitations so they will fit into the categorical rule exemptions.

State of Oregon  
Department of Environmental Quality

## Memorandum

Date: August 1, 1994

**To:** Environmental Quality Commission  
**From:** Gregg Lande  
**Subject:** Presiding Officer's Report for Rulemaking Hearing  
Hearing Date and Time: August 1, 1994 beginning at 1:00 pm  
Hearing Location: DEQ Headquarters, Room 3a

## Title of Proposal:

**Item A:** Federal Operating Permit Program Rule Amendments  
**Item B:** Categorical Rule Exclusions from Federal Operating Permit Program Requirements

The rulemaking hearing on the above titled proposal was convened at 1:00 pm. People were asked to sign witness registration forms if they wished to present testimony. Attendees were also advised that the hearing was being recorded and of the procedures to be followed.

Nine people were in attendance, one person signed up to give testimony.

Prior to receiving testimony, Gregg Lande briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

A summary of the oral testimony is presented below:

Jerry Ritter, Weyerhaeuser

Mr. Ritter commented that there was an apparent contradiction in the public notice package that was sent out. On page 68 of the packet, item E, it says "the application shall include a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants from those activities which are designated insignificant." On the Attachment F, page 3, item A (at the bottom) it says "changes to the rules . . . will lessen the burden on industrial sources because emissions from the activities will be not included in the permit application." Mr. Ritter also stated that he felt that sources should not have to quantify emissions from activities that are defined as categorically exempt. This creates an enormous burden for industry.

There was no further testimony and the hearing was closed at 1:30.

## LIST OF WRITTEN COMMENTS RECEIVED

Testimony References  
Public Testimony Given/Received In Portland

<u>No.</u>	<u>Oral Testimony</u>	<u>Written Testimony</u>	<u>Name and Affiliation</u>
1	YES	NO	Jerry Ritter Weyerhaeuser Paper Co
2	Did not attend (DNA)	YES	Douglas Morrison Attorney Bogle & Gates
3	DNA	YES	Richard Garber Environmental Engineer Weyerhaeuser Paper Co
4	DNA	YES	J. Mark Morford Attorney Stoel Rives Boley Jones & Grey
5	DNA	YES	Mike Hawkins President Hawk Oil Co
6	DNA	YES	Russell Ayers Weyerhaeuser Paper Co
7	DNA	YES	Maureen Healy Director, Federal Environment and Transportation Issues The Society of the Plastics Industry
8	DNA	YES	David C. Bray Permit Programs Manager EPA Region X
9	DNA	YES	Jeffrey K. Yutani Biomass One, L.P.
10	DNA	YES	James R. Watts Oregon Reinforced Plastics Association
11	DNA	YES	Andrew Fridley Environmental Services Portland Public Schools



12 DNA YES

Mark E. Leary  
manager, Regulatory Affairs  
Browning-Ferris Industries

13 DNA YES

Ira J. Huddleston  
Executive Director  
Asphalt Pavement Association of  
Oregon

DEPARTMENT'S EVALUATION OF PUBLIC COMMENT

DIVISION 28

Categorically Insignificant Activities

1. Sources should not have to quantify every emission from every source. This will require an enormous amount of money and time. 1

Response The Department is not requiring owners or operators to quantify every emission from every source. The purpose of OAR 340-28-110(15) is to list the activities for which emissions need not be quantified. OAR 340-28-1060 states that emissions from categorically insignificant activities are not considered regulated air pollutants for Plant Site Emission Limit purposes.

2. Categorically insignificant activities should be omitted from permit applications, and other insignificant emissions and activities need only be listed in the application, without quantification. 2

Response Based on comments provided by the EPA, the proposed changes to categorically insignificant activities are required for federal operating permit program approval. Part 70 states that "An application may not omit information needed to determine the applicability or, or to impose any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to §70.9." The EPA originally proposed deleting all activities that have applicable requirements from the list of categorically insignificant activities. The Department avoided this correction by adding the language "including those requirements that apply to categorically insignificant activities." The Department feels that this proposed correction is less burdensome to owners or operators and the Department.

3. There should be additional activities added to the categorically insignificant list. 2,3,6,7

Response In order to add an activity to the list of categorically insignificant activities, the activity must have widespread applicability in the state. Therefore, some activities will not be added to the list because the activity may be significant at a different industry.

The following list of activities has been proposed for addition to the list. The Department has responded after each proposed addition.

## I. Mill Wide Sources

Process safety and relief valves, rupture disks, water seals. Under normal conditions, these points are parts of contained systems without any emissions. Any emissions are expected to occur only under emergency conditions which would be reported as required under Excess Emission rules. While computer modeling of future releases is possible, the frequency and quantity of emissions is not predictable for purposes of Title V.

Response The Department believes that points that do not normally emit any pollutants and only do so under emergency conditions are not required to be permitted. These points do not emit pollutants under normal operating conditions. In addition, since emissions only occur under emergency conditions, these points cannot be included in the categorically insignificant activity list because of the excess emission rule. The Department does not propose to add this activity to the list of categorically insignificant activities.

Air vents from air compressors OAR 15(t) should be extended to include all air compressors, compressed air handling systems and pneumatically operated equipment, systems and hand tools, because these emissions are essentially air; this category does not include emissions from drives.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Steam vents and leaks and safety and relief valves for boiler steam distribution systems; steam condensate flash tanks; steam vents on condensate receivers, deaerators and similar equipment; boiler blowdown tanks; These emissions are essentially water vapor.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Standby compressors, generators, and water pumps. OAR 15(c) should include equipment burning gasoline, as emissions from gasoline burning equipment would be less than for distillate fuels.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

OAR 15(vv) should be clarified by defining "back-up". NWPPA suggests that "back-up" means equipment used to provide incremental service. "Back-up" should not include equipment used to replace or substitute for loss of primary equipment or utility service.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Cooling towers. DEQ should include the equivalent of the Ecology listings because these emissions are essentially water vapor.

Response MACT standards have been promulgated for cooling towers that use chromium-based water treatment programs. The Department agrees that cooling towers that do not use chromium-based water treatment programs would have insignificant emissions and has revised OAR 340-28-110(15) accordingly.

## II. Bark and Power Boiler Area

Wetted Ash piles and handling. Ash piles and handling that are wet will not produce more than trivial emissions because wetting will eliminate fugitive dust and will cool the ash.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

## III. Recovery Boilers and Liquor Evaporators

Turpentine, soap and tall oil storage and unloading. The tanks and piping for these systems are at ambient temperatures and are passively vented, and the materials are of low volatility at ambient temperature. Turpentine would include only crude turpentine.

Response The Department believes that emissions from these sources could be significant. The Department does not propose to add this activity to the list of categorically insignificant activities.

## V. Tanks and Totes

White and green liquor tanks and associated pumping, piping and handling. This category was changed to distinguish between black liquors and other wood pulping liquors. White and green liquors are aqueous salt solutions that should be exempt under 15(jj). This is intended to clarify that exemption.

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Process water and white water storage tanks. This includes all non-contact raw water used as process water. Also, white water is an aqueous suspension of paper machine filtrates that contain only trace concentrations of regulated pollutants. Tanks containing white water are passively vented and are not expected to produce more than trivial emissions.

Response Process water is too broad a description and would not be a categorically insignificant activity for all industries. The Department agrees with the commentor about white water and has revised OAR 340-28-110(15) accordingly.

Clean condensate tanks. Includes tanks containing clean steam condensates and clean steam-stripped process condensates. These materials are previously processed to remove volatiles and sulfur compounds and would not contain more than trace concentrations.

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Alum tanks. Alum is an inorganic salt in aqueous solution and therefore is not expected to produce emissions of regulated pollutants.

Response The Department agrees with the commentor that aqueous salt solutions should not have emissions of regulated air pollutants. Therefore, the Department is proposing to delete this and the other solutions that would not emit regulated air pollutants from this subsection of the rule.

Lime mud tanks and lime mud filtrate tanks. Lime mud is an aqueous salt slurry. See explanation for white and green liquor.

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Broke beaters, repulpers, pulp and repulping tanks, stock chests and pulp handling. These processes handle only aqueous suspensions of cellulose which may have low VOC concentrations (secondary fiber lines will not have VOCs). Virtually all VOC emissions from pulp storage and handling will be accounted for in paper machine dryer emissions.

Response The Department has received information that VOC emissions from recycled pulp thickeners and repulpers may be significant. The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly with an exception for thickening equipment and repulpers.

## **VI. Kraft Mill Caustic Area.**

Lime mud washer

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Lime mud filter

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Liquor clarifiers and storage tanks

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Lime grits washers, filters and handling

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Green liquor dregs washers, filters and handling

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

## VII. Paper Machine Area

Finishing and converting operations. These operations vent inside the building and the emissions to the ambient air are negligible. Indoor emissions must meet workplace health standards and are sometimes controlled for that reason.

Response The Department recognizes that some activities inside buildings may be insignificant. However, some buildings are significant sources of emissions. The Department does not propose to add this activity to the list of categorically insignificant activities.

Rewinder, winder, decorator and converting equipment dust system exhausts that vent inside a building. See explanation for item 1 above.

Response See Department response above.

Starch cooking. Particulate emissions are inside buildings and would only present a local dusting problem with negligible emissions to ambient air.

Response See Department response above.

Stock cleaning and pressurized pulp washing. These are enclosed systems with negligible emissions.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

## VIII. Wood Handling Area

Chip silos. Chips in silos are contained and protected from wind and therefore particulate and VOC emissions are expected to be negligible.

Response The Department does not believe that particulate and VOC emissions from chip silos will be negligible. The Department does not propose to add this

activity to the list of categorically insignificant activities.

Log storage, wetting and handling. This category would extend 15(pp) to include all log storage and handling activities, but would not include emissions from vehicular traffic.

Response The Department does not believe that fugitive emissions from log storage, wetting and handling are insignificant. The Department does not propose to add this activity to the list of categorically insignificant activities.

Chipping and Debarking. Chipping and debarking are not expected to result in more than negligible emissions other than local dust that is controlled, if necessary, with misting.

Response The Department believes emissions from chipping and debarking can be significant, if not adequately controlled. Also, emission factors are available for quantification of such emissions (AP-42, Section 10.3). The Department does not propose to add this activity to the list of categorically insignificant activities.

**IX. Wastewater Handling and Treatment.** Items listed below should be covered by OAR 15(dd). NWPPA would like DEQ to confirm this interpretation. Please clarify that 15(dd) also includes drain vents.

Response OAR 340-28-110(15)(dd) "process sewer floor drains or open trenches" should not be included in the list of categorically insignificant activities since there is a proposed MACT standard for pulp and paper covering these sources. The Department proposes to delete OAR 340-28-110(15)(dd) from the list.

Sewer manholes, Junction boxes, Open drains, Sumps, Lift stations, Open trenches

Response All of these sources are included in the proposed MACT standard for the pulp and paper industry. The Department does not propose to add this activity to the list of categorically insignificant activities.

**X. Solid Waste Management**

Landfills. NWPPA suggests that this category cover landfill emissions including dusts and gaseous emissions where material handled is not a primary product of the source's SIC code, and where specific rules or performance standards do not apply to the air emissions from the landfill.

Response Support activities at federal operating permit program sources must also be included in the permit application, even if they are not a primary product of the source's SIC code. The Department does not believe emissions from landfills are insignificant, especially fugitive dust. The Department does not propose to add this activity to the list of categorically insignificant activities.

Sludge dewatering and handling. Virtually all emissions associated with waste water treatment systems will be associated with aerated basins and primary clarifiers. Other handling of wastewaters and residuals from wastewater treatment should produce only trace emissions.

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Screw press vents. See explanation for sludge dewatering and handling.

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Pond dredging. Dredging occurs infrequently — about every 5 - 10 years — and emissions are not reasonably quantifiable. Activity will be subject to other approvals (such as solid waste or water discharge permitting).

Response Dredging of ponds causes considerable emissions, especially odors. The Department does not propose to add this activity to the list of categorically insignificant activities.

## **XI. Miscellaneous Sources**

Building exhaust vents.

Response OAR 340-28-2270(110)(15)(r), warehouse activities, only include building exhaust vents for the warehouse. The Department does not believe that emissions from miscellaneous building openings are categorically insignificant, especially since the activities inside the building can produce very significant emissions. The Department does not propose to add this activity to the list of categorically insignificant activities.

Dumpsters. Emissions are not quantifiable and not amenable to control. DEQ could include language such as "if the wastes are properly contained" to ensure that protection from wind, etc. is provided.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Flanges and Valves. This category should include all leaks from flanges and valves, unless they are subject to a source or source-category specific requirement. Emission factors for flanges and valves are not accurate and direct measurement is impracticable. Good energy management, safety issues and product loss concerns will result in these emissions being kept to a minimum.

Response Valves and flanges are included in the proposed pulp and paper MACT and other MACT standards. The Department does not propose to add this



activity to the list of categorically insignificant activities.

Maintenance and repair. NWPPA suggests that DEQ confirm that the use of the term "non-process" in OAR 15(hh) includes any maintenance and repair activity that does not result in the incorporation or conversion of a raw material into a final product. For example, the use of paint to paint equipment in a paper mill would be "non-process" but the use of paint to mark rolls of paper would be "process."

Response The Department agrees that clarification is necessary and has changed OAR 340-28-110(15) accordingly.

Building Openings (doors, windows). NWPPA suggests that DEQ clarify that 15(n) would cover miscellaneous building openings. These building openings would be expected to have fewer emissions than openings that are mechanically vented.

Response OAR 340-28-110(15)(n) does not include miscellaneous building openings. The Department does not believe that emissions from miscellaneous building openings are categorically insignificant, especially since the activities inside the building can produce very significant emissions. The Department does not propose to add this activity to the list of categorically insignificant activities.

Oilers (on chains, etc.). NWPPA recommends that all lubricating activities be included in the list as emissions would be negligible and not easily quantifiable. DEQ could clarify that "transfer equipment" in OAR 15(jj) includes equipment such as chain oilers.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Painting and coating associated with routine maintenance and repair. DEQ should expand or clarify that OAR 15(h) would include the painting of any building or structure at a facility associated with routine maintenance and repair.

Response The Department has already included such a clarification in the proposed version of the rules that were sent out for public notice: (h) groundskeeping activities, including, but not limited to building painting and road and parking lot maintenance. The Department proposes no change to the rule.

Short Duration Process Trials. NWPPA suggests the DEQ include process trials under the Ecology language contingent upon 1) the activity not involving installation of an emission unit and not increasing the potential to emit, or 2) if a purpose of the process trial is to quantify emissions and determine the applicability of requirements.

Response The Department has written a general permit condition regarding process trials and fuel burn trials. The Department does not believe that these activities represent normal operation and therefore, emissions would not have to

be quantified. The Department does not propose to add this activity to the list of categorically insignificant activities.

Woodworking. Please clarify that woodworking activities for maintenance and repair that are not for production and sale of the wood are exempt.

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Steam Cleaning. Please clarify that this is included in maintenance and repair under OAR 15 (hh).

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Abrasive Use. Please clarify that this is included in maintenance and repair under OAR 15(hh).

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

Emissions from tanks which are not mechanically ventilated, not used for storage of VOC, not subject to NSPS or other specific applicable requirement, and vapor pressure less than 15.0 kPa.

Response The Department believes that emissions from the above mentioned tanks could be significant and does not propose to add this activity to the list of categorically insignificant activities.

Raw material loading, unloading, and transfer operation emissions where material handled is not a primary product of the source's SIC code, unless otherwise subject to a specific rule or performance standard or subject to control requirements.

Response The Department considers all activities supporting the major industrial group for inclusion in the permit. The Department feels that material handling emissions are not insignificant and does not propose to add this activity to the list of categorically insignificant activities.

An increase in the hours of operation or in the production rate, unless such a change would be prohibited under a permit condition.

Response Oregon's Plant Site Emission Limit rules often result in permits containing emissions based on the highest levels of projected production levels and/or anticipated operating hours. Increases above these permitted levels cause PSEL violations. The Department does not propose to add this activity to the list of categorically insignificant activities.

Lime mud, grits, dregs storage piles with adequate wind protection

Response The commentor did not provide emissions estimates as requested.

Without this information, the Department does not propose to add this activity to the list of categorically insignificant activities.

Combustion source flame safety purging on startup

Response Based on the following clarification provided by the commentor, The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly. "The standard operating procedure on any boiler on startup is to purge the boiler of potentially explosive fuel and fuel pyrolysis products for about 5 minutes before any fuel is intentionally ignited in the boiler. Fuel pyrolysis products typically include CO, hydrocarbons, hydrogen, some VOCs depending on the fuel, and other compounds. The concentrations of these compounds is generally expected to be very low, since no fuel is introduced to the boiler during the boiler purge procedure. Most of the gas exhausted from the boiler during the purge would be air from the boiler combustion air fans. These emissions are unquantifiable because emission concentrations would vary significantly from startup to startup, and the number of startups is unknown. The mass emissions associated from startup boiler purging is expected to be very low in a continuously operating process like a paper mill, because boiler startups are relatively rare. Typically a recovery furnace may have eight scheduled startups plus about 20 unscheduled startups per year (unscheduled from boiler trips). Power boilers would have about twice as many startups. Another reason not to quantify emissions from boiler purging is that CEMs typically monitor boiler emissions during startups, and the CEMS confirm that emission concentrations of measured pollutants are negligible until the boiler is up and running on fuel."

Stack sampling ports

Response Leaving caps off sampling ports can be dangerous to source testers and can also be a source of emissions, especially when the sampling port is located before the control device for inlet concentration testing. Anti-seize lubricants are available to prevent caps from rusting onto the port. The Department does not propose to add this activity to the list of categorically insignificant activities.

Closed storage tanks of solid chemical additives exclusive of loading and unloading

Response The Department does not believe that these activities represent normal operation and therefore, emissions would not have to be quantified. The Department does not propose to add this activity to the list of categorically insignificant activities.

Oil/Water separators in effluent treatment systems;

Response The Department agrees with the commentor and has revised OAR 340-28-110(15) accordingly.

open lid or closed lid vented tanks with aqueous suspensions of vegetable, straw,

or wood fiber;  
 coffee makers;  
 steam traps;  
 steam and air pressure safety valves;  
 accidental chip or recycled fiber fires;  
 liquid sampling systems for quality control monitoring;  
 natural gas venting from combustion source flame safety systems;  
 diesel and gasoline engine backup equipment for electric motors and associated  
 small fuel tanks;  
 local mill diesel and gasoline storage tanks for plant equipment;  
 lube oil tanks, oil breathers on gear boxes;  
 residual fuel oil (#6 oil) storage tanks;  
 maintenance activities including but not limited to welding, building ventilation,  
 mechanical equipment cleaning operations;  
 cookouts;  
 expand categorically insignificant activity definition (jj) for on site storage tanks  
 to include the following: passively vented aqueous inorganic salt solutions, acid  
 tanks with lime absorbers, caustic storage tanks;  
 sewers, open U-drains;  
 dumpsters;  
 aerosol can usage;  
 accidental gas bottle leaks;  
 steam cleaning of mobile equipment.

Response The Department believes that the above listed sources are either addressed already in the rule or are addressed in these responses to comment.

turbine generator hydrogen vents;  
 water storage tanks;  
 hydraulic systems, breathers, and tanks;  
 electrical transformer vents;  
 stock spills, and recycled fiber rejects storage piles;  
 pipeline vacuum breaker vents;  
 battery vents;  
 ponds, effluent clarifiers, stabilization basins not subject to NSPS, or MACT  
 rules;  
 chip piles, hogged fuel piles;  
 non-HAP containing chemical storage tanks;  
 crude tall oil.

Response The commentor did not provide emissions estimates as requested. Without this information, the Department does not propose to add these activities to the list of categorically insignificant activities.

4. The activity "non-process related repair and maintenance activities" should be clarified. 4

Except for (1) those industries whose business is repair and maintenance and (2) emissions from process equipment undergoing repair or maintenance, we believe that all repair and maintenance activities should be categorically insignificant, regardless whether the activity is performed on process equipment. We suggest that the insignificant activity be described as "repair and maintenance activities except for those repair and maintenance activities that are the principal business of a source; the operation of process equipment undergoing repair or maintenance is not a categorically insignificant activity."

Response OAR 340-28-110(15) states that "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. The Department feels that because of the above rule language, no clarification such as "except for those industries or operations whose business is repair and maintenance" is necessary. The Department proposes no change to the rule.

OAR 340-28-1410, 340-28-1420, and 340-28-1430 require owners or operators to estimate the amount of excess emissions during planned startup and shutdown, scheduled maintenance, or upset and breakdown. OAR 340-28-2720(9) requires owners or operators to estimate emissions from startup and shutdown for fee purposes. Therefore, excess emissions from repair and maintenance of process equipment are not categorically insignificant, as indicated by the commentor. The Department proposes no change to the rule.

- 4
5. The Department should adopt rule language for 2 million Btu/hr boilers burning natural gas and propane with no restriction on hours rather than 5 million Btu/hr boilers limited to 3,000 hours.

Response The Department agrees with the commentor and has incorporated the suggested change into OAR 340-28-110(15). The Department is also proposing changes to the distillate oil and kerosene burning equipment in the same manner to eliminate the restriction on hours of operation.

- 7
6. The Department should adopt rule language which will allow activities that are insignificant but are not currently included in the regulation.

Response Part 70 states that the Administrator may approve as part of a state program a list of insignificant activities and emission levels which need not be included in permit applications. The Department already proposed such generic language to the EPA to include activities determined to be insignificant but not specifically on the list. The EPA stated that such language could not be approved. The Department proposes no change to the rule.

2,3,4

7. The requirement that categorically insignificant activities must comply with all applicable requirements and be monitored serves to defeat the purpose of being defined as insignificant.

Response In discussions with EPA, it was admitted that general applicable requirements were not considered when drafting the Part 70 rules regarding categorically insignificant activities. The general applicable requirements are those that apply to all sources, regardless of size, such as Oregon's opacity and grain loading rules. The EPA will probably be changing the Part 70 rules regarding insignificant activities in 1996. The Department has addressed how categorically insignificant activities will be identified in both the permit application and the permit and how compliance will be monitored. The Department feels that these procedures comply with current Part 70 requirements and represents an equitable resolution of this problem, in that it meets the EPA requirements while placing minimal resource requirements on the Department and permitted Title V sources. At such time the EPA proposes changes to the rules regarding insignificant activities, the Department will examine further rule changes. At this time, the Department proposes no change to the rule.

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8. The Department should adopt the Washington Department of Ecology's interim solution to the problem of insignificant activities which would largely, but not completely, exempt insignificant activities from operating permit requirements that would be due solely to generally applicable SIP provisions.

Response The Washington Department of Ecology's interim solution is one of the factors which led the EPA to propose interim approval of their program. Their rule will have to be corrected within two years to gain full approval. The Department believes the path it has chosen, including the addition of many of industry's recommendations, is a better solution.

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9. Unless the Oregon provisions for permit applications and permit content ensure that all applicable requirements for categorically insignificant activities are identified in the permit application and included in the permit, the definition of "Categorically insignificant activity" (OAR 340-28-110(15)) needs to state that such activity cannot be subject to an applicable requirement, not just that it must comply with applicable requirements. The Title V permit must ensure that the source complies with all applicable requirements, and as such, the owner or operator cannot omit any information from a permit application that is necessary to determine or impose an applicable requirement.

Response The Department has required all applicants of federal operating permits to fill out the application forms regarding applicable requirements and categorically insignificant

activities. The Department shall include requirements applicable to categorically insignificant activities in the permit. The Department proposes no change to the rule.

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10. The Society of Plastics Industry supports the Department's provision that does not require emissions from insignificant activities to be considered as regulated air pollutants for purposes of establishing Plant Site Emission Limits (PSEL)s. This is consistent with the Federal Clean Air Amendments of 1990 which gives states the discretion to develop a list of insignificant activities and de minimis emission levels which need not be included by a source in a permit application.

No response necessary.

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11. The proposed changes to categorically insignificant activities (OAR 340-28-110 (15)) should be adopted.

No response necessary.

#### Insignificant Mixtures

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12. Insignificant mixture usage should be considered a categorically insignificant activity. The language for the proposed mixture rule should be clarified so that the rule could not be interpreted to simply impose another application requirement without eliminating the need to address insignificant emissions from trace components of mixtures. Therefore, the rule language in OAR 340-28-2120(3)(c)(E) should be changed so that owners/operators that annually use 100,000 pounds or less of mixture that contains chemicals or compounds below the 1.0%/0.1% thresholds may omit from their application information concerning the chemicals or compounds.

Response Part 70 states that "An application may not omit information needed to determine the applicability of, or to impose any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to §70.9." Therefore, the proposed rule language by the commentor is unacceptable. The Department does believe that clarification to rule language for owners or operators that use less than 100,000 pounds of a mixture is necessary and has revised OAR 340-28-110(15) accordingly.

#### Aggregate Insignificant Emissions

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13. Requiring compliance demonstration for aggregate insignificant emissions is contrary to the concept of insignificant. Sources should have the option of demonstrating compliance

with PSEs by assuming that aggregate insignificant emissions are equivalent to the aggregate insignificant emissions levels set forth in OAR 340-28-110.

Response Owners or operators must quantify emissions from activities they want to include in the aggregate insignificant emissions in order to verify that the emissions are indeed below the aggregate levels. The Department is planning on having owners or operators briefly examine the activities they included in the aggregate insignificant emissions and certify every six months that there have not been any changes that would increase the emissions above the aggregate thresholds. The Department proposes no change to the rule.

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14. The aggregate insignificant emission levels for criteria pollutants are too low. Oregon's aggregate insignificant emission levels for criteria pollutants are far lower than those that other states have adopted and far lower than what the EPA is likely to approve. Aggregate insignificant emission levels for criteria pollutants should be 10 percent of the significant emission rates for those pollutants established in Table 2 to OAR 340-28-110(108). Linking the aggregate insignificant emission levels to significant emission rates would be more consistent with the relative concerns posed by these pollutants and with the Department's new source review program.

Response The aggregate insignificant emission levels were established via a consensus by the second Industrial Source Advisory Committee. There has been no data furnished by the pilot group of sources indicating a problem with the low levels adopted. After discussion with the public members of the third Industrial Source Advisory, the Department feels that it is inappropriate at this time to raise the aggregate insignificant emission levels. The Department proposes no change to the rule.

#### Minor New Source Review

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15. Process changes were not meant to be subject to the notice of intent to construct process. Any revisions to the term "modify" should clearly reflect that this rule only applies to physical changes.

Response The title of the rule clearly states Construction/Operation Modification. The Department specifically added the word operation to the title of the rule to include process changes. Upon review of meeting notes taken during all meetings regarding minor new source review, it is the Department's conclusion that changes in the method of operation were intended to be included.

The definition of modification, as defined by 40 CFR 60.2, is "any physical change in, or change in the method of operation of, ....." The Department used this exact



rule language in its proposed changes. Upon further discussion with the EPA, changes in the method of operation may exclude from minor new source review those changes in operation that sources can accommodate without any physical change. Therefore, the Department proposes further clarifying language to OAR 340-28-2270.

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16. Public notice should only be required when physical changes to the facility increase the emissions above the Plant Site Emission Limit (PSEL) as is currently stated in the rule, not based on whether they require "a case-by-case determination of an emission limitation or other standard." This is not the proper forum for the EPA to be attempting to require new public comment provisions.

Response The rules used to address minor new source review, OAR 340-28-800 through 340-28-820 and OAR 340-28-1700 through 340-28-1790, have been approved into the State Implementation Plan (SIP) by the EPA. The requirements in OAR 340-28-2270 are an attempt by the Department to clarify these requirements for federal operating permit program sources, as requested by industrial members of the advisory committee. Changes in OAR 340-28-2270 are required for EPA approval. The Department has clarified and corrected the rule language in OAR 340-28-2270 according to comments by the EPA.

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17. Proposed OAR 340-28-2270(3)(c)(A) and (B) would distinguish between modifications based on whether they will increase "the amount of any air pollutant emitted into the atmosphere by any source or combination of sources, not including decreases, above the significant emissions rate." This language will be difficult for sources to interpret what types of modifications do and do not require the more extensive public notification process (i.e., What is an increase? Over what period is an increase determined?). To resolve these problems, we suggest replacing the proposed standard with:

would not increase the maximum capacity to emit any air pollutant by more than the significant emissions rate (determined without consideration of netting under OAR 340-28-110(58)).

Response The Department agrees with the commentor and has clarified the rule language in OAR 340-28-2270(3)(c)(A) and (B) accordingly.

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18. The proposed change to the notice of intent to construct rule would add yet a further layer of pointless procedure to HAP modifications. There can be no public policy served by this duplication. It also would create a requirement more stringent than the federal rules with respect to HAP changes that do not meet the HAP modification thresholds.

Response The EPA regulations regarding modifications for hazardous air pollutant

(HAP) sources have not yet been promulgated. Until such rules are promulgated, the Department is proposing to use OAR 340-28-2270 to review construction and modifications triggering 112(g). Without OAR 340-28-2270, owners or operators of major hazardous air pollutant sources would not be able to obtain any construction/modification approval since Division 32 references this rule for modification approval. Clarifications were made regarding HAP modifications in OAR 340-28-2270. Once federal regulations are promulgated for 112(g), the Department shall propose further rulemaking to comply with federal requirements.

- 8
19. OAR 340-28-110(9)(d) needs to be revised to ensure that the terms of any "Notice of Construction and Approval of Plans" are included in the Title V permit as an applicable requirement regardless of when a Title V permit application is submitted.

Response The Department agrees with the commentor and has clarified the rule language in OAR 340-28-110(9)(d) accordingly.

- 8
20. OAR 340-28-1910(2)(e) and (3)(b)(I) needs to be revised to be more consistent with the language of 40 CFR 70.5(a)(1)(ii).

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-1910(2)(e) and (3)(b)(I).

- 8
21. OAR 340-28-2270(1)(a) - The phrase "having emissions to the atmosphere" is redundant since the definition of the term "stationary source" itself includes this phrase.

Response The Department has replaced "stationary source" with "facility, building, structure, or installation, or combination of these" and therefore, "having emissions to the atmosphere" is necessary. The Department proposes no change to the rule.

- 8
22. OAR 340-28-2270(1)(b) and (c) - Neither the federal Clean Air Act nor EPA regulations require states to include air pollution equipment or monitoring equipment in their provisions for regulating the construction and modification of stationary sources. Also, the inclusion of (b) and (c) is confusing since the scope of this regulation is classes of "sources of regulated air pollutants." Neither air pollution control equipment nor monitoring equipment are sources of air pollutants.

Response The Department agrees with the commentor and has clarified the language at 340-28-2270(1).

23. OAR 340-28-2270(2)(b) - EPA's regulations exempt changes in method of operation that the source can physically accommodate. If Oregon wishes to provide similar treatment, then it should consider using the term "modify" and include a definition of the term "modify or modification" in the definition section.

Response See Department response to 15.

24. OAR 340-28-2270(2)(b) - By linking this provision to sources covered by a Title V operating permit, it does not appear to apply to certain insignificant activities at the source. However, if such activities are modified such that they no longer qualify as insignificant, the Title V permit will need to be revised. Oregon should consider whether such modifications should be subject to the requirements of OAR 340-28-270 or if it only wants to review such changes as a Title V permit modification.

Response The Department feels that changes to categorically insignificant activities and activities that meet the criteria of aggregate insignificant emissions are not of interest under the minor new source review program. If a permittee makes a change to an insignificant activity, the Department proposes to review the change under the appropriate permit modification procedures. The Department proposes no change to the rule.

25. OAR 340-28-2270(2)(b)(A) - The term "source" needs to be changed to "stationary source" since that is the only class of sources subject to this regulation that has a capacity to emit. Also, Oregon should consider adding a definition of the phrase "maximum capacity to emit." Finally, the language from the definition of "potential to emit" is not appropriate here since it considers operational limitations as well as the physical design capacity of the source.

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(2)(b)(A) accordingly.

26. OAR 340-28-2270(2)(b)(B) - The phrase "the amount of any air pollutant emitted into the atmosphere" should be replaced by the phrase in the statutory definition of "modification" which states "the amount of any air pollutant emitted of which results in the emissions of any air pollutant not previously emitted.;"

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(2)(b)(B) accordingly.

27. OAR 340-28-2270(2)(b)(C) - Since OAR 340-32-4500 applies to all sources of HAPS,

this provision cannot be approved into the Oregon SIP.

Response The Department agrees with the commentor and has incorporated OAR 340-28-2270(2)(b)(C) in the submittal package for 112(l) delegation until the EPA promulgates federal regulations regarding modifications.

28. OAR 340-28-2270(2)(c) - This provision is being revised in a way that implies the source itself is being changed and not just the method of compliance demonstration or the monitoring equipment, or that a new requirement has been imposed on the source. 8

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(2)(c) accordingly.

29. OAR 340-28-2270(3)(b)(H) should be expanded to include the quantities emitted. 8

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(3)(b)(H) accordingly.

30. OAR 340-28-2270(3)(c)(A) and (B) - These provisions need to be revised to more clearly indicate which actions will be subject to an opportunity for public notice and comment. 8

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(3)(c)(A) and (B) accordingly.

31. OAR 340-28-2270(3)(c)(B)(i) and (3)(d) - It is not clear why it would take Oregon 180 days to review an application for a "minor" permit to construct action as such time frames are more typical of the major PSD/NSR programs. 8

Response The Department has allowed for up to 180 days to review applications for minor new source review because computer modeling of ambient air quality impacts may be required. Also, if a public hearing is requested, additional time will be needed. The Department proposes no change to the rule.

32. OAR 340-28-2270(3)(c)(B)(v) and (vi) - EPA's regulations for minor permit to construct programs do not require states to offer an opportunity for a public hearing. Unless this is required by Oregon law, the State could consider deleting these provisions. 8

Response Provisions for public hearings are already required by OAR 340-28-820(5) for Notice of Construction and Approval of Plans, and OAR 340-14-025(6) for Air

Contaminant Discharge Permits. The Department proposes no change to the rule.

- 8
33. OAR 340-28-2270(3)(c)(B)(vii) - The phrase "after the public comment period" needs to be relocated to the beginning of the sentence. As it currently stands, it appears that the construction may proceed immediately after the public notice period regardless of whether or not the Department notifies the owner of operator.

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(3)(c)(B)(vii) accordingly.

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34. OAR 340-28-2270(3)(d) - EPA regulations require an opportunity for public notice and comment on a permitting authority's proposal to approve or disapprove an application. As such, Oregon needs to revise this regulation to provide for public comment on certain proposed disapprovals.

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(3)(c) accordingly.

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35. OAR 340-28-2270(3)(f) - Oregon should consider revising this provision to allow for different time periods for submitting the notice of completion. Perhaps the regulation could state that it would be 30 days or another time period as specified in the Federal Operating Permit.

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-28-2270(3)(f) accordingly.

- 8
36. OAR 340-28-2270(3)(g)(D) - Needs to be revised to be more consistent with the language of 40 CFR 70.5(a)(1)(ii).

Response The Department agrees with the commentor and has incorporated the suggested change into OAR 340-28-2270(3)(g)(D).

#### Standard Permit Requirements

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37. The proposed additional standard permit requirement language should be revised so that it is clear that this condition only applies to intentional or knowing actions.

Response The Department agrees with the commentor and has incorporated the suggested change into OAR 340-28-2130(3)(a)(E).

Federal Operating Permit Fees

38. OAR 340-28-2650(3)(a) - The term "points" should be retained here rather than using the term "units" since the purpose of this section is to be able to quantify actual emissions to the atmosphere. 8

Response The Department's intent is to limit calculation of actual emissions to emissions units, not emissions points. The Department proposes no change to the rule.

39. OAR 340-28-2670(2)(b) - The term "point" must be retained here rather than "unit" since the purpose of this provision is to ascertain whether or not more than one "source" (i.e., emission unit") is being vented to the atmosphere through one stack. It is very common for an emission unit to have more than one emission point or to have more than one emission unit vented through a single emission point. 8

Response The Department agrees with the commentor and has deleted the proposed change from "point" to "unit" in OAR 340-28-2670(2)(b).

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DIVISION 32

HAZARDOUS AIR POLLUTANTS

General Provisions for Stationary Sources

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340-32-5400	Accidental Release Prevention

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**Emission Standards and Procedural  
Requirements for Hazardous Air  
Contaminants Regulated Prior to  
the 1990 Amendments to the  
Federal Clean Air Act**

340-32-5500	Applicability
340-32-5510	General Requirements
340-32-5520	Federal Regulations Adopted by Reference
340-32-5530	Emission Standards for Radon Emissions from Underground Uranium Mines
340-32-5540	Emission Standards for Beryllium
340-32-5550	Emission Standards for Mercury
340-32-5560	Emission Standard for Vinyl Chloride
340-32-5570	Emission Standards for Benzene
340-32-5580	Emission Standards for Arsenic
340-32-5590	Definitions for Asbestos Emission Standards and Procedural Requirements
340-32-5600	Emission Standards and Procedural Requirements for Asbestos
340-32-5610	Asbestos Inspection Requirements for Federal Operating Permit Program Sources
340-32-5620	Asbestos Abatement Projects
340-32-5630	Asbestos Abatement Notifications Requirements
340-32-5640	Asbestos Abatement Work Practices and Procedures
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**DIVISION 32  
HAZARDOUS AIR POLLUTANTS**

**General Provisions for Stationary Sources**

**Policy and Purpose**

**340-32-100** The Environmental Quality Commission finds that certain air contaminants for which there are no ambient air quality standards may cause or contribute to an identifiable and significant increase in mortality or to an increase in serious irreversible or incapacitating reversible illness or to irreversible ecological damage, and are therefore considered to be hazardous air pollutants. It shall be the policy of the Commission that no person may cause, allow, or permit emissions into the ambient air of any hazardous substance in such quantity, concentration, or duration determined by the Commission to be injurious to public health or the environment. The purpose of this Division is to establish emissions limitations on sources of these air contaminants. In order to reduce the release of these hazardous air pollutants and protect public health and the environment, it is the intent of the Commission to adopt by rule within this Division the source category specific requirements that are promulgated by the EPA. Furthermore, it is hereby declared the policy of the Commission that the standards contained in this Division are considered minimum standards, and as technology advances, protection of public health and the environment warrants, more stringent standards may be adopted and applied.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Applicability**

**340-32-105**

(1) The provisions of this Division shall apply to any new, modified, or existing source that emits or has the potential to emit any HAP listed in Table 1 of OAR 340-32-130.

(2) The owner or operator of the following types of sources shall comply

with the applicable standards set forth in OAR 340-32-400 through 340-32-5000 and OAR 340-32-5500 through 340-32-5650:

- (a) any existing major source of HAP;
- (b) any new major source of HAP that proposes to construct;
- (c) any existing major source of HAP that proposes a modification;
- (d) any existing source currently having an Air Contaminant Discharge Permit that becomes a major source of HAP;
- (e) any existing unpermitted source that becomes a major source of HAP; or
- (f) any area source of HAP for which a standard has been adopted.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; Renumber from OAR 340-32-210, DEQ 18-1993, f. & ef. 11-4-93

**Delegation of Authority**

**340-32-110**

- (1) The Lane Regional Air Pollution Authority (LRAPA) is authorized to implement and enforce, within its boundaries, this Division.
- (2) The Commission may authorize LRAPA to implement and enforce its own provisions upon a finding that such provisions are at least as stringent as a corresponding provision in this Division. LRAPA may implement and enforce provisions authorized by the Commission in place of any or all of this Division upon receipt of delegation from EPA or approval of such provisions under Section 112(1) of the federal Clean Air Act. Authorization provided under this section may be withdrawn for cause by the Commission.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & ef 11-4-93

**Definitions**

**340-32-120** As used in this Division:

- (1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous

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substance into the ambient air from a stationary source.

(2) "Act" and "FCAA" mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(3) "Actual Emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) Actual emissions shall equal the average rate at which the source actually emitted the pollutant and which is representative of normal source operation. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the specified time period.

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

(c) For purposes of OAR 340-32-300 through OAR 340-32-380 actual emissions shall equal the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction.

(4) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(5) "Artificially or substantially greater emissions" means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

(6) "Base year emissions" for purposes of Early Reductions only (OAR 340-32-300), means actual emissions in the calendar year 1987 or later.

(7) "Commission" means the Oregon

Environmental Quality Commission.

(8) "Department" means the Department of Environmental Quality.

(9) "Director" means the Director of the Department or Regional authority, and authorized deputies or officers.

(10) "Early Reductions Unit" means a single emission point or group of emissions points defined as a unit for purposes of an alternative emissions limit issued under OAR 340-32-300 through 380.

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

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

(13) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or regional authority, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

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

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that

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- emits air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:
- (A) the group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply, and
- (B) the emissions from the emissions unit are quantifiable.
- (b) Emissions units may be defined on a pollutant by pollutant basis where applicable.
- (c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.
- (d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-28-1930 ~~for~~, OAR 340-28-1940, or OAR 340-28-2270, or for purposes of determining the applicability of a New Source Performance Standard (NSPS).
- (15) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.
- (16) "EPA Conditional Method" means any method of sampling and analyzing for air pollutants which has been validated by the EPA but which has not been published as an EPA reference method.
- (17) "EPA Reference Method" means any method of sampling and analyzing for an air pollutant as described in 40 CFR Part 60, 61, or 63 (July 1, 1993).
- (18) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.
- (19) "Existing source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.
- (20) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.
- (21) "Fugitive emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.
- (22) "Generally Available Control Technology (GACT)" means an alternative emission standard promulgated by EPA for non-major sources of hazardous air pollutants which provides for the use of control technology or management practices which are generally available.
- (23) "Hazardous air pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.
- (24) "High-Risk Pollutant" means any air pollutant listed in Table 2 of OAR 340-32-340 for which exposure to small quantities may cause a high risk of adverse public health effects.
- (25) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air

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- pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.
- (26) "Manufacture" as used in OAR 340-32-240 means to produce, prepare, compound, or import a substance. This includes the coincidental production of a substance as a byproduct or impurity.
- (27) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.
- (28) "Modification" means any physical change in, or change in the method of operation of, a major source that increases the actual emissions of any HAP emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.
- (29) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or the effective date of this Division, whichever is earlier.
- (30) "Not feasible to prescribe or enforce a numerical emission limit" means a situation in which the Department determines that a pollutant or stream of pollutants listed in OAR 340-32-130 cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any state or federal law or regulation; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.
- (31) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.
- (32) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.
- (33) "Process" as used in OAR 340-32-240 means the preparation of a substance, including the intentional incorporation of a substance into a product after its manufacture, for distribution in commerce.
- (34) "Regional authority" means Lane Regional Air Pollution Authority.
- (35) "Regulated Air Pollutant" as used in this Division means:
- (a) any pollutant listed under OAR 340-32-130 or OAR 340-32-5400; or
  - (b) any pollutant that is subject to a standard promulgated pursuant to section 129 of the Act.

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- (36) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, and quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include but are not limited to:
- (a) Emissions from ships and trains coming to or from a facility;
  - (b) Emissions from offsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.
- (37) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.
- (38) "Section 112(b) means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.
- (39) "Section 112(d) means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.
- (40) "Section 112(e) means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.
- (41) "Section 112(n) means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.
- (42) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.
- (43) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.
- (44) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in section 129(g) of the FCAA.
- (45) "Stationary Source"
- (a) as used in OAR 340-32-100 through 340-32-5000 and OAR 340-32-5500 through 340-32-5650 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant.
  - (b) as used in OAR 340-32-5400 means any buildings, structures, equipment, installations, or substance emitting stationary activities:
    - (A) that belong to the same industrial group;
    - (B) that are located on one or more 2contiguous properties;
    - (C) that are under the control of the same person (or persons under common control); and
    - (D) from which an accidental release may occur.
- (46) "Use" as used in OAR 340-32-240 means the consumption of a chemical that does not fall under the definitions of "manufacture" or "process". This may include the use of a chemical as a manufacturing aid, cleaning or degreasing aid, or waste treatment aid.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 18-1993,  
f. & ef. 11-4-93

**List of Hazardous Air Pollutants**  
340-32-130 For purposes of this Division the Commission adopts by reference the pollutants, including groups of substances and mixtures, listed

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**Permit Application Requirements**

Hist.: DEQ 13-1993, f. & ef, 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**340-32-150 through 340-32-200 [Reserved]**

**Applicability**

**340-32-210**

- (1) The provisions of this Division shall apply to any new, modified, or existing source that emits or has the potential to emit any HAP listed in Table 1 of OAR 340-32-130.
- (2) The owner or operator of the following types of sources shall comply with the standards set forth in OAR 340-32-400 through OAR 340-32-5000:
  - (a) any existing major source of HAP;
  - (b) any new major source of HAP that proposes to construct;
  - (c) any existing major source of HAP that proposes a modification;
  - (d) any existing source currently having an Air Contaminant Discharge Permit that becomes a major source of HAP;
  - (e) any existing unpermitted source that becomes a major source of HAP; or
  - (f) any area source of HAP for which a standard has been adopted.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93

**Permit Application**

**340-32-220**

- (1) The owner or operator of a HAP source subject to OAR 340-32-400 through 340-32-4500 or 340-32-5500 through 340-32-5650 shall comply with the appropriate application requirements for construction permits, OAR 340-32-230 and operating permits, OAR 340-32-240.
- (2) Notwithstanding the provisions of OAR Chapter 340, Divisions 28 and 32, no stationary source shall be required to apply for, or operate pursuant to, a federal operating permit issued under OAR 340-28-2100 through 340-28-2320 solely because such source is subject to the provisions of OAR 340-32-5400, Accidental Release Prevention.

[Note: Rules specifying the full procedures and specific requirements for permitting can be found in OAR Chapter 340, Division 28.]

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

**Permit to Construct or Modify**

**340-32-230**

- (1) On or after the effective date of the program no owner or operator shall:
  - (a) construct a new major source that will be subject to the federal operating permit program without obtaining an Air Contaminant Discharge Permit (ACDP) pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 prior to construction;
  - (b) modify any existing major source operating under a federal operating permit without obtaining a preconstruction notice of approval as described in OAR 340-28-2270 prior to modifying;
  - (c) modify any existing source operating under an ACDP which will become a major source after modifying, without obtaining a permit modification pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 prior to modifying;
  - (d) modify any existing source not currently operating under any permit which will become a major source after modifying, without obtaining an ACDP pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 prior to modifying;
  - (e) modify any existing source operating under an ACDP as a synthetic minor pursuant to OAR 340-28-1740 which will become a major source after modifying, without:
    - (A) obtaining a federal operating permit pursuant to OAR 340-28-2100 through 340-28-2320 for those sources proposing to change an enforceable condition in the permit prior to operating as a major source; or
    - (B) obtaining a modified ACDP pursuant to OAR 340-28-1700 through 340-28-17~~9~~70 for those sources proposing to construct or modify any emissions unit prior to construction or modification.
- (2) Prior to the effective date of the program for a major source and at any time for an area source subject to OAR 340-32-5500 through 340-32-5600

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or 340-32-5650, no owner or operator shall:

- (a) construct a new source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 without obtaining an ACDP pursuant to OAR 340-28-1700 through 340-28-179170;
  - (b) modify any existing source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 such that HAP emissions are increased without obtaining a modified ACDP pursuant to OAR 340-28-1700 through 340-28-179170;
  - (c) modify any existing source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 such that HAP emissions are not increased without obtaining a notice of construction approval pursuant to OAR 340-28-800 through 340-28-820.
- (3) All applicants for construction or modification of a major source of HAP shall determine and report to the Department potential emissions of HAP listed in Table 1 (OAR 340-32-130).

**(4) Where an existing federal operating permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.**

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef, 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**Permit to Operate  
340-32-240**

- (1) On and after the effective date of the program or at such earlier date as the Department may establish pursuant to OAR 340-28-2120, no owner or operator shall operate a new, existing, or modified major source of HAP emissions without applying for an operating permit as described below.

- (a) The following types of HAP sources shall, within 12 months after initial startup of the construction or modification, comply with the federal operating permit application procedures of OAR 340-28-2100 through 340-28-2320:
  - (A) new major sources as described in OAR 340-32-230(1)(a);
  - (B) existing sources operating

under an ACDP as described in OAR 340-32-230(1)(c);

- (C) existing sources previously unpermitted as described in OAR 340-32-230(d);
  - (D) existing synthetic minor sources operating under an ACDP as described in OAR 340-32-230(1)(e)(B).
- (b) Any existing major sources as described under OAR 340-32-230(1)(b) shall:
- (A) immediately upon receiving its preconstruction notice of approval, comply with the operating permit procedures described under OAR 340-28-2230 Administrative Amendments, if the source has complied with the enhanced provisions of OAR 340-28-2290 and OAR 340-28-2310;
  - (B) within 12 months of commencing operation comply with the permit application procedures under OAR 340-28-2250 when the modification qualifies as a minor modification or OAR 340-28-2260 when the modification qualifies as a significant modification; or
  - (C) at the time of permit renewal comply with the permit application procedures under OAR 340-28-2220(2) when the modification qualifies as an off permit change or OAR 340-28-2220(3) when the modification qualifies as a "Section 502(b)(10)" change.
- (c) Any synthetic minor source as described in OAR 340-32-230(1)(e)(A) shall, prior to commencing operation, apply for and obtain the required federal operating permit according to the procedures of OAR 340-28-2100 through 340-28-2320.
- (d) Any existing major source shall comply with the federal operating permit application procedures of OAR 340-28-2100 through 340-28-2320 upon becoming subject to the federal operating permit program.
- (2) All ~~major source~~ **federal** operating permit applicants shall include in the application:
- (a) all emissions of HAP listed in Table 1 (OAR 340-32-130) in accordance with OAR 340-28-2120(3) Standard Application Form and Required Information, and OAR

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- 340-28-2120(4) Quantifying Emissions;
- (b) an estimate of the use of additional substances, listed in OAR 340, Chapter 135, Appendix 1 and in OAR 340-32-5400 Table 3, that are manufactured, processed, or used at the facility and that could reasonably be expected to be emitted from the source;
- (A) The estimated annual manufacture, processing, or use of each chemical shall be reported within the following ranges: "Not Present"; "Insignificant Use" (less than 1,000 pounds); "1,001 - 10,000 pounds"; "10,000 - 20,000 pounds"; "20,001 - 50,000 pounds"; and "Over 50,000 pounds".
- (B) The owner or operator shall provide estimates of the usage of these additional chemicals based on readily available information. The owner or operator is not required to estimate the "manufacture" of any chemical from combustion or manufacturing processes for which there are no verifiable emission factors, mass balance calculation methods, or for which no EPA approved testing, sampling, or monitoring method exists. The use of chemicals in the following categories are exempt from quantification:
- (i) aggregate insignificant emissions as defined under OAR 340-28-110(5) and categorically insignificant activities as defined under OAR 340-28-110(15) ~~and~~ ~~insignificant mixture usage as defined under OAR 340-28-110(50)~~;
- (ii) products and fuels for maintaining motor vehicles used onsite; or
- (iii) chemicals used in a manufactured item that are not released under normal circumstances of processing at the facility;
- (C) Nothing in paragraphs (A) or (B) above shall require a source to conduct monitoring or testing solely for the purpose of estimating annual usage of the additional substances.
- (3) Prior to the effective date of the program for a major source and at any time for an area source, no owner or operator shall operate a new, existing, or modified stationary source subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 without first obtaining a permit pursuant to OAR 340-28-1700 through 340-28-1799.70.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & ef. 9-24-93; DEQ 18-1993, f. & ef. 11-4-93

**General Permits**  
**340-32-250**

- (1) The owner or operator of an existing major HAP source that meets all of the following criteria may apply to be covered under the terms and conditions of a general permit for the applicable source category in accordance with OAR 340-28-2170:
- (a) the source is a major source as defined in OAR 340-32-120(25) of the Act only;
- (b) no emissions standard for existing sources, promulgated pursuant to section 112(d) or OAR 340-32-2500, applies to the source; and
- (c) the Department does not consider the source a problem source based on the source's complaint record and compliance history.
- (2) When an emissions limitation applicable to a source with a general permit is promulgated by the EPA pursuant to 112(d), or adopted by the state pursuant to OAR 340-32-500 through OAR 340-32-2500, the source shall:
- (a) immediately comply with the provisions of the applicable emissions standard; and
- (b) apply for an operating permit pursuant to OAR 340-28-2120 within 12 months of promulgation of an applicable emissions standard if 3 or more years are remaining on the general permit term, or at least 12 months prior to permit expiration if less than 3 years remain on the



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**Compliance Extensions for Early Reductions**

~~date.~~  
~~[(4)](5)~~

If a source test is the supporting basis for establishing post-reduction emissions for one or more emission points in the ~~source~~ **Early Reductions Unit**, ~~but the test results are not available by the deadline for submittal of a permit application the owner or operator shall provide the supporting basis no later than 120 days after the applicable deadline for submittal of the permit application~~ the test results shall be submitted by the applicable deadline for submittal of a permit application as specified in section (3) of this rule.

The Department shall review and decide on permit applications for early reductions according to the provisions of OAR 340-28-2100 through 2320 .

~~[(5)](6)~~

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**General Provisions for Compliance Extensions**

**340-32-320**

- (1) The Department shall by permit, issued in accordance with OAR 340-28-2100 through 2320, allow an existing source to meet an alternative emission limitation for an Early Reductions Unit in lieu of an emission limitation promulgated under section 112(d) of the FCAA for a period of six years from the compliance date of the otherwise applicable standard provided the owner or operator demonstrates:
- (a) according to the requirements of OAR 340-32-340 that the ~~source~~ **Early Reductions Unit** has achieved a reduction of at least 90 percent (95 percent or more in the case of HAP that are particulate) in emissions of:
    - (A) total HAP from the ~~source~~ **Early Reductions Unit**; or
    - (B) total HAP from the ~~source~~ **Early Reductions Unit** as adjusted for high-risk pollutant weighing factors (Table 2), if applicable.
  - (b) that such reduction was achieved

**Applicability**

**340-32-300** The requirements of OAR 340-32-300 through OAR 340-32-380 apply to an owner or operator of an existing source who wishes to obtain a compliance extension and an alternative emission limit from a standard issued under section 112(d) of the FCAA. Any owner or operator of a facility who elects to comply with a compliance extension and an alternative emission limit issued under this section must complete a permit application as prescribed in OAR 340-32-310.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Permit Application Procedures for Early Reductions**

**340-32-310**

- (1) To apply for an alternative emission limitation under OAR-340-32-300, an owner or operator of the source shall file a permit application with the Department.
- (2) Except as provided in (3) of this rule, the permit application shall contain a demonstration of early reduction in HAP emissions as prescribed the information required in OAR-340-32-340 and shall comply with additional permit application procedures as prescribed in OAR 340-28-2100 through OAR 340-28-2320.
- (3) Permit applications for Early Reductions shall be submitted ~~prior to the date of proposal of an~~ no later than 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act provided that the reduction was achieved prior to the date of proposal of the standard.
- (4) The post reduction emissions information required under OAR 340-32-340(5)(b), OAR 340-32-340(5)(c), and OAR 340-32-340(5)(e) shall not be filed as part of the source's initial permit application but shall be filed later as a supplement to the application. This supplementary information shall be filed no earlier than one year after the date early reductions had to be achieved according to OAR 340-32-320(1)(b) and no later than 13 months after such

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before the otherwise applicable standard issued under section 112(d) of the FCAA was first proposed.

- (2) A source granted an alternative emission limitation shall comply with an applicable standard issued under section 112(d) of the FCAA immediately upon expiration of the six year compliance extension period specified in section (1) of this rule.
- (3) For each facility issued a permit under section (1) of this rule, there shall be established as part of the permit an enforceable alternative emission limitation for HAP for each Early Reductions Unit reflecting the reduction that qualified the Early Reductions Unit for the alternative emission limitation.
- (4) Any source that has received an alternative emissions limit from EPA, either pursuant to 40 CFR 63.75 **Enforceable Commitments** dated December 29, 1992, or as a Title V specialty permit, shall have the alternative emission limit(s) incorporated as an applicable requirement in its operating permit pursuant to OAR 340-28-2230 upon permit issuance or renewal.
- (5) If a source fails to submit a timely and complete application according to OAR 340-28-2120, or does not adequately demonstrate the required reductions in emissions pursuant to OAR 340-32-340, the Department shall not approve the source's application for a compliance extension and alternative emission limit, and the source is required to comply with any applicable emission standard established pursuant to 112(d) of the FCAA by the compliance date prescribed in the applicable standard.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Determination of Early Reductions Unit  
340-32-330**

An alternative emission limitation may be granted under this section to an existing Early Reductions Unit as defined below provided that ~~{the source achieves the}~~ a 90 percent (or 95% in the case of particulate emissions) reduction in base year HAP emissions is achieved. For the purposes of compliance extensions for early reductions only, an "Early

Reductions Unit" includes any of the following:

- (1) a building structure, facility, or installation identified as a source under any proposed or promulgated standard issued under 112(d) of the FCAA;
- (2) all portions of an entire contiguous plant site under common ownership or control that emit hazardous air pollutants;
- (3) any portion of an entire contiguous plant site under common ownership or control that emits HAP and can be identified as a facility, building, structure, or installation for the purposes of establishing standards under section 112(d) of the FCAA; or
- (4) any individual emission point or combination of emission points within a contiguous plant site under common control, provided that the base year emissions of HAP from such point or aggregation of points is at least 10 tons per year where the total base year emissions of HAP from the entire contiguous plant site is greater than 25 tons, or at least 5 tons per year where the total base year emissions of HAP from the entire contiguous plant site is equal to or less than 25 tons.

Stat. Auth.: ORS 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Demonstration of Early Reduction  
340-32-340**

- (1) For purposes of determining emissions for Early Reductions, "Actual emissions" means the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction. Actual emissions shall be calculated using the source's actual operating rates, and types of materials processed, stored, or combusted during the selected time period.
- (2) An owner or operator applying for an alternative emission limitation shall demonstrate achieving early reductions as required by OAR 340-32-320(1) by following the procedures in this rule.
- (3) An owner or operator shall establish the Early Reductions Unit for the purposes of a compliance extension and alternative emission limit by documenting the following

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information:

- (a) a description of the Early Reductions Unit including a site plan of the entire contiguous plant site under common control that contains the Early Reductions Unit, markings on the site plan locating the parts of the site that constitute the Early Reductions Unit, and the activity at the Early Reductions Unit that causes HAP emissions;
- (b) a complete list of all emission points of HAP in the Early Reductions Unit, including identification numbers and short descriptive titles; and
- (c) a statement showing that the Early Reductions Unit conforms to one of the allowable definition options from OAR 340-32-330. For an Early Reductions Unit conforming to the option in OAR 340-32-330(4), the total base year emissions from the Early Reductions Unit, as determined pursuant to this section, shall be demonstrated to be at least:
  - (A) 5 tons per year, for cases in which total HAP emissions from the entire contiguous plant site under common control are 25 tons per year or less as required under section (12) of this rule; or
  - (B) 10 tons per year in all other cases.
- (4) An owner or operator shall establish base year emissions for the Early Reductions Unit by providing the following information:
  - (a) the base year chosen, where the base year shall be 1987 or later;
  - (b) the best available data accounting for actual emissions, during the base year, of all HAP from each emission point listed in the Early Reductions Unit in subsection (3)(b) of this rule;
  - (c) the supporting basis for each emission number provided in subsection (4)(b) of this rule including:
    - (A) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, a discussion of the validity of the method for measuring the subject emissions, and evidence that the testing was conducted in accordance with the Department's Source Sampling Manual or Continuous Monitoring Manual; and
    - (B) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used; and
  - (d) Evidence that the emissions provided under section (4)(b) of this rule are not artificially or substantially greater than emissions in other years prior to implementation of emission reduction measures.
- (5) An owner or operator shall establish post-reduction emissions by providing the following information:
  - (a) For the emission points listed in the Early Reductions Unit in subsection (3)(b) of this rule a description of all control measures employed to achieve the emission reduction required by OAR 340-32-320(1)(a);
  - (b) ~~the best available data on an annual basis accounting for actual emissions, after the base year and following employment of emission reduction measures,~~ The best available data accounting for actual emissions, during the year following the applicable emission reduction deadline as specified in OAR 340-32-320(1)(b), of all HAP from each emission point in the Early Reductions Unit listed in subsection (3)(b) of this rule;
  - (c) The supporting basis for each emission number provided in subsection (5)(b) of this rule including:
    - (A) For test results submitted as the supporting basis, a description of the test protocol followed, any problems encountered during the testing, a discussion of the validity of the method for measuring the subject emissions, and evidence that the testing was conducted in accordance with the Department's Source Sampling

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Manual or Continuous Monitoring Manual; and  
 (B) For calculations based on emission factors, material balance, or engineering principles and submitted as the supporting basis, a step-by-step description of the calculations, including assumptions used and their bases, and a brief rationale for the validity of the calculation method used;  
~~[(d) Evidence that all emission reductions used for the early reductions demonstration were achieved prior to proposal of an applicable standard issued under section 112(d) of the FCAA.]~~

~~[(e)]~~ (d) Evidence that there was no increase in radionuclide emissions from the source.

- (6) (a) An owner or operator shall demonstrate that both total base year emissions and total base year emissions adjusted for high-risk pollutants (Table 2), as applicable, have been reduced by at least 90 percent for gaseous HAP emitted and 95 percent for particulate HAP emitted by determining the following for gaseous and particulate emissions separately:
- (A) Total base year emissions, calculated by summing all base year emission data from subsection (4) (b) of this rule;
  - (B) Total post-reduction emissions, calculated by summing all post-reduction emission data from subsection (5) (b) of this rule;
  - (C) Total base year emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a pollutant from subsection (4) (b) of this rule by the appropriate weighing factor for the pollutant from Table 2 and then summing all weighted emission data; and
  - (D) Total post-reduction emissions adjusted for high-risk pollutants, calculated by multiplying each emission number for a

pollutant from subsection (5) (b) of this rule by the appropriate weighing factor for the pollutant from Table 2 and then summing all weighted emission data.

- (E) Percent reductions, calculated by dividing the difference between base year and post-reduction emissions by the base year emissions. Separate demonstrations are required for total gaseous and particulate emissions, and total gaseous and particulate emissions adjusted for high-risk pollutants.

(b) If any points in the ~~source~~ Early Reductions Unit emit both particulate and gaseous pollutants, as an alternative to the demonstration required in subsection (6) (a) of this rule, an owner or operator may demonstrate:

- (A) A weighted average percent reduction for all points emitting both particulate and gaseous pollutants where the weighted average percent reduction is determined by

$$\%_w = \frac{0.9 (\sum M_g) + 0.95 (\sum M_p)}{\sum M_g + \sum M_p}$$

where  $\%_w$  = the required weighted percent reduction  
 $\sum M_g$  = the total mass rate (eg., kg/yr) of all gaseous emissions  
 $\sum M_p$  = the total mass rate of all particulate emissions; and

- (B) The reductions required in subsection (6) (a) of this rule for all other points in each Early Reductions Unit.

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**Table 2**  
**List of Early Reductions High-Risk Pollutants**  
(OAR 340-32-340)

<u>CAS Number</u>	<u>Chemical Name</u>	<u>Weighing Factor</u>
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
79107	Acrylic acid	10
107131	Acrylonitrile	10
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
107302	Chloromethyl methyl ether	10
334883	Diazomethane	10
132649	Dibenzofurans	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100
77474	Hexachlorocyclopentadiene	<del>100</del> 10
302012	Hydrazine	100
101688	Methylene diphenyl diisocyanate (MDI)	10
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10
0	Arsenic compounds	100
0	Beryllium compounds	10
0	Cadmium compounds	10
0	Chromium compounds	100
0	Coke oven emissions	10
0	Manganese compounds	10
0	Mercury compounds	100
0	Nickel compounds	10

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- (7) If lower rates or hours are used to achieve all or part of the emission reduction, any HAP emissions that occur from a compensating increase in rates or hours from the same activity elsewhere within the plant site that contains the Early Reductions Unit shall be counted in the post-reduction emissions from the Early Reductions Unit. If emission reductions are achieved by shutting down process equipment and the shutdown equipment is restarted or replaced anywhere within the plant site, any hazardous air pollutant emissions from the restarted or replacement equipment shall be counted in the post-reduction emissions for the Early Reductions Unit.
- (8) The best available data representing actual emissions for the purpose of establishing base year or post-reduction emissions under this rule shall consist of documented results from source tests using an EPA Reference Method, EPA Conditional Method, or the owner's or operator's source test method that has been validated pursuant to Method 301 of 40 CFR Chapter I Part 63 Appendix A, dated June 1992. However, if one of the following conditions exists, an owner or operator may submit, in lieu of results from source tests, calculations based on engineering principles, emission factors, or material balance data as actual emission data for establishing base year or post-reduction emissions:
- (a) no applicable EPA Reference Method, EPA Conditional Method, or other source test method exists;
  - (b) it is not technologically or economically feasible to perform source tests;
  - (c) it can be demonstrated to the satisfaction of the Department that the calculations will provide emission estimates of accuracy comparable to that of any applicable source test method;
  - (d) for base year emission estimates only, the base year conditions no longer exist at an emission point in the Early Reductions unit and emission data could not be produced for such an emission point, by performing source tests under currently existing conditions and converting the test results to reflect base year conditions, that is more accurate than an estimate produced by using engineering principles, emission factors, or a material balance; or
- (e) the emissions from one or a set of emission points in the Early Reductions Unit are small compared to total Early Reductions Unit emissions and potential errors in establishing emissions from such points will not have a significant effect on the accuracy of total emissions established for the Early Reductions Unit.
- (9) For base year or post-reduction emissions established under this rule that are not supported by source test data, the source owner or operator shall include the reason source testing was not performed.
- ~~+(10)~~ ~~In cases where emission control measures have been employed less than a year prior to demonstrating emission reductions under this rule, an owner or operator shall extrapolate post reduction emission rate data to an annual basis and shall describe the extrapolation method as part of the supporting basis required under section (5) of this rule.~~
- ~~+(11)~~ (10) The EPA average emission factors for equipment leaks cannot be used under this subpart to establish base year emissions for equipment leak Early Reductions Units, unless the base year emission number calculated using the EPA average emission factors for equipment leaks also is used as the post-reduction emission number for equipment leaks from the Early Reductions Unit.
- ~~+(12)~~ (11) A source owner or operator shall not establish base year or post-reduction emissions that include any emissions from the Early Reductions Unit exceeding allowable emission levels specified in any applicable law, regulation, or permit condition.
- ~~+(13)~~ (12) For Early Reductions Units subject to paragraph (3)(c)(A) of this rule, an owner or operator shall

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document total base year emissions from an entire contiguous plant site under common control by providing the following information for all HAP from all emission points in the contiguous plant site under common control:

- (a) a complete list of all emission points of HAP;
- (b) the best available data accounting for all HAP emissions during the base year from each HAP emission point;
- (c) total base year emissions calculated by summing all base year emissions data from (b) of this section.

~~+(14)+~~(13) If a new pollutant is added to the list of HAP or high-risk pollutants, any source emitting such pollutant will not be required to revise an early reduction demonstration pursuant to this rule if alternative emission limits have previously been specified by permit for the Early Reductions Unit as provided for in OAR 340-32-320(1).

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: f. & cert. ef. 9-24-93

**Review of Base Year Emissions  
340-32-350**

- (1) Pursuant to the procedures of this rule, the Department shall review and approve or disapprove base year emissions data submitted in a permit application from an applicant that wishes to participate in the early reduction program. A copy of the permit application shall also be submitted to the EPA Region 10 Office.
- (2) Within 30 days of receipt of base year emission data, the Department shall advise the applicant that:
  - (a) The base year emission data are complete as submitted; or
  - (b) The base year emission data are not complete and include a list of deficiencies that must be corrected before review can proceed.
- (3) Within 60 days of a determination that a base year emission data submission is complete, the

Department shall evaluate the adequacy of the submission with respect to the requirements of OAR 340-32-340(2) through (4) and either:

- (a) Propose to approve the submission and publish a notice in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice, providing the aggregate base year emission data for the source and the rationale for the proposed approval, noting the availability of the nonconfidential information contained in the submission for public inspection in at least one location in the community in which the source is located, providing for a public hearing upon request by at least 10 interested persons, and establishing a 30 day public comment period that can be extended to 60 days upon request by at least 10 interested persons; or

- (b) Propose to disapprove the base year emission data and give notice to the applicant of the reasons for the disapproval. An applicant may correct disapproved base year data and submit revised data for review in accordance with this subsection, except that the review of a revision shall be accomplished within 30 days.

- (4) If no adverse public comments are received by the reviewing agency on proposed base year data for a source, the data shall be considered approved at the close of the public comment period and a notice of the approval shall be sent to the applicant and published by the reviewing agency by advertisement in the area affected.
- (5) If adverse public comments are received and the Department agrees that corrections are needed, the Department shall give notice to the applicant of the disapproval and reasons for the disapproval. An applicant may correct disapproved base year emission data and submit revised emission data. If a revision is submitted by the applicant that, to the satisfaction of the Department, takes into account the adverse comments, the Department will publish by advertisement in the area affected a notice containing the approved base year emission data for

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the source and send notice of the approval to the applicant.

- (6) If adverse public comments are received and the Department determines that the comments do not warrant changes to the base year emission data, the Department will publish by advertisement in the area affected a notice containing the approved base year emission data for the source and the reasons for not accepting the adverse comments. A notice of the approval also shall be sent to the applicant.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: f. & cert. ef. 9-24-93

**Early Reduction Demonstration Evaluation**  
**340-32-360**

- (1) The Department will evaluate an early reduction demonstration submitted by the ~~{source}~~ owner or operator in a permit application with respect to the requirements of OAR 340-32-340.
- (2) An application for a compliance extension may be denied if, in the judgement of the Department, the owner or operator has failed to demonstrate that the requirements of OAR 340-32-340 have been met. Specific reasons for denial include, but are not limited to:
- (a) The information supplied by the owner or operator is incomplete;
  - (b) The required 90 percent reduction (95 percent in cases where the HAP is particulate matter) has not been demonstrated;
  - (c) The base year or post-reduction emissions are incorrect, based on methods or assumptions that are not valid, or not sufficiently reliable or well documented to determine with reasonable certainty that required reductions have been achieved; or
  - (d) The emission of HAP or the performance of emission control measures is unreliable so as to preclude determination that the required reductions have been achieved or will continue to be achieved during the extension period.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: f. & cert. ef. 9-24-93

**Approval of Applications**  
**340-32-370**

- (1) If an early reduction demonstration is approved and other requirements for a complete permit application are met, the Department shall establish by a permit issued pursuant to OAR 340-28-2100 through 2320, enforceable alternative emissions limitations for each Early Reductions Unit reflecting the reduction which qualified the Early Reductions Unit for the extension. However, if it is not feasible to prescribe a numerical emissions limitation for one or more emission points in the Early Reductions Unit, the Department shall establish such other requirements, reflecting the reduction which qualified the Early Reductions Unit for an extension, in order to assure ~~{the source achieves}~~ **that** the 90 percent or 95 percent reduction, as applicable, **is achieved**.
- (2) An alternative emissions limitation or other requirement prescribed pursuant to section (1) of this rule shall be effective and enforceable immediately upon issuance of the permit for the source and shall expire exactly six years after the compliance date of an otherwise applicable standard issued pursuant to section 112(d) of the Act.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**Rules for Special Situations**  
**340-32-380**

- (1) If more than one standard issued under section 112(d) of the FCAA would be applicable to an Early Reductions Unit as defined under OAR 340-32-330, then the date of proposal referred to in OAR 340-32-310(3), OAR 340-32-320(1)(b), and OAR 340-32-340(5)(d), is the date the first applicable standard is proposed.
- (2) Sources emitting radionuclides are not required to reduce radionuclides by 90(95) percent. Radionuclides may not be increased from the source as a result of the early reductions demonstration.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93



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- prevention techniques, alternative technology, process changes, or other options, as well as emissions control technologies. In some cases GACT may be identical to MACT for major HAP sources in the same source category.
- (b) Any person who proposes to operate an area source after a GACT standard has been promulgated by EPA shall comply with the applicable GACT requirements.
- (c) Any person who proposes to operate an area source after the Commission has adopted an emissions limitation, shall comply with the applicable requirements.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**340-32-5010 through 340-32-5390 [Reserved]**

**Accidental Release Prevention**

**340-32-5400**

- (1) List. For purposes of this rule the Commission adopts by reference the List of Regulated Substances and Thresholds for Accidental Release Prevention 40 CFR Part 68 ~~proposed January 19, 1993~~ dated January 31, 1994 which includes the Department of Transportation Division 1.1 Explosive Substances List (49 CFR 172.101).  
(Table 3)

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

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**Table 3**  
**List of Regulated Toxic and Flammable Substances**  
**For Purposes of Accidental Release Prevention**  
**(OAR 340-32-5400)**

[Part A - Regulated Toxic Substances

<u>CAS Number</u>	<u>Chemical Name</u>	<u>Threshold Quantity (lbs)</u>
75865	Acetone cyanohydrin	5000
107028	Aerolein	1000
107131	Acrylonitrile	10000
814686	Acrylyl chloride	1000
107186	Allyl alcohol	5000
107119	Allylamine	1000
7664417	Ammonia (anhydrous)	1000
7664417	Ammonia (aqueous sol'n, conc. >20%)	5000
62533	Aniline	5000
7783702	Antimony pentafluoride	1000
7784341	Arsenous trichloride	5000
7784421	Arsine	500
98873	Benzal chloride	1000
98168	Benzenamine,3 (trifluoromethyl )	1000
98077	Benzotrichloride	500
100447	Benzyl chloride	1000
140294	Benzyl cyanide	1000
10294345	Boron trichloride	1000
7637072	Boron trifluoride	1000
353424	Boron trifluoride with methyl ether (1:1)	5000
7726956	Bromine	1000
75150	Carbon disulfide	10000
7782505	Chlorine	1000
10049044	Chlorine dioxide	500
107073	Chloroethanol	1000
67663	Chloroform	10000
542881	Chloromethyl ether	500
107302	Chloromethyl methyl ether	1000
4170303	Crotonaldehyde	10000
123739	Crotonaldehyde,(E)	10000
506774	Cyanogen chloride	1000
108918	Cyclohexylamine	5000
19287457	Diborane	500
110576	Trans 1,4 dichlorobutene	1000
111444	Dichloroethyl ether	10000
75785	Dimethyldichlorosilane	1000
57147	Dimethylhydrazine	5000
2524030	Dimethyl phosphorochloridothioate	1000
106898	Epichlorohydrin	10000
107153	Ethylenediamine	10000
151564	Ethyleneimine	1000
75218	Ethylene oxide	5000
7782414	Fluorine	500

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<u>CAS Number</u>	<u>Chemical Name</u>	<u>Threshold Quantity (lbs)</u>
50000	Formaldehyde	500
107164	Formaldehyde cyanohydrin	5000
110009	Furan	1000
302012	Hydrazine	5000
7647010	Hydrochloric acid (sol'n, conc. $\geq 25\%$ )	5000
74908	Hydrocyanic acid	500
7647010	Hydrogen chloride (anhydrous)	1000
7664393	Hydrogen fluoride	500
7722841	Hydrogen peroxide (conc. $> 52\%$ )	5000
7783075	Hydrogen selenide	500
7783064	Hydrogen sulfide	1000
13463406	Iron, pentacarbonyl	500
78820	Isobutyronitrile	10000
108236	Isopropyl chloroformate	5000
78977	Lactonitrile	5000
126987	Methacrylonitrile	1000
74839	Methyl bromide	5000
74873	Methyl chloride	10000
79221	Methyl chloroformate	1000
60344	Methyl hydrazine	5000
624839	Methyl isocyanate	1000
74931	Methyl mercaptan	1000
556649	Methyl thiocyanate	10000
75796	Methyltrichlorosilane	1000
13463393	Nickel carbonyl	500
7697372	Nitric acid	5000
10102439	Nitric oxide	1000
98953	Nitrobenzene	10000
56382	Parathion	1000
79210	Peracetic acid	1000
594423	Perchloromethylmercaptan	1000
108952	Phenol	10000
75445	Phosgene	500
7803512	Phosphine	1000
10025873	Phosphorus oxychloride	1000
7719122	Phosphorus trichloride	5000
110894	Piperidine	5000
107120	Propionitrile	1000
109615	Propyl chloroformate	5000
75558	Propyleneimine	10000
75569	Propylene oxide	10000
140761	Pyridine, 2 methyl 5 vinyl	1000
7446095	Sulfur dioxide	1000
664939	Sulfuric acid	5000
7783600	Sulfur tetrafluoride	1000
7446119	Sulfur trioxide	1000
75741	Tetramethyllead	1000
509148	Tetranitromethane	1000
108985	Thiophenol	1000
7550450	Titanium tetrachloride	500

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<u>CAS Number</u>	<u>Chemical Name</u>	<u>Threshold Quantity (lbs)</u>
584849	Toluene 2,4 diisocyanate	1000
91087	Toluene 2,6 diisocyanate	1000
26471625	Toluene diisocyanate (unspecified isomer)	1000
15219	Trichloroethylsilane	1000
75774	Trimethylchlorosilane	1000
108054	Vinyl acetate monomer	5000
75014	Vinyl chloride	10000

Part B - Regulated Flammable Substances

75070	Acetaldehyde	10000
74862	Acetylene	10000
598732	Bromotrifluorethylene	10000
25167673	Butene	10000
106978	Butane	10000
106989	1 Butane	10000
107017	2 Butene	10000
106990	1,3 Butadiene	10000
590181	2 Butene cis	10000
624646	2 Butene trans	10000
463581	Carbon oxysulfide	10000
557982	2 Chloropropylene	10000
590216	1 Chloropropylene	10000
7791211	Chlorine monoxide	10000
460195	Cyanogen	10000
75194	Cyclopropane	10000
4109960	Dichlorosilane	10000
75376	Difluoroethane	10000
124403	Dimethylamine	10000
463821	2,2 Dimethylpropane	10000
74840	Ethane	10000
74851	Ethylene	10000
75047	Ethylamine	10000
107006	Ethyl acetylene	10000
60297	Ethyl ether	10000
75003	Ethyl chloride	10000
75081	Ethyl mercaptan	10000
109955	Ethyl nitrite	10000
1333740	Hydrogen	10000
75285	Isobutane	10000
78784	Isopentane	10000
78795	Isoprene	10000
75296	Isopropyl chloride	10000
75310	Isopropylamine	10000
4828	Methane	10000
107313	Methyl formate	10000
115106	Methyl ether	10000
563451	3 Methyl 1 butene	10000

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<u>CAS Number</u>	<u>Chemical Name</u>	<u>Threshold Quantity (lbs)</u>
563462	2 Methyl 1 butene	10000
115117	2 Methylpropene	10000
174895	Methylamine	10000
504609	1,3 Pentadiene	10000
109660	Pentane	10000
109671	1 Pentene	10000
627203	2 Pentene(Z)	10000
646048	2 Pentene,(E)	10000
74986	Propane	10000
463490	Propadiene	10000
115071	Propylene	10000
7803625	Silane	10000
116143	Tetrafluoroethylene	10000
75763	Tetramethylsilane	10000
10025782	Trichlorosilane	10000
79389	Trifluorochloroethylene	10000
75503	Trimethylamine	10000
75025	Vinyl fluoride	10000
107255	Vinyl methyl ether	10000
75354	Vinylidene chloride	10000
75387	Vinylidene fluoride	10000
109922	Vinyl ethyl ether	10000
689974	Vinyl acetylene	10000

**Part A - Regulated Toxic Substances**

<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Acrolein [2-Propenal]</u>	<u>107-02-8</u>	<u>5,000</u>
<u>Acrylonitrile [2-Propenenitrile]</u>	<u>107-13-1</u>	<u>20,000</u>
<u>Acrylyl chloride [2-Propenoyl chloride]</u>	<u>814-68-6</u>	<u>5,000</u>
<u>Allyl alcohol [2-Propen-1-ol]</u>	<u>107-18-6</u>	<u>15,000</u>
<u>Allylamine [2-Propen-1-amine]</u>	<u>107-11-9</u>	<u>10,000</u>
<u>Ammonia (anhydrous)</u>	<u>7664-41-7</u>	<u>10,000</u>
<u>Ammonia (conc 20% or greater)</u>	<u>7664-41-7</u>	<u>20,000</u>
<u>Arsenous trichloride</u>	<u>7784-34-1</u>	<u>15,000</u>
<u>Arsine</u>	<u>7784-42-1</u>	<u>1,000</u>
<u>Boron trichloride [Borane, trichloro-]</u>	<u>10294-34-5</u>	<u>5,000</u>
<u>Boron trifluoride [Borane, trifluoro-]</u>	<u>7637-07-2</u>	<u>5,000</u>
<u>Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[metane]]-T-4-</u>	<u>353-42-4</u>	<u>15,000</u>
<u>Bromine</u>	<u>7726-95-6</u>	<u>10,000</u>

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<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Carbendisulfide</u>	<u>75-15-0</u>	<u>20,000</u>
<u>Chlorine</u>	<u>7782-50-5</u>	<u>2,500</u>
<u>Chlorine dioxide [Chlorine oxide (ClO<sub>2</sub>)]</u>	<u>10049-04-4</u>	<u>1,000</u>
<u>Chloroform [Methane, trichloro-]</u>	<u>67-66-3</u>	<u>20,000</u>
<u>Chloromethylether [Methane, oxybis[chloro-]</u>	<u>542-88-1</u>	<u>1,000</u>
<u>Chloromethylmethyl ether [Methane, chloromethoxy-]</u>	<u>107-30-2</u>	<u>5,000</u>
<u>Crotonaldehyde [2-Butenal]</u>	<u>4170-30-3</u>	<u>20,000</u>
<u>Crotonaldehyde, (E)- [2-Butenal, (E)-]</u>	<u>123-73-9</u>	<u>20,000</u>
<u>Cyanogen chloride</u>	<u>506-77-4</u>	<u>10,000</u>
<u>Cyclohexylamine [Cyclohexanamine]</u>	<u>108-91-8</u>	<u>15,000</u>
<u>Diborane</u>	<u>19287-45-7</u>	<u>2,500</u>
<u>Dimethyldichlorosilane [Silane, dichlorodimethyl-]</u>	<u>75-78-5</u>	<u>5,000</u>
<u>1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]</u>	<u>57-14-7</u>	<u>15,000</u>
<u>Epichlorohydrin [Oxirane, (chloromethyl)-]</u>	<u>106-89-8</u>	<u>20,000</u>
<u>Ethylenediamine [1,2-Ethanediamine]</u>	<u>107-15-3</u>	<u>20,000</u>
<u>Ethyleneimine [Aziridine]</u>	<u>151-56-4</u>	<u>10,000</u>
<u>Ethylene oxide [Oxirane]</u>	<u>75-21-8</u>	<u>10,000</u>
<u>Fluorine</u>	<u>7782-41-4</u>	<u>1,000</u>
<u>Formaldehyde(solution)</u>	<u>50-00-0</u>	<u>15,000</u>
<u>Furan</u>	<u>110-00-9</u>	<u>5,000</u>
<u>Hydrazine</u>	<u>302-01-2</u>	<u>15,000</u>
<u>Hydrochloric acid (conc 30% or greater)</u>	<u>7647-01-0</u>	<u>15,000</u>
<u>Hydrocyanic acid</u>	<u>74-90-8</u>	<u>2,500</u>
<u>Hydrogen chloride (anhydrous) [Hydrochloric acid]</u>	<u>7647-01-0</u>	<u>5,000</u>
<u>Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]</u>	<u>7664-39-3</u>	<u>1,000</u>
<u>Hydrogen selenide</u>	<u>7783-07-5</u>	<u>500</u>
<u>Hydrogen sulfide</u>	<u>7783-06-4</u>	<u>10,000</u>
<u>Iron, pentacarbonyl- [Iron carbonyl(Fe(CO)<sub>5</sub>), (TB-5-11)-]</u>	<u>13463-40-6</u>	<u>2,500</u>

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<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Isobutyronitrile [Propanenitrile,2-methyl-]</u>	<u>78-82-0</u>	<u>20,000</u>
<u>Isopropyl chloroformate [Carbonochloridicacid, 1-methylethylester]</u>	<u>108-23-6</u>	<u>15,000</u>
<u>Methacrylonitrile [2-Propenenitrile,2-methyl-]</u>	<u>126-98-7</u>	<u>10,000</u>
<u>Methyl chloride [Methane, chloro-]</u>	<u>74-87-3</u>	<u>10,000</u>
<u>Methyl chloroformate [Carbonochloridicacid, methylester]</u>	<u>79-22-1</u>	<u>5,000</u>
<u>Methyl hydrazine [Hydrazine, methyl-]</u>	<u>60-34-4</u>	<u>15,000</u>
<u>Methyl isocyanate [Methane, isocyanato-]</u>	<u>624-83-9</u>	<u>10,000</u>
<u>Methyl mercaptan [Methanethiol]</u>	<u>74-93-1</u>	<u>10,000</u>
<u>Methyl thiocyanate [Thiocyanic acid, methyl ester]</u>	<u>556-64-9</u>	<u>20,000</u>
<u>Methyltrichlorosilane [Silane, trichloromethyl-]</u>	<u>75-79-6</u>	<u>5,000</u>
<u>Nickel carbonyl</u>	<u>13463-39-3</u>	<u>1,000</u>
<u>Nitric acid (conc 80% or greater)</u>	<u>7697-37-2</u>	<u>15,000</u>
<u>Nitric oxide [Nitrogen oxide (NO)]</u>	<u>10102-43-9</u>	<u>10,000</u>
<u>Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]<sup>1</sup></u>	<u>8014-95-7</u>	<u>10,000</u>
<u>Peracetic acid [Ethaneperoxoic acid]</u>	<u>79-21-0</u>	<u>10,000</u>
<u>Perchloromethylmercaptan [Methanesulfonylchloride, trichloro-]</u>	<u>594-42-3</u>	<u>10,000</u>
<u>Phosgene [Carbonicdichloride]</u>	<u>75-44-5</u>	<u>500</u>
<u>Phosphine</u>	<u>7803-51-2</u>	<u>5,000</u>
<u>Phosphorusoxychloride [Phosphorylchloride]</u>	<u>10025-87-3</u>	<u>5,000</u>
<u>Phosphorustrichloride [Phosphoroustrichloride]</u>	<u>7719-12-2</u>	<u>15,000</u>
<u>Piperidine</u>	<u>110-89-4</u>	<u>15,000</u>
<u>Propionitrile [Propanenitrile]</u>	<u>107-12-0</u>	<u>10,000</u>
<u>Propyl chloroformate [Carbonochloridicacid, propylester]</u>	<u>109-61-5</u>	<u>15,000</u>
<u>Propyleneimine [Aziridine, 2-methyl-]</u>	<u>75-55-8</u>	<u>10,000</u>
<u>Propylene oxide [Oxirane, methyl-]</u>	<u>75-56-9</u>	<u>10,000</u>
<u>Sulfur dioxide (anhydrous)</u>	<u>7446-09-5</u>	<u>5,000</u>

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<u>Chemical Name</u>	<u>CAS No</u>	<u>Threshold Quantity (lbs)</u>
<u>Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-]</u>	<u>7783-60-0</u>	<u>2,500</u>
<u>Sulfur trioxide</u>	<u>7446-11-9</u>	<u>10,000</u>
<u>Tetramethyllead [Plumbane, tetramethyl-]</u>	<u>75-74-1</u>	<u>10,000</u>
<u>Tetranitromethane [Methane, tetranitro-]</u>	<u>509-14-8</u>	<u>10,000</u>
<u>Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-]</u>	<u>7550-45-0</u>	<u>2,500</u>
<u>Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]<sup>1</sup></u>	<u>584-84-9</u>	<u>10,000</u>
<u>Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]<sup>1</sup></u>	<u>91-08-7</u>	<u>10,000</u>
<u>Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-]<sup>1</sup></u>	<u>26471-62-5</u>	<u>10,000</u>
<u>Trimethylchlorosilane [Silane, chlorotrimethyl-]</u>	<u>75-77-4</u>	<u>10,000</u>
<u>Vinyl acetate monomer [Acetic acid ethenyl ester]</u>	<u>108-05-4</u>	<u>15,000</u>

<sup>1</sup>The mixture exemption in 40 CFR Part 68.115(b)(1) does not apply to the substance.



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**Part B - Regulated Flammable Substances**

<u>Chemical Name</u>	<u>CAS No.</u>	<u>Threshold Quantity (lbs)</u>
<u>Acetaldehyde</u>	<u>75-07-0</u>	<u>10,000</u>
<u>Acetylene [Ethyne]</u>	<u>74-86-2</u>	<u>10,000</u>
<u>Bromotrifluorethylene [Ethene, bromotrifluoro-]</u>	<u>598-73-2</u>	<u>10,000</u>
<u>1,3-Butadiene</u>	<u>106-99-0</u>	<u>10,000</u>
<u>Butane</u>	<u>106-97-8</u>	<u>10,000</u>
<u>1-Butene</u>	<u>106-98-9</u>	<u>10,000</u>
<u>2-Butene</u>	<u>107-01-7</u>	<u>10,000</u>
<u>Butene</u>	<u>25167-67-3</u>	<u>10,000</u>
<u>2-Butene-cis</u>	<u>590-18-1</u>	<u>10,000</u>
<u>2-Butene-trans [2-Butene, (E)]</u>	<u>624-64-6</u>	<u>10,000</u>
<u>Carbonoxysulfide [Carbonoxide sulfide (COS)]</u>	<u>463-58-1</u>	<u>10,000</u>
<u>Chlorine monoxide [Chlorine oxide]</u>	<u>7791-21-1</u>	<u>10,000</u>
<u>2-Chloropropylene [1-Propene, 2-chloro-]</u>	<u>557-98-2</u>	<u>10,000</u>
<u>1-Chloropropylene [1-Propene, 1-chloro-]</u>	<u>590-21-6</u>	<u>10,000</u>
<u>Cyanogen [Ethanedinitrile]</u>	<u>460-19-5</u>	<u>10,000</u>
<u>Cyclopropane</u>	<u>75-19-4</u>	<u>10,000</u>
<u>Dichlorosilane [Silane, dichloro-]</u>	<u>4109-96-0</u>	<u>10,000</u>
<u>Difluoroethane [Ethane, 1,1-difluoro-]</u>	<u>75-37-6</u>	<u>10,000</u>
<u>Dimethylamine [Methanamine, N-methyl-]</u>	<u>124-40-3</u>	<u>10,000</u>
<u>2,2-Dimethylpropane [Propane, 2,2-dimethyl-]</u>	<u>463-82-1</u>	<u>10,000</u>
<u>Ethane</u>	<u>74-84-0</u>	<u>10,000</u>
<u>Ethyl acetylene [1-Butyne]</u>	<u>107-00-6</u>	<u>10,000</u>
<u>Ethylamine [Ethanamine]</u>	<u>75-04-7</u>	<u>10,000</u>
<u>Ethyl chloride [Ethane, chloro-]</u>	<u>75-00-3</u>	<u>10,000</u>
<u>Ethylene [Ethene]</u>	<u>74-85-1</u>	<u>10,000</u>
<u>Ethyl ether [Ethane, 1,1'-oxybis-]</u>	<u>60-29-7</u>	<u>10,000</u>
<u>Ethyl mercaptan [Ethanethiol]</u>	<u>75-08-1</u>	<u>10,000</u>
<u>Ethyl nitrite [Nitrous acid, ethyl ester]</u>	<u>109-95-5</u>	<u>10,000</u>

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<u>Chemical Name</u>	<u>CAS No.</u>	<u>Threshold Quantity (lbs)</u>
<u>Hydrogen</u>	<u>1333-74-0</u>	<u>10,000</u>
<u>Isobutane [Propane, 2-methyl]</u>	<u>75-28-5</u>	<u>10,000</u>
<u>Isopentane [Butane, 2-methyl-]</u>	<u>78-78-4</u>	<u>10,000</u>
<u>Isoprene [1,3-Butadiene, 2-methyl-]</u>	<u>78-79-5</u>	<u>10,000</u>
<u>Isopropylamine [2-Propanamine]</u>	<u>75-31-0</u>	<u>10,000</u>
<u>Isopropyl chloride [Propane, 2-chloro-]</u>	<u>75-29-6</u>	<u>10,000</u>
<u>Methane</u>	<u>74-82-8</u>	<u>10,000</u>
<u>Methylamine [Methanamine]</u>	<u>74-89-5</u>	<u>10,000</u>
<u>3-Methyl-1-butene</u>	<u>563-45-1</u>	<u>10,000</u>
<u>2-Methyl-1-butene</u>	<u>563-46-2</u>	<u>10,000</u>
<u>Methyl ether [Methane, oxybis-]</u>	<u>115-10-6</u>	<u>10,000</u>
<u>Methyl formate [Formic acid, methyl ester]</u>	<u>107-31-3</u>	<u>10,000</u>
<u>2-Methylpropene [1-Propene, 2-methyl-]</u>	<u>115-11-7</u>	<u>10,000</u>
<u>1,3-Pentadiene</u>	<u>504-60-9</u>	<u>10,000</u>
<u>Pentane</u>	<u>109-66-0</u>	<u>10,000</u>
<u>1-Pentene</u>	<u>109-67-1</u>	<u>10,000</u>
<u>2-Pentene, (E)-</u>	<u>646-04-8</u>	<u>10,000</u>
<u>2-Pentene, (Z)-</u>	<u>627-20-3</u>	<u>10,000</u>
<u>Propadiene [1,2-Propadiene]</u>	<u>463-49-0</u>	<u>16,000</u>
<u>Propane</u>	<u>74-98-6</u>	<u>10,000</u>
<u>Propylene [1-Propene]</u>	<u>115-07-1</u>	<u>10,000</u>
<u>Propyne [1-Propyne]</u>	<u>74-99-7</u>	<u>10,000</u>
<u>Silane</u>	<u>7803-62-5</u>	<u>10,000</u>
<u>Tetrafluoroethylene [Ethene, tetrafluoro-]</u>	<u>116-14-3</u>	<u>10,000</u>
<u>Tetramethylsilane [Silane, tetramethyl-]</u>	<u>75-76-3</u>	<u>10,000</u>
<u>Trichlorosilane [Silane, trichloro-]</u>	<u>10025-78-2</u>	<u>10,000</u>
<u>Trifluorochloroethylene [Ethene, chlorotrifluoro-]</u>	<u>79-38-9</u>	<u>10,000</u>
<u>Trimethylamine [Methanamine, N,N-dimethyl-]</u>	<u>75-50-3</u>	<u>10,000</u>
<u>Vinyl acetylene [1-Buten-3-yne]</u>	<u>689-97-4</u>	<u>10,000</u>

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<u>Chemical Name</u>	<u>CAS No.</u>	<u>Threshold Quantity (lbs)</u>
<u>Vinyl chloride [Ethene, chloro-]</u>	<u>75-01-4</u>	<u>10,000</u>
<u>Vinyl ethyl ether [Ethene, ethoxy-]</u>	<u>109-92-2</u>	<u>10,000</u>
<u>Vinyl fluoride [Ethene, fluoro-]</u>	<u>75-02-5</u>	<u>10,000</u>
<u>Vinylidene chloride [Ethene, 1,1-dichloro-]</u>	<u>75-35-4</u>	<u>10,000</u>
<u>Vinylidene fluoride [Ethene, 1,1-difluoro-]</u>	<u>75-38-7</u>	<u>10,000</u>
<u>Vinyl methyl ether [Ethene, methoxy-]</u>	<u>107-25-5</u>	<u>10,000</u>

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- (2) Risk Management Plan. The owner or operator of a stationary source at which a substance listed in Table 3 of this rule is present in greater than the threshold quantity shall prepare and implement a written risk management plan to detect and prevent or minimize accidental releases, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.
- (3) Compliance. The owner or operator of a stationary source required to prepare and implement a risk management plan under section (2) of this rule shall:
- (a) register the risk management plan with the EPA;
  - (b) submit copies of the risk management plan to the U.S. Chemical Safety and Hazard Identification Board, the Department, and the Oregon Office of Emergency Management; and
  - (c) submit as part of the compliance certification required under OAR 340-28-2160, annual certification to the Department that the risk management plan is being properly implemented.
- (4) Compliance schedule.
- (a) The owner or operator of a stationary source shall prepare and implement a risk management plan under section (2) of this rule according to the schedule promulgated by the EPA.
  - (b) The owner or operator of a stationary source that adds a listed substance or exceeds the threshold shall prepare and implement a risk management plan according to the schedule promulgated by the EPA.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93

**340-32-5410 through 340-32-5490** [Reserved]

**Emission Standards and Procedural  
Requirements for Hazardous Air  
Contaminants Regulated Prior to  
the 1990 Amendments to the  
Federal Clean Air Act**

**Applicability**

**340-32-5500** OAR 340-32-5500 through 340-32-5650 shall apply to any stationary source identified in OAR 340-32-5530 through 340-32-5650. Compliance with OAR 340-32-5530 through 340-32-5650 shall not relieve the source from compliance with other applicable rules of this Chapter, with applicable provisions of the Oregon Clean Air Implementation Plan, or with any other applicable federal requirement.

[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 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 19-1986, f. & ef. 11-7-86; DEQ 9-1988, f. 5-19-88, cert. ef. 6-1-88 (and corrected 6-3-88); DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-460(1), DEQ 13-1993, f. & cert. ef. 9-24-93; Renumbered from OAR 340-25-460(1), DEQ 18-1993, f. & ef. 11-4-93

**General Requirements**

**340-32-5510** Notification of startup. In addition to any other notification requirement, any person owning or operating a new source of emissions subject to OAR 340-32-5500 through 340-32-5600 or 340-32-5650 shall furnish the Department written notification as follows:

- (1) Notification of the anticipated date of startup of the source not more than 60 days nor less than 30 days prior to the anticipated date.
- (2) Notification of the actual startup date of the source within 15 days after the actual date.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 19-1986, f. & ef. 11-7-86; DEQ 9-1988, f. 5-19-88, cert. ef. 6-1-88 (and corrected 6-3-88); DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 13-1993, f. & cert. ef. 9-24-93; Renumbered from OAR 340-25-460(4), DEQ 18-1993, f. & ef. 11-4-93

**Federal Regulations Adopted by Reference  
340-32-5520**

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maximum extent possible without dismantling other than opening the device, the presence of tears, holes, and abrasions in filter bags and for dust deposits on the clean side of bags. For air cleaning devices that cannot be inspected on a weekly basis according to this subsection, submit to the Department, revise as necessary, and implement a written maintenance plan to include, at a minimum, the following:

- (A) Maintenance schedule.
- (B) Recordkeeping plan.
- (d) Maintain records of the results of visible emission monitoring and air cleaning device inspections using a format approved by the Department which includes the following:
  - (A) Date and time of each inspection.
  - (B) Presence or absence of visible emissions.
  - (C) Condition of fabric filters, including presence of any tears, holes and abrasions.
  - (D) Presence of dust deposits on clean side of fabric filters.
  - (E) Brief description of corrective actions taken, including date and time.
  - (F) Daily hours of operation for each air cleaning device.
- (e) Furnish upon request, and make available at the affected facility during normal business hours for inspection by the Department, all records required under this section.
- (f) Retain a copy of all monitoring and inspection records for at least two years.
- (g) Submit quarterly a copy of the visible emission monitoring records to the Department if visible emissions occurred during the report period. Quarterly reports shall be postmarked by the 30th day following the end of the calendar quarter.
- (h) Asbestos-containing waste material produced by any asbestos milling operation shall be disposed of according to OAR 340-32-5650.

**Asbestos Inspection Requirements for Federal Operating Permit Program Sources. 340-32-5610** This rule applies to renovation and demolition activities at major sources subject to the federal operating permit program as defined in OAR 340-28-110~~[(59)(b)]~~.

- (1) To determine applicability of the Department's asbestos regulations, the owner or operator of a renovation or demolition project shall thoroughly inspect the affected area for the presence of asbestos.
- (2) For demolition projects where no asbestos-containing material is present, written notification shall be submitted to the Department on an approved form. The notification shall be submitted by the owner or operator or by the demolition contractor as follows:
  - (a) Submit the notification, as specified in section (3) of this rule, to the Department at least ten days before beginning any demolition project.
  - (b) The Department shall be notified prior to any changes in the scheduled starting or completion dates or other substantial changes or the notification of demolition will be void.
- (3) The following information shall be provided for each notification of demolition:
  - (a) Name, address, and telephone number of the person conducting the demolition.
  - (b) Contractor's Oregon demolition license number, if applicable.
  - (c) Certification that no asbestos was found during the predemolition asbestos inspection and that if asbestos-containing material is uncovered during demolition the procedures found in OAR 340-32-5620 through OAR 340-32-5650 will be followed.
  - (d) Description of building, structure, facility, installation, vehicle, or vessel to be demolished, including:
    - (A) The age, present and prior use of the facility;
    - (B) Address or location where the demolition project is to be accomplished.
  - (e) Major source owner's or operator's name, address and phone number.
  - (f) Scheduled starting and completion dates of demolition work.
  - (g) Any other information requested

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 18-1992, f. & cert. ef. 10-7-91; DEQ 4-1993, f. & cert. ef. 3-10-93; Renumbered from OAR 340-25-465, DEQ 18-1993, f. & ef. 11-4-93

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on the Department form.

Stat. Auth.: ORS Ch. 468 & 468A  
Hist.: DEQ 20-1993(T), f. & ef. 11-4-93; DEQ 13-1994, f. & ef. 5-19-94

**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.
  - (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.

**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 for each small-scale asbestos abatement project except for small-scale projects in residential buildings described in section (4) of this rule.
    - (B) \$50 for each project greater than a small-scale asbestos abatement project and less than 260 linear feet or 160 square feet.
    - (C) \$200 for each project greater than 260 linear feet or 160 square feet, and less than 2,600 linear feet or 1,600 square feet.
    - (D) \$500 for each project greater than 2,600 linear feet or 1,600 square feet, and less than 26,000 linear feet or 16,000 square feet.
    - (E) \$750 for each project greater than 26,000 linear feet or 16,000 square feet, and less than 260,000 linear feet or 160,000 square feet.
    - (F) \$1,000 for each project greater than 260,000 linear feet or 160,000 square feet.
  - (b) Project notification fees shall be payable with the completed

## DIVISION 32

Hazardous Air Pollutants

40. OAR 340-32-230(4) needs to be revised to be more consistent with the language of 40 CFR 70.5(a)(1)(ii). 8

Response The Department agrees with the commentor and has incorporated the suggested changes into OAR 340-32-230(4).

41. The Department should adopt a de minimis emissions level for HAPs that is consistent with the EPA proposal. 4,7

Response The EPA regulations regarding de minimis levels for hazardous air pollutant sources have not yet been promulgated. The levels currently in the rule reflect an earlier federal draft proposal. Rather than revise the de minimis levels now, to coincide with another proposed set of levels, the Department will revise the de minimis levels, if necessary, once federal regulations are finalized and promulgated.

42. For sources subject to MACT standards, the permit program rule should define as insignificant all HAP emissions that are not subject to control requirements. 2

Response There are two important cases where HAP emissions from stationary sources at a facility covered by a MACT would not be subject to control requirements:

- a. The MACT standard establishes a cutoff below which no control is required.
- b. The MACT standard does not address the HAP emissions at all from certain stationary sources.

In the first case, although a MACT may not apply there may be other requirements that apply to non-major, but significant sources at the facility.

More importantly, in the second case, if an owner or operator made changes to the HAP emitting stationary sources greater than de minimis levels, the source would be required to do a case-by-case MACT determination for those changes. Knowledge of the HAP emissions before and after the proposed change is essential to the process. Even if no changes were made to those sources, the Department would review the HAP emissions under the requirements for residual emissions. The Department proposes no change to the rule.

DETAILED CHANGES TO ORIGINAL RULEMAKING PROPOSAL  
MADE IN RESPONSE TO PUBLIC COMMENT

I. Background and Purpose

This proposed rule package contains amendments to existing rules to fulfill Oregon's duty to comply with Title V of the Federal Clean Air Act Amendments (FCAA) and obtain approval of the Federal Operating Permit Program.

II. Summary of DEQ's Proposed Division 28 Rules

Required Changes for Federal Operating Permit Program Approval

The following changes, listed in Table 1, are proposed based on comments received by the EPA. If these changes are adopted substantially in tact, the EPA will grant interim approval of the program. Otherwise, the EPA will disapprove the program.

TABLE 1 DIVISION 28 RULE CHANGES	
Rule Number	Rule Change
340-28-110 (5)	<del>Emissions from the usage of non exempt insignificant mixtures may be included in the aggregate provided that the criteria of this section are met.</del>
340-28-110 (5) (a)	One ton for <u>total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;</u>
340-28-110 (5) (c)	<u>600 pounds for fluoride;</u>
340-28-110 (5) (e)	The lesser of the amount established in OAR 340-32- <del>4500</del> 130, Table <del>3</del> 1 or OAR 340-32-5400, Table 3, or 1,000 pounds <del>for each Hazardous Air Pollutant</del> ;
340-28-110 (9) (c)	Any term or condition in an ACDP, OAR 340-28-1700 through 340-28-1790, <del>issued before a federal operating permit application is submitted for the source</del> including any term or condition of any preconstruction permits issued pursuant to OAR 340-28-1900 through 340-28-2000, New Source Review), until or unless the Department revokes or modifies the term or condition by a permit modification;



TABLE 1 DIVISION 28 RULE CHANGES

Rule Number	Rule Change
340-28-110(9) (d)	Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-28-800 through 340-28-820, <del>issued before a federal operating permit application is submitted for the source</del> until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;
340-28-110(9) (e)	<u>Any term or condition in a Notice of Approval, OAR 340-28-2270, until or unless the Department revokes or modifies the term or condition by a Notice of Approval or a permit modification;</u>
340-28-110(36) (d)	Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-28-1930 <del> or</del> , OAR 340-28-1940, <u>or OAR 340-28-2270</u> , or for purposes of determining the applicability of any New Source Performance Standard (NSPS).
340-28-110(41)	<del>[(41)] "Exempt Insignificant Mixture Usage" means use, consumption, or generation of insignificant mixtures which the Department does not consider integral to the primary business activity, excluding fuels, raw materials, and end products.</del>
340-28-110(51)	"Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of <del>exempt insignificant mixture usage or</del> aggregate insignificant emissions.
340-28-110(53)	<del>[(53)] "Insignificant Mixture" means a chemical mixture containing not more than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of this chapter, and not greater than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens.</del>
340-28-110(63)	<del>[(63)] "Non-exempt Insignificant Mixture Usage" means use, consumption, or generation of insignificant mixtures which the Department considers integral to the primary business activity, including fuels, raw materials, and end products.</del>
340-28-110(81) (c)	as used in OAR 340-28-2560 through 340-28-2740 means any regulated air pollutant as defined in 340-28-110 <del>(81)</del> 78) except the following:

TABLE 1 DIVISION 28 RULE CHANGES

Rule Number	Rule Change
340-28-110(126) (a)	<p>This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); Trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane <del>{2}</del> (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:</p>
340-28-1060(2)	<p>For purposes of establishing PSEs, emissions from <del>{non exempt insignificant mixture usage and}</del> aggregate insignificant emissions listed in OAR 340-28-110 shall be considered regulated air pollutants under OAR 340-28-1010.</p>
340-28-1430(5)	<p>Approval of the above procedures by the Department shall be based upon determination that said procedures are consistent with good pollution control practices, and will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The permittee shall record all excess emissions in the upset log as required in section <del>{3}</del><u>2</u> of this rule. At any time during the period of excess emissions the Department may require the owner or operator to cease operation of the equipment or facility, in accordance with OAR 340-28-1430(3). In addition, approval of these procedures shall not absolve the permittee from enforcement action if the approved procedures are not followed, or if excess emissions occur that are determined by the Department to be avoidable, pursuant to OAR 340-28-1450.</p>
340-28-1910(2) (d)	<p>Approval to construct a source under an ACDP issued under paragraph (3) (b) (I) of this rule shall authorize construction and operation of the source, <u>except as prohibited in subsection (e) of this rule</u>, until the later of:</p>

TABLE 1 DIVISION 28 RULE CHANGES

Rule Number	Rule Change
340-28-1910(2)(e)	<u>(e) Where an existing federal operating permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.</u>
340-28-1910(3)(b)(I)	After the effective date of Oregon's program to implement the federal operating permit program, the owner or operator of a source subject to OAR 340-28-2110 who has received a permit to construct or modify under OAR 340-28-1900 through 340-28-2000, shall submit an application for a federal operating permit within one year of initial startup of the construction or modification, <u>unless the federal operating permit prohibits such construction or change in operation.</u> The federal operating permit application shall include the following information:
340-28-2110(7)	<u>(7) Insignificant activity emissions. All emissions from insignificant activities, including categorically insignificant activities and aggregate insignificant emissions, shall be included in the determination of the applicability of any requirement.</u>
340-28-2110(7)	<del>(7)</del> <u>(8) Federal operating permit program sources that are required to obtain an ACDP, OAR 340-28-1700 through 340-28-1790, or a Notice of Approval, OAR 340-28-2270, because of a Title I modification, shall operate in compliance with the federal operating permit <del>except as otherwise provided for in</del>until the federal operating permit is revised to incorporate the ACDP or the Notice of Approval for the Title I modification.</u>
340-28-2120(3)	Standard application form and required information. Applications shall be submitted on forms and in electronic formats specified by the Department. Information as described below for each emissions unit at a federal operating permit program source shall be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, <u>including those requirements that apply to categorically insignificant activities,</u> or to evaluate the fee amount required. The application shall include the elements specified below:

TABLE 1 DIVISION 28 RULE CHANGES

Rule Number	Rule Change
340-28-2120(c) (E)	<p>The application shall include a list of all categorically insignificant activities and an estimate of all emissions of regulated air pollutants from those activities which are designated insignificant because of <del>{non-exempt insignificant mixture usage or }</del> aggregate insignificant emissions. <u>Owners or operators that use more than 100,000 pounds per year of a mixture that contains not greater than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of this chapter, and not greater than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens shall contact the supplier and manufacturer of the mixture to try and obtain information other than Material Safety Data Sheets in order to quantify emissions.</u></p>
340-28-2130(3) (a) (E)	<p><u>(E)A condition that prohibits any person from knowingly rendering inaccurate any required monitoring device or method.</u></p>
340-28-2130(3) (c) (B)	<p>Prompt reporting of deviations from permit requirements that do not cause excess emissions, including those attributable to upset conditions, as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. <u>"Prompt" means within seven (7) days of the deviation.</u> Deviations that cause excess emissions, as specified in OAR 340-28-1400 through 340-28-1460 shall be reported in accordance with OAR 340-28-1440.</p>
340-28-2130(6) (e)	<p>The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit <u>or, for information claimed to be confidential, the permittee may furnish such records directly to the EPA along with a claim of confidentiality.</u></p>
340-28-2170(1)	<p>The Department may, after notice and opportunity for public participation provided under OAR 340-28-2290, issue general permits covering numerous similar sources in specific source categories <u>as defined in section (2) of this rule.</u> General permits shall comply with all requirements applicable to other federal operating permits.</p>

TABLE 1 DIVISION 28 RULE CHANGES

Rule Number	Rule Change
340-28-2200 (1) (d)	The Department or Lane Regional Air Pollution Authority is the permitting authority for purposes of the 18 month requirement contained in 42 USC § 7661b(c) and this subsection. Except as provided under the initial transition plan or under regulations promulgated under Title IV of the FCAA or under OAR 340-28-2100 through 340-28-2320 for the permitting of affected sources under the national acid rain program, the Department shall take final action on each permit application (including a request for permit modification or renewal) within 18 months after receiving a complete application. <u>In the case of any complete permit application containing an early reductions demonstration pursuant to OAR 340-32-300, the Department shall take final action on within 9 months of receipt.</u>
340-28-2220 (1) (a) (B)	<del>emit different regulated air pollutants</del> <u>trigger different applicable requirements;</u>
340-28-2230 (1) (h)	(h) Incorporates into the federal operating permit the requirements from preconstruction review permits authorized under OAR 340-28-1900 through 340-28-2000 or OAR 340-28-2270, provided that the procedural requirements followed in the preconstruction review are substantially equivalent to the requirements of OAR 340-28-2200 through 340-28-2290 and OAR 340-28-2310 that would be applicable to the change if it were subject to review as a permit modification, compliance requirements are substantially equivalent to those contained in OAR 340-28-2130 through 340-28-2190, and no changes in the construction or operation of the facility that would require a permit modification under OAR 340-28-2240 through 340-28-2260 have taken place; <u>or</u>
340-28-2230 (1) (i) & (j)	(i) Corrects baseline or PSELs when more accurate emissions data is obtained but does not increase actual emissions <del>;</del> <del>or</del> <del>(j) Corrects minor misinterpretations of an applicable requirement upon Department approval.</del>
340-28-2620 (4)	If an owner or operator of a major source operates an assessable emission <del>point/</del> unit for less than 5% of the permitted operating schedule, the owner or operator may elect to report emissions based on a prorotation of the PSEL for the actual operating time.
340-28-2650 (3) (a)	Submit complete information on the forms including all assessable emissions, emission <del>points</del> <u>units</u> and sources, and

TABLE 1 DIVISION 28 RULE CHANGES	
Rule Number	Rule Change
340-28-2720(9)	The owner or operator shall determine emissions during startup and shutdown, and for emissions greater than normal, during conditions that are not accounted for in the procedure(s) otherwise used to document actual emissions. The owner or operator shall apply 340-28-2720(9) (a) or 340-28-2720(9) (b) (c) and (d) in developing emission factors. The owner or operator shall apply the emission factor obtained to the total time the assessable emission <del>point</del> <u>unit</u> operated in these conditions.

Categorically Insignificant Activities

The EPA has required the Department to clarify that applicable requirements apply to all activities at a facility, whether that activity is classified as categorically insignificant or not. In discussions with EPA, it was admitted that general applicable requirements were not considered when drafting the Part 70 rules regarding categorically insignificant activities. The general applicable requirements are those that apply to all sources, regardless of size, such as Oregon's opacity and grain loading rules. The EPA will probably be changing the Part 70 rules regarding insignificant activities in 1996. The Department has addressed how categorically insignificant activities will be identified in both the permit application and the permit and how compliance will be monitored. The Department feels that these procedures comply with current Part 70 requirements and represents an equitable resolution of this problem, in that it meets the EPA requirements while placing minimal resource requirements on the Department and permitted Title V sources. At such time the EPA proposes changes to the rules regarding insignificant activities, the Department will examine further rule changes.

The Department is also proposing to include additional activities, detailed in Table 2, to the categorically insignificant activities definition based on input from the Title V pilot program sources and public comment received.

TABLE 2 OAR 340-28-110(15) RULE CHANGES	
Rule Number	Rule Change
340-28-110(15)	(15) "Categorically insignificant activity" means any of the following <u>listed</u> pollutant emitting activities principally supporting the source <u>or the major industrial group.</u> <del>+</del> <u>Categorically insignificant activities must comply with all applicable requirements.</u>

TABLE 2 OAR 340-28-110(15) RULE CHANGES

Rule Number	Rule Change
340-28-110(15)	(a) <del>{exempt insignificant mixture usage}</del> <u>constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under Divisions 20 through 32 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;</u>
340-28-110(15)	(c) <del>{natural gas, propane, and distillate oil space heating rated at less than 0.4 million British Thermal Units/hour;}</del> <u>distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;</u>
340-28-110(15)	(d) <u>natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;</u>
340-28-110(15)	<del>{h}</del> <u>i</u> groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;
340-28-110(15)	<del>{n}</del> <u>o</u> air <del>{conditioning}</del> <u>cooling</u> or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;
340-28-110(15)	<del>{e}</del> <u>p</u> refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;
340-28-110(15)	<del>{g}</del> <u>r</u> temporary construction activities <del>{excluding fugitive dust}</del> ;
340-28-110(15)	<del>{e}</del> <u>t</u> <del>{electric}</del> <u>air vents from air compressors;</u>
340-28-110(15)	<del>{x}</del> <u>y</u> <del>{demineralizer vents}</del> <u>pre-treatment of municipal water, including use of deionized water purification systems;</u>
340-28-110(15)	<del>{y}</del> <u>cafeteria or office waste dumpsters;</u>
340-28-110(15)	<del>{d}</del> <u>process sewer floor drains or open trenches;</u>

TABLE 2 OAR 340-28-110(15) RULE CHANGES

Rule Number	Rule Change
340-28-110(15)	<u>(gg) routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;</u>
340-28-110(15)	<u>(hh) electric motors;</u>
340-28-110(15)	<u>(ii) storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;</u>
340-28-110(15)	<u>(jj) on-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;</u>
340-28-110(15)	<u>(kk) natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;</u>
340-28-110(15)	<u>(ll) pressurized tanks containing gaseous compounds;</u>
340-28-110(15)	<u>(mm) vacuum sheet stacker vents;</u>
340-28-110(15)	<u>(nn) emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;</u>
340-28-110(15)	<u>(oo) log ponds;</u>
340-28-110(15)	<u>(pp) storm water settling basins;</u>
340-28-110(15)	<u>(qq) fire suppression and training;</u>
340-28-110(15)	<u>(rr) paved roads and paved parking lots within an urban growth boundary;</u>
340-28-110(15)	<u>(ss) hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;</u>
340-28-110(15)	<u>(tt) health, safety, and emergency response activities;</u>



TABLE 2 OAR 340-28-110(15) RULE CHANGES

Rule Number	Rule Change
340-28-110(15)	<u>(uu) emergency generators and pumps used only during loss of primary equipment or utility service;</u>
340-28-110(15)	<u>(vv) non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;</u>
340-28-110(15)	<u>(ww) non-contact steam condensate flash tanks;</u>
340-28-110(15)	<u>(xx) non-contact steam vents on condensate receivers, deaerators and similar equipment;</u>
340-28-110(15)	<u>(yy) boiler blowdown tanks;</u>
340-28-110(15)	<u>(zz) industrial cooling towers that do not use chromium-based water treatment chemicals;</u>
340-28-110(15)	<u>(aaa) ash piles maintained in a wetted condition and associated handling systems and activities;</u>
340-28-110(15)	<u>(bbb) oil/water separators in effluent treatment systems;</u>
340-28-110(15)	<u>(ccc) combustion source flame safety purging on startup;</u>
340-28-110(15)	<u>(ddd) broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;</u>
340-28-110(15)	<u>(eee) stock cleaning and pressurized pulp washing, excluding open stock washing systems; and</u>
340-28-110(15)	<u>(fff) white water storage tanks.</u>

### Insignificant Mixtures

The Department is proposing to delete all references to insignificant mixtures, both exempt and non-exempt. The existing rules regarding insignificant mixtures would have required all owners or operators to quantify all emissions from non-exempt mixture usage. Material Safety Data Sheets (MSDS) do not contain information on chemicals in a mixture at less than 1% by weight or less than 0.1% by weight if the chemical is a carcinogen listed in the U.S. Department of Health and Human Service's Annual Report on Carcinogens. An extreme interpretation of the existing rules may require owners or operators to analyze all chemical mixtures to find out what trace amounts of chemicals may be present.

At first, the Department proposed to delete this requirement altogether and only require owners or operators to use information contained on the MSDS.

Upon further investigation, it was discovered that one facility was a major hazardous air pollutant source for a chemical that was contained at less than 0.1% in a mixture. By dropping the requirement to quantify emissions of constituents in mixtures not listed on MSDS sheets, this facility would not have been required to report these emissions.

After discussion with the Industrial Source Advisory Committee III, the Department is proposing to require owners or operators who use more than 100,000 pounds per year of a mixture to contact the supplier and manufacturer of that mixture to try and obtain information other than Material Safety Data Sheets in order to quantify emissions. The 100,000 pound cutoff was selected because 1% is 1,000 pounds, which would be the maximum amount of any constituent present that is not listed on the MSDS. The categorically insignificant activities are also proposed for change to exempt the constituents of a mixture at less than 1% or 0.1% from quantification for users of less than 100,000 pounds of a mixture.

### Minor New Source Review

**Background** Federal regulations governing minor new source review (NSR) are found in Section 110(a)(2)(C) of the FCAA and 40 CFR 51.160 through 51.164. The federal minor NSR regulates the construction or physical change of an individual "stationary source" that increases actual emissions.

Minor new source review is currently regulated under OAR 340-28-800 through 340-28-820, Notice of Construction and Approval of Plans (NC), and OAR 340-28-1700 through 340-28-1790, Air Contaminant Discharge Permits (ACDP). These rules will continue to apply to sources that are not required to obtain federal operating permits. The NC rules cover changes made at a facility that do not increase emissions above the Plant Site Emission Limit (PSEL). The ACDP rules cover all other permit changes.

Construction/Operation Modifications, OAR 340-28-2270, was written to review minor NSR changes at federal operating permit program facilities only. The existing rules are the result of consensus reached by public and industrial representatives on the Air Quality Industrial Source Control Advisory Committee II along with Department staff. The Department proposed the Construction/Operation Modifications rules for minor new source review as part of the federal operating permit program for numerous reasons:

- ◆ The NC rules are not written clearly so interpretation and implementation of these rules has not been consistent.
- ◆ The Department wanted to clarify the NC rules for Title V sources, especially because of the increased liability of permittees.
- ◆ The Department wanted the permittees to be able to use one rule for all construction/modification, regardless of whether there were increases above the PSEL.

Changes to OAR 340-28-2270, Construction/Operation Modification, are proposed based on comments received by the EPA Region X. Comments received by the EPA help clarify the requirements and correct errors that would preclude approval of OAR 340-28-2270 as a SIP revision. Without approval of OAR 340-28-2270, Title V sources would be required to apply for construction approval under OAR 340-28-800 or 340-28-1700.

**Applicability** The federal minor NSR is concerned with the construction or physical change of an individual "stationary source." It does not examine changes to an "emissions unit" or a "source". Therefore, an owner or operator is not allowed to net out of minor NSR by providing emissions decreases elsewhere, as can be done in major NSR.

Also included in the applicability of this rule are air pollution control equipment used to comply with a Department requirement. In the past, the Department has reviewed changes to required air pollution control equipment, even though these types of changes are not required to be reviewed under the federal minor NSR program. The Department shall continue to review such changes for federal operating permit program sources.

**Requirements** Changes in operation that require physical changes are also required to be reviewed under minor NSR. For example, a boiler has the capability to burn both natural gas and distillate oil. The facility does not have a distillate oil fuel tank because only natural gas has been burned. The boiler does not have to be modified to burn gas but a fuel tank must be installed. Therefore, this modification is a physical change requiring minor NSR. If the tank had already been installed and connected to the boiler, the change in operation going from natural gas to distillate oil would not have been a physical change requiring minor NSR.

The Department did not intend to track changes in potential to emit for emissions units. Rule language has been proposed changing "potential to emit" to "maximum capacity to emit." The major NSR program requires an owner or operator to install Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER) for changes that increase the maximum capacity to emit greater than the Significant Emission Rate (SER). Because of this requirement, the Department must review increases in the maximum capacity for stationary sources to see if BACT or LAER must be applied to that stationary source.

Maximum capacity to emit is also clarified by adding the rule language "hourly basis at full production, including air pollution control equipment." Any physical or operational limitation on the capacity such as restrictions on hours of operation or on the type or amount of material combusted, stored, or processed should not be included in the maximum capacity to emit.

When talking about modifications for hazardous air pollutants (HAP), actual increases of emissions above a de minimis level are of concern, not the existing physical capacity. Therefore, special rules were included for review of HAP modifications as part of minor NSR. These rules will be used to review HAP modifications until federal rules for 112(g) are promulgated by the EPA. At that time, the Department will propose further rulemaking.

The Department eliminated requirements for Department required monitoring equipment, compliance certification requirements, and new applicable requirements from OAR 340-28-2270. All of these types of changes would require that a significant permit modification be done. The Department did not see an advantage of requiring construction/modification review in addition to a significant permit modification for these types of changes.

**Public Notice Requirements** The federal rules for minor NSR require the opportunity for public comment for every review. The EPA has allowed

states to set de minimis levels under which public notice is not required. The Department is proposing to clarify which minor NSR actions require public comment in this rulemaking.

In the June 6, 1989 Federal Register [54 FR 27274], the EPA clarified regulations regarding the "federal enforceability" of emissions controls and limitations at a source. The following minor NSR actions must allow for public notice in order to be federally enforceable:

- ▶ any emission increases greater than the SER to avoid NSR, excluding any emission decreases;
- ▶ any new applicable requirement established to limit potential to emit;
- ▶ any new applicable requirement established as a result of a Typically Achievable Control Technology (TACT) determination under OAR 340-28-630; and
- ▶ any new applicable requirement established as a result of a Maximum Achievable Control Technology (MACT) determination under OAR 340-32-4500.

In addition to these actions, the Department will continue to provide public notice for any increase of emissions greater than the PSEL.

**Construction versus Operating Approval** The Department believed that constructing and operating in accordance with construction approval granted outside the operating permit program was allowed by Part 70, even if the subsequent operation conflicted with the federal operating permit. This belief was based on the following:

- » "any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act" is defined as an applicable requirement [40 CFR 70.2].
- » "sources must have a preconstruction permit consistent with requirements of parts C and D of title I, and must have filed a complete application for a title V operating permit within 12 months of commencing operation, unless some earlier date is required by the permitting authority" as stated in the final preamble to Part 70.

The EPA has pointed out that 70.5(a)(1)(ii) states that "Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation." Therefore, the Department is proposing to make the appropriate changes to the rules.

Table 3 contains the proposed changes to the minor new source review rules.

TABLE 3 OAR 340-28-2270 RULE CHANGES	
Rule Number	Rule Change
340-28-2270 (1)	<p><del>(+2+1)</del> Scope. This regulation shall apply to <del>the following classes of sources of regulated air pollutants</del>:</p> <p>(a) Any <del>emissions unit</del> <u>stationary source</u> <del>having emissions to the atmosphere</del>; and</p> <p>(b) Any air pollution control equipment used to comply with a Department requirement <del>;</del></p> <p><del>(c) Any monitoring equipment required by the Department</del>.</p>
340-28-2270 (2)	<p><del>(+1+2)</del> Requirement.</p> <p>(a) No owner or operator shall construct, fabricate, erect, install, establish, develop or operate a new <u>stationary source</u> <del>of regulated air pollutants</del> <u>or air pollution control equipment</u> <del>of any class</del> <u>listed in OAR 340-28-2270(+2+1)</u> without first notifying the Department in writing and obtaining approval.</p>
340-28-2270 (2)	<p>(b) No owner or operator shall <del>modify</del> <u>make any physical change or change in the method of operation that the source is physically unable to accommodate</u> or replace any <u>stationary source</u> <del>of regulated air pollutants</del> <u>or air pollution control equipment</u> <del>of any class</del> <u>listed in OAR 340-28-2270(+2+1)</u>, covered by a permit under OAR 340-28-2100 through 340-28-2320, without first notifying the Department in writing and obtaining approval if:</p>
340-28-2270 (2) (b)	<p>(A) Any <del>emissions unit is changed or added to that would increase that emissions potential to emit</del> <u>stationary source's maximum capacity to emit any regulated air pollutant, excluding those pollutants listed in OAR 340-32-130 or 340-32-5400, is increased on an hourly basis at full production, including air pollution control equipment; or</u></p>
340-28-2270 (2) (b)	<p><del>(B) Any alternative operating scenario is changed or added to that would affect the method of the compliance certification;</del></p>
340-28-2270 (2) (b)	<p><del>(+C+D)</del> The performance of any pollution control equipment used to comply with a Department requirement is degraded causing an increase of <del>emissions</del> <u>the amount of any air pollutant emitted or which results in the emission of any air pollutant not previously emitted</u> (excluding routine maintenance) <del>;</del></p>

TABLE 3 OAR 340-28-2270 RULE CHANGES

Rule Number	Rule Change
340-28-2270 (2) (b)	<del>(D) The performance of any monitoring equipment required by the Department is changed (excluding routine maintenance); or</del>
340-28-2270 (2) (b)	<del>(E) The source becomes subject to a new applicable requirement.</del>
340-28-2270 (2)	(c) <u>No owner or operator shall make any physical change in, or change in the method of operation of, a major source that increases the actual emissions of any hazardous air pollutant (HAP) emitted by such source by more than a de minimis amount or which results in the emission of any HAP not previously emitted by more than a de minimis amount, without first notifying the Department in writing and obtaining approval if the source becomes subject to OAR 340-32-4500.</u>
340-28-2270 (3)	(3) Procedure. (a) Notice. Any owner or operator required to obtain approval for a new, modified, or replaced <u>stationary source</u> <del>{of regulated air pollutants}</del> <u>or air pollution control equipment</u> <del>{of any class}</del> listed in OAR 340-28-2270 ( <del>{2}</del> <u>1</u> ) shall notify the Department in writing on a form supplied by the Department.
340-28-2270 (3)	(b) Submission of Plans and Specifications. The Department shall require the submission of plans and specifications for any <u>stationary source</u> <del>{of regulated air pollutants}</del> <u>or air pollution control equipment</u> <del>{of any class}</del> listed in OAR 340-28-2270 ( <del>{2}</del> <u>1</u> ) being constructed or modified and its relationship to the production process. The following information shall be required for a complete application <u>for a Notice of Approval:</u>
340-28-2270 (3) (b)	(F) A plot plan showing the location and height of the constructed or modified <del>{air</del> <u>contaminant}</u> <u>stationary source</u> . The plot plan shall also indicate the nearest residential or commercial property;
340-28-2270 (3) (b)	(H) The change in the amount, <u>quantities emitted</u> , nature and duration of regulated air pollutant emissions;
340-28-2270 (3) (b)	<del>{(I) Amount and method of refuse disposal;</del>

TABLE 3 OAR 340-28-2270 RULE CHANGES

Rule Number	Rule Change
340-28-2270(3)	<p>(c) Notice of Approval:            (A) For construction or modification of any <u>stationary source</u> <del>{of regulated air pollutants}</del> <u>or air pollution control equipment</u> <del>{of any class}</del> listed in OAR 340-28-2270(<del>2</del>1) that does not increase emissions above the <u>facility-wide PSEL</u>; <u>does not increase the amount of any air pollutant emitted by any individual stationary source above the significant emission rate, excluding any emissions decreases</u>; <u>does not establish a federally enforceable limit on potential to emit</u>; or <u>does not establish a new applicable requirement as a result of a TACT determination under OAR 340-28-630 or a MACT determination under OAR 340-32-4500</u>:</p>
340-28-2270(3)(c)(A)	<p>(ii) A Notice of Approval to proceed with construction or modification shall allow the owner or operator to construct or modify the <u>stationary source or air pollution control equipment listed in OAR 340-28-2270(1)</u> and operate it in accordance with provisions under OAR 340-28-2220, 340-28-2230 or 340-28-2240, whichever is applicable.</p>
340-28-2270(3)(c)	<p>(B) For construction or modification of any <u>stationary source</u> <del>{of regulated air pollutants}</del> <u>or air pollution control equipment</u> <del>{of any class}</del> listed in OAR 340-28-2270(<del>2</del>1) that increases emissions above the <u>facility-wide PSEL</u>; <u>increases the amount of any air pollutant emitted by any individual stationary source above the significant emission rate, excluding any emissions decreases</u>; <u>establishes a federally enforceable limit on potential to emit</u>; or <u>establishes a new applicable requirement as a result of a TACT determination under OAR 340-28-630 or a MACT determination under OAR 340-32-4500</u>:</p>
340-28-2270(3)(c)(B)(iii)	<p>(III) For each major source within an attainment area for which dispersion modeling has been performed <u>as a requirement of the Notice of Approval</u>, an indication of what impact each proposed permitted emission would have on the Prevention of Significant Deterioration Program within that attainment area.</p>

TABLE 3 OAR 340-28-2270 RULE CHANGES

Rule Number	Rule Change
340-28-2270(3)(c)(B)	(iv) The owner or operator may request that the external review procedures required under OAR 340-28-2290 and OAR 340-28-2310 be used instead of the notice procedures under paragraph (ii) and (iii) <u>of</u> this rule to allow for subsequent incorporation of the Notice of Approval as an administrative amendment.
340-28-2270(3)(c)(B)	(vii) <u>After the public notice period and the public hearing, if requested, <del>the</del></u> the Department shall, upon determining that the proposed construction or modification is, in the opinion of the Department, in accordance with the provisions of applicable rules, order, and statutes, notify the owner or operator that construction may proceed <del> after the public notice period</del> .
340-28-2270(3)(c)(B)	(viii) A Notice of Approval to proceed with construction or modification shall allow the owner or operator to construct or modify the <u>stationary source or air pollution control equipment listed in OAR 340-28-2270(1)</u> and operate it in accordance with provisions under OAR 340-28-2220, 340-28-2230, or 340-28-2240, whichever is applicable.
340-28-2270(3)	(d) Order Prohibiting Construction. (i) <u>If within the 60 day or 180 day review period, whichever is applicable, the Director determines that the proposed construction or modification is not in accordance with applicable statutes, rules, regulations and orders, the Director shall issue an order prohibiting the construction or modification of the <del>air contamination</del> stationary source or air pollution control equipment listed in OAR 340-28-2270(1). Said order is to be forwarded to the owner by certified mail. The Department shall issue public notice as to the intent to prohibit construction in accordance with OAR 340-28-2270(3)(c)(B)(ii) and (iii).</u>



TABLE 3 OAR 340-28-2270 RULE CHANGES

Rule Number	Rule Change
340-28-2270(3)(d)	(ii) <u>Failure to issue such order within the 60 day review period shall be considered a determination that the proposed construction, installation, or establishment may proceed, provided that it is in accordance with plans, specifications, and any corrections or revisions thereto, or other information, if any, previously submitted, and provided further that it shall not relieve the owner of the obligation of complying with applicable emission standards and orders.</u>
340-28-2270(3)	(f) Notice of Completion. Within thirty (30) days, <u>or other period specified in the federal operating permit,</u> after any owner or operator has constructed or modified a <del>an air</del> <u>contamination] stationary source or air pollution control equipment [as defined under] listed in OAR 340-28-2270(1)</u> , that owner or operator shall so report in writing on a form furnished by the Department, stating the date of completion of construction or modification and the date the <u>stationary source or air pollution control equipment</u> was or will be put in operation.
340-28-2270(3)(g)(A)	(i) The owner or operator of the <del>air</del> <u>contamination] stationary source or air pollution control equipment listed in OAR 340-28-2270(1)</u> shall submit to the Department the applicable notice, and
340-28-2270(3)(g)	(B) Where a federal operating permit would allow incorporation of such construction or modification as an administrative amendment [OAR 340-28-2230], the owner or operator of the <u>stationary source or air pollution control equipment listed in OAR 340-28-2270(1)</u> may: (i) submit the permit application information required under OAR 340-28-2 <del>12</del> 230(3) with the information required under OAR 340-28-2270(3)(b) upon becoming aware of the need for an administrative amendment; and

TABLE 3 OAR 340-28-2270 RULE CHANGES

Rule Number	Rule Change
340-28-2270(3)(g)	(C) Where a federal operating permit would require incorporation of such construction or modification as a minor permit modification [OAR 340-28-2250] or a significant permit modification [OAR 340-28-2260], the owner or operator of the <u>stationary source or air pollution control equipment listed in OAR 340-28-2270(1)</u> shall submit the permit application information required under OAR 340-28-2120(3) within one year of initial startup of the construction or modification, <u>except as prohibited in paragraph (D) of this rule.</u>
340-28-2270(3)(g)	(D) <u>Where an existing federal operating permit would prohibit such construction or change in operation, the owner or operator must obtain a permit revision before commencing operation.</u>

**Oregon Department of Environmental Quality  
Air Quality Industrial Source Advisory Committee III  
Members**

Chair

Judge Jacob Tanzer  
Ball, Janik & Novack  
One Main Place  
101 SW Main Street  
Portland, OR 97204  
228-2525  
FAX 2958-1058

Ex Officio

Don Arkell  
LRAPA  
225 N 5th #501  
Springfield, OR 97477  
1-503-726-2514  
FAX 1-503-726-3782

Environmental

Tim Raphael (interim)  
OSPIRG  
1536 SE 11th Avenue  
Portland, OR 97214  
231-4181  
FAX 231-4007

Public-at-Large

Shannon Bauhofer  
516 NW Drake  
Bend, OR 97701  
1-503-389-1444  
FAX 1-503-389-0256

Business

Bonnie Gariepy  
Intel Corporation, AL4-91  
5200 NE Elam Young Parkway  
Hillsboro, OR 97124  
642-6592  
FAX 649-3996

Business

Candee Hatch  
CH<sub>2</sub>M Hill  
825 NE Multnomah #1300  
Portland, OR 97232  
235-5022 X 4336  
FAX 235-2445

Business

Doug Morrison  
representing Northwest Pulp and Paper Assoc.  
Bogle & Gates  
2 Union Square  
601 Union Street  
Seattle, WA 98101-2346  
1-206-621-1413  
Home 1-206-641-9352  
FAX 1-206-621-2660

Environmental

Dr. Robert Palzer  
1610 NW 118th Court  
Portland, OR 97229-5022  
520-8671  
FAX 520-8671

Business

Jim Spear  
Williams Air Controls  
14100 SW 72nd Avenue  
Tigard, OR 97226  
684-8600  
FAX 684-8610

Public-at-Large

Nancy Spieler  
3530 16th Place  
Forest Grove, OR 97116  
359-5760

Environmental

Lisa Brenner (interim)  
18181 SW Kummrow Road  
Sherwood, OR 97140-9164  
625-6891  
FAX 625-6369

Business

Jim Whitty  
Associated Oregon Industries  
317 SW Alder #450  
Portland, OR 97204  
227-3730 X 103  
FAX 227-0115

State of Oregon  
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal  
for  
Federal Operating Permit Program Rule Amendments  
and  
Categorical Rule Exclusions from Federal Operating Permit Program Requirements

## Rule Implementation Plan

### Summary of the Proposed Rule

The Department is proposing changes to its Federal Operating Permit (FOP) Program rules contained in Chapter 340 Divisions 28 and 32. These changes are in response to experience the Department gained while conducting the pilot permitting project with a group of volunteer industrial sources. During this pilot project, suggestions were made by the sources, the EPA, and DEQ staff to clarify and correct the rule language. The proposed rulemaking also incorporate changes to the minor New Source Review rule (OAR 340-28-2270) to ensure EPA approval of the Federal Operating Permit Program. The EPA has also issued final and amended rules for Early Reductions and Accidental Release chemicals and the Department must update the corresponding OARs. This package also includes several housekeeping changes to correct typographical errors. This proposal would affect FOP Program major sources.

### Proposed Effective Date of the Rule

These rules and rule amendments will become effective immediately upon adoption by the Environmental Quality Commission and upon filing with the Secretary of State. However, the EPA must approve the state program before sources can be issued Title V permits. EPA is expected to approve the Federal Operating Permit Program no later than November 15, 1994.

### Proposal for Notification of Affected Persons

The Air Quality Division has already assembled a mailing list of Federal Operating Permit sources. Sources on this mailing list will receive updated copies of Divisions 28 and 32.

### Proposed Implementing Actions

The proposed amendments will be implemented through the Department's Federal Operating Permit Program. In Lane County the amendments will be implemented by the Lane Regional Air Pollution Authority (LRAPA). This workload will be administered within the revenue and staffing previously allocated to implement the Federal Operating Permit Program. The proposed changes to Divisions 28 and 32 would clarify many of the requirements of the rules and would incorporate changes required by the EPA for approval. These changes are anticipated to relieve administrative burdens and uncertainty for both the Department and the regulated community.

#### Proposed Training/Assistance Actions

The Air Quality Division recently hired a Title V information specialist to provide information on the FOP Program to sources and the public. Access will be available statewide through the Department's toll-free telephone line. There are also various FOP Program guidance documents that have been mailed to sources that will be affected by the proposed rules.

## Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item D-1  
October 21, 1994 Meeting

**Title:**

Oregon Environmental Equity Project

**Summary:**

In response to concerns about disproportionate environmental impacts on low income and minority populations, the Governor's Office asked the Department to take the lead on an environmental equity project in cooperation with other state agencies. A Citizens Advisory Committee has studied the issue since January and has developed recommendations and a report to the Governor.

**Department Recommendation:**

This is an informational report and Commission direction is not required at this time.

maria menor  
Report Author

Heidi Taylor  
Division Administrator

Mary Walsh  
Director

October 7, 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: September 21, 1994

**To:** Environmental Quality Commission  
**From:** Fred Hansen, Director  
**Subject:** Agenda Item D-1, October 21, 1994 EQC Meeting  
Oregon Environmental Equity Project

**Purpose**

In accordance with a directive from Anne Squier of the Governor's office, Director Fred Hansen appointed a Citizen Advisory Committee to assist in efforts to identify environmental equity issues, examine the environmental concerns of minority and low income populations, and to develop recommendations for further state action. Committee Chair Victor Merced and project staff will make an informational presentation to the EQC of the Committee's conclusions and recommendations. EQC direction is not required at this time. The Advisory Committee recommendations apply to the State's natural resource agencies and will be submitted to the Governor.

**Background**

In response to growing concerns about the disproportionate environmental impacts on the state's low income and minority populations, Anne Squier, Policy Advisor to the Governor on Natural Resources and the Environment asked that the Department of Environmental Quality take the lead on an environmental equity project with assistance from the state Health Division and other state natural resource agencies.

Through interviews project staff conducted with interest groups and agency staff, more than twenty potential environmental equity issues were identified that the Committee grouped into the following areas:

- Agency communication and public involvement procedures.
- Exposure to water pollution.
- Farmworker exposure to pesticides.
- Exposure to household pollutants - lead, asbestos, radon.
- Land use siting of industrial waste and other permitted facilities.
- Cleanup of contaminated sites.

From January to July 1994, the Committee held monthly public meetings to discuss the

Memo To: Environmental Quality Commission  
September 21, 1994  
Page 2

impacts of environmental hazards on the state's minority and low income groups. The Committee addressed one of the six issues at each meeting, which included an opportunity for public comment on any environmental equity issue.

The Committee agreed that the information available to members supported a need for action to ensure equity in the State's environmental programs. The Committee's recommendations to natural resource agencies are intended to assure that environmental equity ethics are incorporated into the agencies' decision making processes. The Committee also recommends that an Environmental Equity Citizen Board be established to advise the implementation of the Committee's recommendations.

The Committee's report will be submitted to the Governor's office this month for approval and further direction. The Governor's office will provide direction to natural resource agencies as to project implementation. At that time, staff will request EQC guidance on implementing the recommendations that apply to DEQ.



# **OREGON ENVIRONMENTAL EQUITY CITIZEN ADVISORY COMMITTEE REPORT**

A Report to  
The Governor

On Ensuring Environmental Equity in Oregon

October 1994

## **Citizen Advisory Committee Members**

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The Chair of the Committee was **Victor Merced**, Deputy Administrator for Oregon's Adult and Family Services Division and former Director of the Oregon Council for Hispanic Advancement. While a National Kellogg Fellow, he conducted research on Third World environmental issues.

**Richard Brown**, co-chair of the Black United Front and a professional photographer long active in environmental issues.

**Joe Coburn**, a retired educator with the Northwest Regional Education Laboratory and former chair of the Klamath tribe restoration committee.

**Richard Craig**, Senior Water Resource Technician/Environmental Coordinator for the Confederated Tribes of Warm Springs.

**Donalda Dodson**, Public Health Manager for the Marion County Health Department and chair of the Salem YWCA's Racial Justice Committee.

**Sheila Holden**, a district manager for Pacific Power and Light and chair of the Portland Northeast Coalition of Neighborhoods.

**Carolyn Landis**, Executive Director of Yamhill County's Community Action Agency.

**Judy Low**, a cultural resource consultant and cultural dynamics instructor at the Public Safety Academy.

**Linda Lutz**, a vice-president of US Bancorp Mortgage Company in Portland and board member of the Oregon Environmental Council, Portland.

**Ellen Mendoza**, Regional Director of Clackamas County for Oregon Legal Services and member of the Oregon Natural Resources Council and the Audobon Society.

**Kim Moreland**, a land use planner who worked primarily on the Albina Community Plan to revitalize inner north and northeast Portland.

**Frances Portillo-Denhart**, an educational consultant and cultural diversity trainer, Portland.

# State Agency Project Participants

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## Project Staff

**Lydia Taylor**, Division Administrator, Management Services, Department of Environmental Quality (DEQ)

**Roberta Young**, Project Manager, DEQ

**Maria Menor**, Project Assistant/Technical Writer, DEQ

**Cathy Neumann**, Coordinator for Oregon Health Division (OHD)

**Doug Terra**, Geographic Information Systems Advisor, DEQ

## State Agency Task Group Members

**Tom Bispham**, DEQ

**Mike Downs**, DEQ

**Ron Hall**, OHD

**Brooks Koenig**, DEQ

**John Kowalczyk**, DEQ

**Monty Morshed**, DEQ

**Doug Parrow**, Water Resources Department (WRD)

**Greg Robart**, Department of Fish and Wildlife (ODFW)

**Jim Sitzman**, Department of Land Conservation and Development (DLCD)

**Carolyn Young**, DEQ

**Lorna Youngs**, Department of Agriculture (ODA)

The following agency staff also responded to issues and provided background information to the Citizen Advisory Committee:

**Margot Barnett**, OHD

**Bob Baumgartner**, DEQ

**Jeff Christensen**, DEQ

**Bob Danko**, DEQ

**Ken Kauffman**, OHD

**Chris Kirby**, ODA

**Neil Mullane**, DEQ

**Greg Nelson**, WRD

**Cathy Neumann**, OHD

**Marilyn Schuster**, Occupational Safety and Health Administration

**George Toombs**, OHD

**Dave Wall**, DEQ

## Acknowledgements

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The Environmental Equity Citizen Advisory Committee would like to offer a special thanks to the individuals who provided input to the Committee on the impact of environmental hazards on the state's minority and low income groups. The input of these individuals was instrumental in further educating the Committee on the complex issues related to environmental equity. These individuals include:

**State Representative Avel Gordly**; **Joe Lane**, Metropolitan Human Rights Commission; **Chris Johnson**, Oregon Childhood Lead Poisoning Prevention Program; **Colin Wood**, La Clinica del Carino; **Nargess Shadbeh**, Oregon Legal Services; **Larry Kleinman**, Pineiros y Campesinos Unidos del Noroeste; **Joan Rothlein**, Center for Research on Occupational and Environmental Toxicology; **Bernie Paul**, Salud Medical Center; **Doug Krahmer**, Oregon Farm Bureau; **Mark Fritsch and John Kelley**, Confederated Tribes of Warm Springs Department of Natural Resources; **Lee Po Cha**, International Refugee Center of Oregon; **Arlene Osbourne**, Lutheran Family Services; **Tina Castanares**, La Familia Sana; **Carmen Campos**, La Familia Sana; **Thom Nelson**, Hood River Grower-Shipper Association; **Joe Peloyo**, La Familia Sana; **Tim Ennis**, Oregon State Office of Rural Health; **Noel Wiggins**, La Familia Sana; **Paul Duong**, Refugee Coordinator, Portland Office of Neighborhood Associations; **Lee Perlman**, Eliot Neighborhood Association, Portland; **Marvietta Redding**, City of Portland Bureau of Environmental Services.

The Committee would also like to acknowledge the help and input that was provided by the additional state agency staff that were involved in the Oregon Environmental Equity Project. A special thanks goes to **Barbara Taylor** and **Ruth Ascher** of the Health Division's Office of Multicultural Health.

Information was also provided by the following organizations and State offices: Metropolitan Human Rights Commission, Urban League of Portland, Columbia River Intertribal Fish Commission, Portland Office of Neighborhood Associations, Commission on Hispanic Affairs, Legislative Commission on Indian Services, Governor's Minority/Women Business Advocate.

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The acronyms used in this report are as follows:

DEQ - Department of Environmental Quality  
OHD - Health Division  
ODFW - Department of Fish and Wildlife  
DLCD - Department of Land Conservation  
and Development

WRD - Water Resources Department  
ODA - Department of Agriculture  
OSHA - Occupational Safety and Health  
Administration  
EPA - US Environmental Protection Agency

# Executive Summary

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## Purpose

The Department of Environmental Quality and the Oregon Health Division were the lead agencies for the state's examination of how minority and low income groups may be disproportionately affected adversely by environmental hazards. The purpose of the Environmental Equity Citizen Advisory Committee was to assist in efforts to identify environmental equity issues, examine the environmental concerns of minority and low income populations, and propose an interagency approach to assure equity in all state environmental regulatory decisions. The ultimate goal of the Oregon Environmental Equity Project was for the State to recognize and take appropriate action to ensure that environmental risks are assessed and regulated in a fully equitable manner.

## Background

People everywhere are becoming increasingly aware of the effects of environmental regulation on their families, neighborhoods, and communities. In the early 1980s, public concerns developed as to where hazardous waste facilities were being located. Government and private studies indicate that the burden of environmental hazards is not evenly distributed among all segments of the population and often falls disproportionately on minority and low income groups. The Governor's Office directed the Department of Environmental Quality to take the lead in examining how the State's environmental programs may contribute to discriminatory environmental problems. The Health Division provided assistance as well as other state natural resource agencies in their respective issue areas.

## Oregon's Issues

Through interviews project staff conducted with interest groups and agency staff, more than twenty potential environmental equity issues were identified and that the Committee grouped into the following six topic issues:

- Natural resource agencies' public participation and communication procedures
- Exposure to water pollution
- Farmworker exposure to pesticides
- Exposure to household pollutants such as lead, radon, asbestos
- Land use siting of facilities
- Cleanup of contaminated sites

From January to July 1994, the Committee held monthly public meetings to discuss the impacts of environmental hazards on the state's minority and low income groups. The Committee addressed one of the six issue areas at each meeting, which included an opportunity for public comment on the environmental equity issues.

## Directives to Agencies

The Committee agreed that the information provided to it supported a need for immediate action to ensure equity in the State's environmental programs. The Committee's directives to natural resource agencies are intended to assure that environmental equity ethics are incorporated into the agencies' decision making processes. The Committee also offered recommendations for agencies to implement in order to gain this assurance.

### **1. AGENCY PUBLIC COMMUNICATION AND PARTICIPATION PROCEDURES**

**Issue Statement:** Minority and low income communities generally lack adequate access to governmental processes and decision-making.

**Directive:** Agencies are to ensure that minority and low income communities are included in and are aware of public communication and involvement procedures.

### **2. HUMAN EXPOSURE TO WATER POLLUTION**

**Issue Statement:** Minority and low income groups may be unduly exposed to water pollution due to their dietary, cultural and recreational practices.

**Directive:** Agencies are to evaluate their policies and actions related to water pollution to assure that they include environmental equity considerations.

### **3. FARMWORKER EXPOSURE TO PESTICIDES**

**Issue Statement:** Concern expressed over whether agricultural workers and their families (who are largely minority and low income) are provided adequate protection from pesticide exposure.

**Directive:** Agencies are to incorporate environmental equity ethics into policies and actions related to the regulation of pesticides to assure that farmworkers are adequately protected both on the job and in their living spaces.

### **4. EXPOSURE TO HOUSEHOLD POLLUTION**

**Issue Statement:** Minority and low income groups are more vulnerable to exposure to household pollutants such as lead, radon and asbestos because of where they live and also because they may be less aware of environmental hazards compared to other segments of the population.

**Directive:** Agencies are to evaluate their policies and actions related to household pollutants to assure that they protect all groups in the state's population.

### **5. LAND USE SITING OF FACILITIES**

**Issue Statement:** Concern expressed about the siting of industrial waste and other permitted facilities in or near areas that are largely minority and/or low income.

**Directive:** State and local agencies are to incorporate environmental equity ethics into their procedures for the siting and review of permitted facilities.

### **6. CLEANUP OF CONTAMINATED SITES**

**Issue Statement:** Concern expressed regarding the state process for the cleanup of contaminated sites.

**Directive:** State agencies are to ensure that environmental equity ethics are integral to the cleanup of contaminated sites.

# Chapter 1. Introduction

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## Project Directive

In response to growing concerns about the disproportionate environmental impacts on the state's low income and minority populations, Anne Squier, Policy Advisor to the Governor on Natural Resources and the Environment asked that the Department of Environmental Quality take the lead on an environmental equity project with assistance from the state Health Division and other state natural resource agencies.

## What is Environmental Equity?

The issue of fairness and equity in the development and implementation of environmental regulations has resulted in the use of several definitional terms. Environmental equity refers to equal protection from environmental hazards for all people, regardless of race, culture, income, or educational level. Equity signifies fairness in the development, administration, and enforcement of environmental laws so that benefits are enjoyed and risks borne equally by all citizens.

"Environmental justice" is another term used to reflect the linkage to civil rights principles. A third term, "environmental racism," refers specifically to the historical pattern of discrimination against people of color and encompasses any environmental policy that disadvantages people based on their race, color or ethnicity.

## The Emergence of Environmental Equity as a National Priority

Nationally, a grass roots environmental movement initially was responsible for increasing awareness about the impacts of environmental hazards on minority and low income groups. In 1982, officials decided to locate a PCB (polychlorinated biphenal) landfill in the predominantly poor and black Warren County, North Carolina. Protests led to an investigation a year later by the U.S. General Accounting Office (GAO) of the socioeconomic and racial composition of communities surrounding four major hazardous waste landfills in the South. The GAO study concluded that blacks were disproportionately represented in three of the four sites studied<sup>1</sup>. The Warren County demonstration and the GAO report led the United Church of Christ Commission on Racial Justice to sponsor a nationwide study in 1987. In the examination of racial and socioeconomic characteristics of residents of communities around commercial hazardous waste facilities, the Commission's study determined race to be a stronger factor than income in predicting the location of hazardous waste siting. In 1990, environmental justice activists, academicians, civil rights leaders, and public health officials attending the Conference on Race and the Incidence of Environmental Hazards held at the University of Michigan formed

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<sup>1</sup> U.S. General Accounting Office (GAO). (1983). Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities.



the "Michigan Coalition," which prompted EPA to establish its Environmental Equity Workgroup. In 1992, EPA created its Office of Environmental Equity and issued a final report entitled "Environmental Equity: Reducing Risks For All Communities" <sup>2</sup>.

Also in 1992, then Senator Albert Gore introduced in the U.S. Senate the Environmental Justice Act of 1992. Because the 102d Congress did not act on the bill, it was reintroduced in the 103rd Congress in the House of Representatives by Representative John Lewis (D-GA) and in the Senate by Senator Max Baucus (D-MT). The Act would provide the federal government with data on the top 100 "environmental high impact areas" that warrant strict regulatory oversight, technical assistance and health assessments<sup>3</sup>.

On February 11, 1994, President Clinton signed an executive order that would establish environmental justice as a national priority. Entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," the order focuses federal attention on the environmental and human health conditions in minority and low-income populations with the goal of achieving environmental equity. The order directs all federal agencies to determine whether their regulations adversely affect the poor or people of color. The order also directs the agencies to ensure that states and other organizations receiving federal funding for environmental projects do not violate federal civil rights law. Finally, federal officials must determine the extent to which environmental racism is a national problem<sup>4</sup>.

Several states have recently begun to address environmental equity concerns. Arkansas and Louisiana were the first to enact environmental justice laws. Virginia has passed a legislative resolution on environmental justice. California, Georgia, New York, North Carolina and South Carolina have pending legislation to address environmental inequities. Adopted and proposed laws include providing compensation to host communities, enhancing public notice and participation, improving risk assessment methodologies, creating state equity policy, and increasing public communication and information<sup>5</sup>. In 1993, Texas created an Environmental Equity and Justice Taskforce which was directed to investigate and identify factors contributing to inequitable environmental impacts and to recommend remedial and preventive actions to the Texas Natural Resource Conservation Commission<sup>6</sup>.

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<sup>2</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY (U.S. EPA). 1992. Environmental Equity: Reducing Risk for all Communities. EPA/230-R-92-008. Washington, D.C.

<sup>3</sup> ANDERSON, Y., COULBERSON, S.L., and PHELPS, J. (1993). "'Environmental Justice:' The Central Role of Research in Establishing a Credible Scientific Foundation for Informed Decision Making." *Toxicology and Industrial Health* 9(5): pp. 685-728.

<sup>4</sup> CLINTON, W. (1994). Executive Order 12898 of February 11, 1994. "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations."

<sup>5</sup> HACKER, B. (1994). "State Environmental Justice Legislation." *Policy Alternatives on Environment*, 11(1): pp. 16-18.

<sup>6</sup> The Task Force's report is entitled "Texas Environmental Equity and Justice Task Force Report." The Task Force was established and appointed in 1993 by Chairman Kirk Watson of the Texas Air Control Board and Chairman John Hall of the Texas Water Commission.

## **Environmental Equity And Oregon**

Oregonians have always placed a high value on the quality of their natural environment, which is not only beautiful but significantly varied. Indeed, as Oregon undergoes population growth and economic diversification, it will become increasingly important to improve the management and regulation of the state's finite resources. The high value placed on the environment is reflected not only in the need to preserve the state's natural resources, but also in Oregonians' desire to retain their quality of life. This value is an essential component to the backdrop for the examination of environmental inequities in the state.

The state's demographic makeup is also part of this backdrop. Almost half of Oregon's population is concentrated in one urban area: 43% of the state's residents live in the Portland Metropolitan Area, which continues to dominate population and economic growth<sup>7</sup>. Oregon is also relatively homogeneous, with whites comprising 93% of the state's population, according to 1990 census data. This is further demonstrated by the fact that Portland was found to be the "whitest" of America's 50 largest cities, where minorities represent fewer than one in six residents<sup>8</sup>.

Oregonians' strong commitment to environmental quality and their unique demographic makeup set the stage for examining how the state's minority and low income populations may be disproportionately impacted by environmental risks and hazards. Factors such as language or cultural barriers, lack of political empowerment, limited educational opportunity, poor access to health care, and economic disadvantages serve to exacerbate environmental impacts on such communities. These factors translate into a small or absent voice in public decisionmaking. Concerns for the welfare of such communities demonstrate the belief that all Oregonians have a just claim to the quality of life provided by Oregon's special natural environment, livable communities, and responsive political and social institutions.

It is clear that the State needs a better understanding of environmental equity issues in Oregon. In response, the Governor's Office directed the Department of Environmental Quality to determine how the State's environmental programs may contribute to discriminatory environmental problems. The Oregon Health Division provided assistance on the Oregon Environmental Equity Project as well as other state natural resource agencies in their respective issue areas.

## **Overview of the Citizen Advisory Committee**

The Governor's Policy Advisor on Natural Resources and the Environment asked that the state's

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<sup>7</sup> Data based on Population Estimates for Oregon (July 1, 1993), Census and Population Research Center, Portland State University. Includes Columbia, Multnomah, Clackamas, Washington and Yamhill counties.

<sup>8</sup> Schrag, J. (1994). "White Like Us." Willamette Weekly. June 14.

examination of disparate environmental impacts on minority and low income groups include the input of a citizen advisory committee. DEQ Director Fred Hansen appointed the Environmental Equity Citizen Advisory Committee in December 1993.

**Committee Charge:** The Committee was established to assist the state in accomplishing the following objectives:

- Gather quantitative and qualitative information on environmental equity.
- Enhance public and governmental awareness of environmental equity.
- Identify issues relating to regulatory practices that may pose greater risks to minority or low income populations.
- Propose recommendations on an interagency approach to assure equity in all state environmental regulatory decisions.

**Committee Members:** Twelve persons were appointed to the Committee. Efforts were made to ensure the Committee was representative geographically, culturally diverse, and that members would have backgrounds that would be helpful in understanding and examining potential issues of environmental inequity in Oregon.

Each member contributed different perspectives to different aspects of the issue. Some members came with an acute understanding of the issue based on their personal experience, while others based their knowledge on literature related to environmental equity. Still others knew about environmental concerns that affected their communities or had related experience through their work. Despite the different perspectives, however, there was a general consensus from the Committee that minority and low income groups do bear a disproportionate burden of the impacts of environmental regulation.

### **Environmental Equity State Agency Taskgroup**

An interagency taskgroup was established by DEQ staff to provide technical assistance and advice to project staff and to the Committee. By creating this taskgroup, it was recognized that efforts to address environmental inequity must involve more than one agency. The state agencies that participated in the taskgroup include: Department of Environmental Quality, Health Division, Department of Land Conservation and Development, Oregon Water Resources Department, Department of Agriculture, and Department of Fish and Wildlife.

## **How the Committee Gathered Information**

The Committee chose to direct outreach efforts to those communities that may be subject to environmental inequities; the primary focus of the Committee's efforts to gather information was to provide a forum for those groups that have not had a voice with regard to their environmental concerns. The conclusions in this report were drawn from the following sources: interviews conducted with interest groups, interested citizens and agency staff, public input to Committee meetings, and research by DEQ staff.

### **Interviews**

In the fall of 1993, informational letters with request notices for telephone interviews were sent to approximately 300 minority, low income and environmental interest groups or individuals in the state. The mailing list was compiled from other public agencies' mailing lists of organizations that provide services to or represent minority and low income groups. The letter was followed by telephone interviews conducted by project staff with 35 statewide interest group representatives statewide and with agency taskgroup members. The objective of the interviews was to assess the range of environmental equity-related concerns from the perspectives of the groups/individuals above as well as from governmental perspectives. The questions were broad and open-ended to allow the interviewee to speak freely about equity issues in the state, are included in the appendix of this report.

Through these interviews, twenty potential environmental equity issues<sup>9</sup> were identified which the Committee grouped into six issue areas:

- Agency public participation and communication procedures
- Exposure to water pollution
- Farmworker exposure to pesticides
- Exposure to household pollutants such as lead, radon, asbestos
- Land use siting of facilities
- Cleanup of contaminated sites

The issue statements heading each chapter of the report were developed from these areas of focus, and are the areas upon which the Committee members based their work.

### **Public Meetings**

From January to July 1994, the Committee held monthly public meetings to discuss the impacts of environmental hazards on the state's minority and low income groups. The Committee's meeting process focused on the inclusion of and outreach to potentially affected populations. A key objective of the meeting process was to identify the concerns of minority and low income groups relative to environmental policy and decision making.

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<sup>9</sup> A list of these issues is provided in Appendix B of this report.

The public Committee meetings were held in Woodburn, Warm Springs, Hood River and various locations in Portland. The meetings were publicized in advance, and attendees were invited to give testimony. The Committee addressed one of the six issue areas at each meeting; however, the individuals providing public comment were not limited to the equity issue area on the meeting agenda. Also present at the meetings were agency staff members who provided Committee members with background information and data on the featured issue area.

### **Research Data and Information**

Project staff gathered baseline information on the agency authorities, policies and programs related to each issue area. Staff also conducted research into the equity issues related to each issue area which included discussions with community members and service providers and studying literature on environmental equity. A resource list is included in the appendix.

### **Expectations of Committee's Efforts**

Numerous studies have concluded that environmental inequities exist in the United States. The Committee's role was to address existing or potential equity issues in Oregon. It should be recognized that the inequity issue areas addressed by the Committee may not be all-inclusive of the equity-related issues in Oregon, but the Committee's efforts provide a sound beginning. The Committee also acknowledged that socioeconomic factors such as poverty, education, health care and access to basic commercial services are beyond the scope of what can be addressed effectively by the state's natural resource agencies. However, racial discrimination, intentional or unintentional, and insensitivity to issues of environmental equity also play a major role, and participating agencies need to work on mitigating these factors. Indeed, this effort should not be considered the State's final analysis of environmental inequities in Oregon. Rather, the Committee's conclusions and recommendations should serve as a springboard for the state's continuing efforts to address disparate environmental impacts on minority and low-income groups.

### **Environmental Equity Implementation Strategy**

The Environmental Equity Citizen Advisory Committee made the following recommendation in order to assure that the issues described in this report are addressed and the Committee's recommendations are implemented by the appropriate natural resource agencies:

#### **Recommendation 1-1**

**An Environmental Equity Advisory Board should be created within the state's natural resource agency structure. The Board should be representative of diverse communities and environmental and low-income interests. The Board would be established for the '95-'97 biennium and would oversee the implementation of the Committee's recommendations.**

## **Institutionalizing Environmental Equity**

**Issue Statement:** Environmental equity should be inherent in the way natural resource agencies do business.

**Directive:** Agencies are to adopt policies that would incorporate environmental equity into their institutional framework and may include the following elements:

### **Recommendation 1-2**

**Mandate diversity in state agency employment practices, since part of the problem is the limited perspectives and absence of diversity among those who develop, implement and enforce environmental policy.**

### **Recommendation 1-3**

**Require diversity training for agency staff, recognizing that diversity encompasses factors other than color, such as age and gender.**

### **Recommendation 1-4**

**Require cultural competency training for all staff, with the goal of a working environment that is appreciative of individual differences rather than merely tolerant of them.**

### **Recommendation 1-5**

**Involve concerned citizens and neighborhoods in a manner which would ensure that diverse viewpoints are included in the environmental decisionmaking process.**

### **Recommendation 1-6**

**Ensure that efforts to achieve environmental equity are carried out by agency field and regional offices.**

### **Recommendation 1-7**

**Recognize that equitable environmental policy requires interagency collaboration and cooperation.**

## **Chapter 2. Agency Communication and Participation Procedures**

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**Issue: Minority and low income communities generally lack adequate access to environmentally-related governmental processes and decision-making.**

### **Directive**

**Agencies are to ensure that minority and low income communities are included in and are aware of public communication and involvement procedures.**

### **Existing Procedures**

Each state agency has mechanisms for fostering public communication and participation. All agencies are mandated by law to provide notice of public hearings to a mailing list of individuals when rules are adopted. Mailing lists are maintained by individual programs and include the regulated communities, governmental agencies, media, and people who have expressed an interest in being informed. Statutes also require direct mailings of information and press releases, which are sent to community publications as well as The Oregonian, the state's largest daily.

State natural resource agencies may also use any of the following mechanisms for public participation: public information meetings, press releases, including those in local and minority publications, citizen advisory committees and workgroups and the development of factsheets and educational materials for public distribution.

### **Issue Topics and Discussion**

*“Citizens have a role in determining what is and is not acceptable in their communities. There must always be a way for citizens to have input into decisions that affect where they live.”*

— State Representative Avel Gordly

That citizens have a right to participate in decisions that affect their lives is a basic principle for risk communication. And yet minority and low income groups may feel completely excluded from the process, or that the issues of greatest concern to them may be dismissed altogether. The following concerns gathered from the Committee's interviews and public meetings indicate that the procedures above may be inadequate for low-income and minority groups.

**Topic 1. Educational efforts often do not adequately address the intended audience's primary language, educational level, or cultural implications.**

Educational disadvantages also play a major role in limiting access to information and experience required to effectively participate in public processes. Efforts are needed to target diverse

audiences through education and outreach, and issues around primary language must be addressed as well.

**Topic 2. The composition of decision-making bodies such as advisory committees, commissions, and study groups is often not representative of minority and low income groups.**

Concern was expressed regarding the lack of agency guidelines to assure consideration of minority and low income representation on citizen advisory committees.

*“Advisory committees are almost universally caucasian, middle to upper class, suburban, and educated...Are we to assume the caucasian, educated, middle to upper class advisory committee will always benevolently look after the interests of the more unfortunate... All the policy making and decisions come from one somewhat public-interested/somewhat self-interested group.”*

— DEQ staffperson

**Topic 3. Communities need information in order to influence the environmental decision-making process.**

Lack of knowledge limits the rate at which low income and minority groups can "get up to speed" on all of the aspects of environmental issues and reduces their effectiveness in proceedings where technical issues play a central role.

**Topic 4. Distribution of information on household hazards such as lead, radon and asbestos is usually directed towards homeowners, and rarely towards renters.**

The channels through which homeowners may receive information on household hazards such as contractors or stores that sell remodeling materials are not generally accessed by renters, who are often low income.

**Building Bridges**

Any effective communication process must involve all parties with an interest or stake in the issue at hand. Ironically, the groups, such as the poor and minority groups, who may be at most risk may also be the most difficult to reach. It is imperative, therefore, that Oregon's natural resource agencies devote time and energy to the slow, hard work of making connections with other legitimate and representative groups. Enlisting the help of organizations that have credibility with communities facilitates two-way communication, particularly so with low income and minority communities where people may perceive government to be disinterested in their concerns.

For example, Portland is home to many refugees who come from countries where there are no environmental quality controls or education on the environment. This lack of environmental awareness, coupled with a distrust for government in general may exacerbate these groups' vulnerability to pollution. Suggestions on effective communication mechanisms from individuals who work in the refugee communities include engaging the various refugee organizations as information channels, as well as direct agency contact with community members through



informal discussion groups.

Service organizations could also assist natural resource agencies in efforts to develop lists of individuals who represent minority and low income interests and are interested in serving on citizen advisory committees.

## **Committee Recommendations**

### Recommendation 2-1

**Identify organizations with established channels for reaching minority and low income communities or that work in the communities of concern, and utilize their communication and outreach endeavors to address environmental issues.** Such organizations include but are not limited to:

- Oregon Health Division's Office of Multicultural Health
- Ethnic community organizations
- Community action programs
- Migrant farmworker health clinics (six statewide)
- County health departments
- Migrant Education network
- Oregon Legal Services offices
- Tribal organizations

### Recommendation 2-2

**Target educational and outreach efforts to diverse audiences: address primary language, education levels, and cultural implications.**

### Recommendation 2-3

**Ensure that agencies work with the public school system to provide students with educational and informational materials on environmental issues.**

### Recommendation 2-4

**Maintain a log of bilingual state employees or community members who can be called upon for assistance in communication with members of diverse communities.**

### Recommendation 2-5

**Require permit applicants to provide contact and information to residents in an affected area.**

### Recommendation 2-6

**Develop a state policy to facilitate public access by low income and minority groups to state agency records regarding environmental regulations.**

### Recommendation 2-7

**Develop an inventory of meeting facilities around the state that meet the American**

**Disability Act requirements.**

**Recommendation 2-8**

**Develop an interagency information referral service for the natural resource agencies to answer environmentally related questions of concerned citizens.**

**Recommendation 2-9**

**Direct information on environmental concerns to renters or property occupants, as well as homeowners.**

## Chapter 3. Exposure to Water Pollution

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**Issue:** Minority and low income groups may be unduly exposed to water pollution due to their dietary, cultural, and recreational practices.

### Directive

**Agencies are to evaluate their policies and actions related to water pollution to assure that they include environmental equity considerations.**

The Committee's meeting on exposure to water pollution focused on the issue of fish consumption as a pathway for exposure for groups who eat more fish than the general population. Other issues raised related to water quality affecting tribal treaty fishing, fish populations and habitat.

*"The problems of environmental equity relative to fish consumption are secondary if instream environmental parameters needed for salmonids and other indigenous species are violated and fish populations decline below harvestable levels."*

— Confederated Tribes of Warm Springs natural resources staff

The Committee heard concerns about the potential for spiritual deprivation of certain cultures, specifically Native American, due to habitat depletion and the resultant loss of fish species and plants that are essential to native religions.

### Issue Topics and Discussion

**Topic 1. The risks to Native Americans and other minority groups who consume greater amounts of fish for dietary exposure to toxic chemicals:**

Fish is not just a primary food source for tribal members, it is essential to the tribes' cultural, economic and spiritual well-being. The Columbia River Intertribal Fish Commission's (CRITFC) survey of the fish consumption habits of the Umatilla, Nez Perce, Yakima and Warm Springs Tribes of the Columbia River basin suggest that EPA's ambient water quality criteria and state adopted water quality standards for the Columbia River basin based on a consumption rate of 6.5 grams per day may not be sufficient to protect Native Americans living in the basin.

*"The rates of tribal members' consumption across sexes, age groups, persons who live on vs. off-reservation, nursing mothers, fishers and non-fishers are from 6 to 11 times higher than the 6.5 grams per day estimate used by U.S. EPA in developing human health based water quality criteria for toxics."*

— Columbia River Intertribal Fish Commission

Issues were raised as to whether low income and minority groups, primarily African and Asian Americans, who used Columbia Slough for subsistence and recreational fishing were unduly exposed to water pollution. Awareness of these issues was heightened when Northwest

Environmental Advocates, a local environmental interest group, posted multi-lingual warning signs along this Portland waterway, which is undergoing an investigation of sediment contamination from decades of untreated sewage, industrial waste and agricultural runoff. Fishing in the Columbia Slough is attractive to the city's refugee communities for cultural and economic reasons.

*“Catching fish is a very common practice in many Asian countries...Asian people see anything from the sea as safe...If it looks clean, it is clean.”*

— Sponsors Organized to Assist Refugees (SOAR)

*“You have low-income people who are not fishing for recreation or for fun, but for their sustenance... (Their view is) ‘If I have nothing else to eat, I’m going to eat (what I catch); and whether I do or I don’t, I’m going to die anyway.’”*

— International Refugee Center of Oregon (IRCO)

## **Topic 2. Communication among federal, state, and county agencies with regard to water quality and water quantity issues:**

Concern was expressed that many water quality and water quantity problems have existed for a long time and that improved interagency coordination of similar efforts is necessary.

*“Coordination with other state and federal agencies on water quality issues is inadequate. (There is) an inadequate amount of sampling sites to enforce state water quality standards. If DEQ cannot increase the sampling sites, it needs to coordinate with Federal, state and county agencies that are currently collecting water quality data. Further, if data from other agencies is not in a form that DEQ can utilize, then DEQ needs to generate collection protocol.”*

— Confederated Tribes of Warm Springs natural resources staff

Agency staff pointed out that DEQ's statewide sampling program is comprised of 145 permanent sampling stations, which accounts for only 4,500 of the 145,000 miles of streams statewide. Accordingly, DEQ does coordinate data collection with other agencies such as the U.S. Geological Service and the Bureau of Reclamation; however, care must be taken as to how other agencies conduct the sampling and the approach taken before the data can be used.

Witnesses also commented on the need to implement existing Memoranda of Understanding (MOUs) developed by Bureau of Land Management, U.S. Forestry Service, and DEQ to address water-quality limited reaches in Eastern Oregon. Agency staff explained that such agreements are exactly that, which means that DEQ cannot require cooperation since it has no enforcement powers over federal agencies. The Committee discussed the possibility of creating an external entity within the state's natural resources structure to see that such agreements are carried out.

## **Topic 3. The level of water quality protection in Eastern Oregon versus Western Oregon:**

Witnesses expressed concern that the level of priority given to water quality protection of water bodies westside is higher than that given to water bodies in eastern Oregon. For example, witnesses contend that much of the water pollution eastside is from nonpoint sources, yet DEQ's enforcement of state standards does little to correct nonpoint source pollution.

Nonpoint source pollution refers to water contaminants that cannot be traced to a specific point

of origin. Rather, they come from non-specific sources such as agricultural, urban, construction, or forestry runoff. Nonpoint sources of pollution are not regulated through permits, as point sources are; therefore, it is possible for a nonpoint source to violate water quality standards without enforcement action being taken. Agency staff also pointed out, however, that the Forest Practices Act now requires forestry operations to meet DEQ water quality standards, which demonstrates that regulation of nonpoint source pollution is possible.

**Topic 4. The sufficiency of water quality enforcement to support fish populations and habitat:**

Committee members heard testimony on how inadequate enforcement of current water quality standards such as those for temperature and instream sediment can result in the lack of protection of cold-water indigenous aquatic species and is detrimental to spawning:

*“Juvenile spring chinook production in the Middle Fork of the John Day has been greatly limited due to lethal instream temperatures. Further, the loss of spring chinook adults and habitat have occurred in the John Day system due to temperature.”*

— Confederated Tribes of Warm Springs natural resources staff

Witnesses also pointed out that stream sediment is high in many portions of the John Day, Hood and Crooked subbasins. The decline of fish populations has direct impact on tribal subsistence and ceremonial fishing.

**Topic 5. Rural community exposure to water pollution from domestic wells:**

Approximately 500,000 rural residents rely on groundwater through domestic wells. Unless they are connected to four or more households, residential wells do not fit the Health Division’s public water system criteria and, therefore, are not required to be tested for contamination. Since they are not required to have their systems tested, rural residents who may be impacted from water pollution through their well system may be unknowingly creating problems such as from faulty well construction or well operation and maintenance.

Agency staff described the Home•A•Syst program which is offered by the Oregon State Extension Service and is a voluntary program designed to help rural residents protect, maintain, and improve their groundwater quality.

Concern was also expressed about the appropriate monitoring of sewage and well problems in low-income housing. Concern was particularly directed toward farmworkers and their families who live in on-site housing or reside in low-income housing off-site.

**Committee Recommendations**

Recommendation 3-1

**Improve state efforts to collect data on and provide information to groups who consume greater amounts of fish and other aquatic species than the general population.**

Examples of how natural resource agencies can implement this recommendation include:

1. Coordinate data collection efforts to provide population profiles that would help identify

the most sensitive population, and then develop risk assessment and risk management strategies accordingly.

2. Incorporate community-based, culturally sensitive programs to receive public input from and to educate potentially impacted populations.
3. Devise better ways for communicating with illiterate populations and with those who are non-English-speaking.

**Recommendation 3-2**

**Improve coordination by natural resource agencies on water quality and water quantity issues and the availability of data to help ensure consistency of subsequent policy implementation statewide.**

Examples of how this recommendation can be implemented include:

1. DEQ would better coordinate with federal, state, and county agencies that are currently collecting water quality data.
2. DEQ would develop water quality measuring protocol if data from other agencies is not in a format the Department can readily use.
3. A citizen involvement mechanism for state and federal natural resource agencies would be formed to help ensure implementation of collective agreements among agencies such as Memoranda of Understanding (MOUs).

**Recommendation 3-3**

**Ensure that the level of water quality protection is consistent statewide.**

Examples of how the state can implement this recommendation include:

1. Strengthen the state's nonpoint source program to address agricultural, forestry, and construction practices.
2. Prioritize the implementation of a groundwater management program that includes monitoring, regulation and assessment of the cumulative negative effects of nutrients, pesticides and other contaminants in groundwater.
3. Enforce compliance on temperature and instream sediment standards to better protect fish populations and habitat.

**Recommendation 3-4**

**Continue to keep rural communities informed about potential water pollution exposure from residential wells.**

Examples of how the state can implement this recommendation include:

1. Continue to educate rural communities on groundwater quality, with a specific focus on minority and low income groups. These efforts would include public forums on groundwater quality and such topics as well construction and septic systems.

2. Encourage voluntary efforts at monitoring groundwater quality in rural areas.
3. Continue to promote efforts to help homeowners assess potential risks to their own water supply.
4. Require local jurisdictions to aggressively pursue sewage/well problems in low-income housing.
5. Require that inspection of residential wells which are used in conjunction with farmworker housing include monitoring for chemical content as well as for potability.

## Chapter 4. Farmworker Exposure to Pesticides

**Issue:** Concern expressed over whether agricultural workers and their families are provided adequate protection from pesticide exposure.

### Directive

Agencies are to incorporate environmental equity ethics into policies and actions related to the regulation of pesticides to assure that farmworkers are adequately protected both on the job and in their living spaces.

Farmworker advocates have long voiced serious concerns about the hazards of pesticide exposures for farmworkers and their families. The meetings at Woodburn and Hood River were held primarily to hear these concerns. Both meetings were well-attended by farmworker advocates, farmworkers, and growers. One witness at Hood River pointed out the need for more meetings of this nature.

*“Groups (such as this Committee) can serve as intermediaries and facilitators to help bring concerned parties together where discussion was polarized before.”*

— La Familia Sana

### Worker Protection Standard

January 1, 1995 is the effective date of EPA's new Worker Protection Standard which covers both workers in areas treated with pesticides, and employees who handle (mix, load, apply, etc.) pesticides for use in these areas. The Worker Protection Standard features requirements for such working conditions as training, decontamination, duties related to personal protective equipment, general notification, and emergency assistance.

ODA has the primary responsibility for enforcing the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Since Oregon OSHA already enforces other worker protection rules, it has entered into a cooperative agreement under which Oregon OSHA will enforce the Worker Protection portion of the EPA rules. The ODA will continue to be responsible for the enforcement of the labeling portion of the rules.<sup>10</sup>

### Issue Topics and Discussion

**Topic 1. The need for more research and data on the health effects of pesticide exposure:** The Committee heard testimony from individuals who personally experienced the health effects of pesticide exposure, such as skin and eye irritations, even though precaution was taken against exposure. The Committee also heard from individuals whose families have been farming for

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<sup>10</sup> OR-OSHA. (1993). OR-OSHA Adopts EPA's Worker Protection Standard For Agricultural Pesticides Into Div. 81. Salem, OR



generations and who have not experienced any effects from being exposed to pesticides. Farmworkers, farmworker advocates, health care providers, and growers share a common concern for the lack of research and data on the health risks from pesticide exposure, however. Witnesses spoke to the meager research attention given to this issue.

*“It’s really easy for people to argue that it’s really not the pesticides (that cause problems), and it’s really easy to argue that it is the pesticides, but everybody’s arguing off the top of their head because there is no real data.”*

— La Clinica del Carino

*“Existing studies are sporadic, incomplete and it is difficult to draw conclusions from them in a convincing way so as to form policy.”*

— La Familia Sana

Information on pesticide poisonings is particularly important for health care providers, who often fail to recognize cases of poisoning. Witnesses at both meetings pointed out that this is in part the reason for the lack of documented cases of pesticide poisoning. The Oregon Health Science University does offer continuing medical education to healthcare providers who want training on pesticide-related illnesses. The problem, however, lies in the difficulty of structuring training since it is based on what pesticides are used, when and where. Particular areas grow particular crops that require particular combinations of pesticides. In addition, training is for acute exposure only; training on cumulative, chronic exposures is not provided because research data is not available.

A related concern was that the target for education on pesticides must extend beyond health care providers.

*“County health personnel and elected officials responsible for county budgets and priorities also need to learn about what is known and not known about pesticide exposure. Farmers also need more information on pesticides, and not from chemical representatives but from a neutral party.”*

— La Familia Sana

The need for a strong research agenda on the health effects of pesticide exposure is shared by all parties involved. Indeed, information on the risks from pesticide exposure effects should be viewed as a way to bring together the involved groups toward the common goal of good community health.

*“If we are able to work from the same set of data and same knowledge base, we will find more common ground for progress.”*

— La Familia Sana

## **Topic 2. The relationship between pesticides and the farmworker’s housing, employment and welfare:**

An overarching issue is the linkage between economic needs and the farmworker’s actions or inactions regarding pesticides. When the new worker protection standards go into effect in January 1995, farmers will be required within 24 hours of spraying, to provide notice of the

application both orally and through the posting of signs.<sup>11</sup> Employers are currently required to provide information on pesticide application to their workers and to medical providers upon request. These requirements notwithstanding, farmworker advocates spoke to the reluctance on the part of farmworkers to come forward and ask for or provide information.

*“Dealing with pesticides visits difficult choices on farmworkers, with the most difficult choice being taking action on pesticides because jobs, housing and their families’ welfare are on the line.”*

— Pineiros y Campesinos Unidos del Noroeste (PCUN)

*“Farmworkers are reluctant to turn a grower in if they don’t post (warning signs) or if they don’t tell people to get out because they are going to spray, because you’d lose your job, and not only do you lose your job, you lose your home...your home and your job go together.”*

— La Clinica del Carino

Further, it was pointed out that farmworkers are not unconcerned about or unaware of pesticide exposure. However, many of them are undocumented and are reluctant to make complaints for fear of reprisals. As described by a PCUN representative at the Woodburn meeting, "This perceived threat is a form of control over the undocumented worker."

To address this linkage, then, there must be ways to assure that workers can request information on pesticide application and provide information on pesticide use and misuse without fear of reprisal. While government regulations are supposed to provide this assurance, the Committee discussed additional mechanisms. One way is by anonymous reporting and providing ways to protect the privacy of workers who report pesticide misuse or rule infractions. For example, it was pointed out that the Pesticide Analytical and Response Center (PARC) is an interagency consortium that reviews and addresses incidents of pesticide exposure to humans and wildlife. Viewing PARC as one avenue through which incidents of pesticide exposure are made known, it was suggested that PARC be examined to assure that reports can be made while protecting the identity of the affected individual. It was also pointed out that any examination of PARC would need to factor in abilities and limitations of each member agency regarding anonymous reporting. For example, ODA has limited authority to keep records in an investigation confidential; while OHD and OSHA have specific statutory authority to protect the identity of the individual in certain circumstances.

A collective bargaining agreement between farmers and their employees was offered as another way to provide this assurance. Farmworkers currently do not have bargaining rights in Oregon. A collective bargaining agreement would cover all workplace issues, including pesticides. Such an agreement would not only enforce minimum wage requirements for farmworkers, but could also allow for the release of information regarding pesticide exposure and risk to a third party in order to protect the privacy of the farmworker.

A representative from PCUN, (Northwest Treeplanters and Farmworkers United), described the relationship between farmworkers and growers as an "imbalance of power" and discussed how

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<sup>11</sup> 40 CFR 170.120 Worker Protection Standard: Notice of applications.

collective bargaining would address this imbalance.

*"...When farmworkers on the ground have the ability and the power to raise issues and not be retaliated against for raising these issues and can discuss them at the bargaining table between growers and farmers, things will change..."*

— PCUN

**Topic 3. The effect of re-entry requirements on-site residents:**

Many more pesticides have been re-registered over the past few years as "restricted-use" pesticides. Under the upcoming Worker Protection Standard, such pesticides would require "re-entry" times; that is, the period of time that must elapse between the application of a pesticide and re-entry by humans into the treated area<sup>12</sup>. Re-entry periods can last anywhere from 24 to 48 hours. Spraying often affects contiguous on-site housing for farmworkers.

The re-entry provision is designed to protect all parties; however, growers, workers, and farmworker advocates alike expressed concern about the burden this requirement would place on workers and their families:

*"Workers are not in the position to go to a motel or to stay with other families or to do other things to remove themselves from the orchard... when re-entry times are enforced, what we'll have are folks living in their cars, living under bridges, living in parks, living on the orchards...it's hard to know what's more dangerous, is it exposure to pesticides or having to live out in the street?"*

— La Clinica del Carino

The Committee heard from growers, who are faced with the difficulty of sustaining their business, having to comply with numerous regulations and trying to provide housing for their employees. Growers at the Hood River meeting attested that, faced with the re-entry requirement, farmers will choose to either comply with the requirement or avoid compliance by closing their on-site housing. Either way, this choice presents a no-win situation for their employees:

*"If I'm required to deal with more regulations and to expose myself to myriad legislation, I would choose not to do that...I would close my housing rather than expose myself to litigation. But I would not like to have to make that choice..."*

— Hood River farmer

Given the choices the upcoming re-entry requirements present to farmers and their workers, support for low-cost housing in communities is critical.

*"...Until there is an alternative for them in terms of off-farm housing...the hardships for the people who work for us would be very great..."*

— Hood River farmer

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<sup>12</sup> 40 CFR 170.112 Worker Protection Standard: Entry restrictions.

#### **Topic 4. The adequacy of existing efforts to foster two-way communication with farmworkers:**

The new Worker Protection Standards will require that information such as warning signs and brochures be written in Spanish as well as English. The issues around communication for farmworkers are two-fold: how the information is conveyed and by whom the information is conveyed. Witnesses spoke to the need for information in the workers' primary language and at the appropriate literacy level, and that agencies go through channels that farmworkers trust and that are familiar. For example, La Familia Sana is an organization that trains members of the community as lay health promoters. It was pointed out that lay health promoters are excellent educators on health and safety issues because many of them had been farmworkers themselves.

#### **Topic 5. The use of alternatives to traditional pesticide use:**

Several witnesses spoke to the need for alternatives to traditional pesticide use in agriculture. Suggestions ranged from reducing the potency of chemicals currently in use to exploring sustainable agriculture, which involves alternatives such as integrated pest management and the use of organic pesticides. Growers at the Hood River meeting pointed out that the success of sustainable agriculture would depend on whether it is economically supported by the marketplace. Not only would stronger consumer demand be necessary, but a potentially greater cost must be offset by a higher rate of return before growers would be willing to convert to alternative methods. Growers suggested that research into technologies geared to more localized rather than broad methods of application be explored.

### **Committee Recommendations**

#### Recommendation 4-1

**Explore innovative methods of providing information to and improving communication with farmworkers and their families on pesticide exposure.**

Examples of how the state would implement this recommendation include:

1. The state would enlist the help of radio stations, churches and organizations that have direct contact with farmworkers to facilitate two-way communication.
2. Education efforts must not only target workers' primary language but also their literacy level.
3. The state would disseminate information on pesticide exposure through schools.

#### Recommendation 4-2

**Address the linkage between the economic needs of workers and failure to report or pursue pesticide use infractions.**

Examples of how this recommendation would be implemented include the following:

1. The state would provide a forum for discussions on pesticide use in agriculture, which would include input from all parties involved, including farmworkers.

2. Legislation would be developed on collective bargaining rights for farmworkers.
3. The Pesticide Analytical and Response Center (PARC, housed within OHD) would be examined to improve its effectiveness as a mechanism to facilitate reporting of pesticide misuse or exposure while protecting the identity of the affected individual.

#### Recommendation 4-3

##### **Expand efforts to conduct research on the health effects of pesticide exposure.**

Examples of how the state can implement this recommendation include:

1. Develop and implement a strong research agenda on pesticide exposure.
2. Emphasize the importance of ongoing efforts to train and educate health care providers on the identification and treatment of pesticide-related illnesses; increase funding of such efforts.
3. Explore ways to track the medical histories of farmworkers and their families.

#### Recommendation 4-4

##### **Expand educational efforts on pesticide-related issues to be more inclusive of all parties involved.**

Examples of how this recommendation can be implemented include:

1. The educational forum would include farmworkers, health care workers, county health officials, community leaders and farmers; moreover, efforts should be conducted by a third party, rather than by chemical companies.
2. A public interest campaign would be conducted to raise community consciousness regarding farmworker issues, including information on the effects of pesticides on the general public.

#### Recommendation 4-5

##### **Encourage affordable housing initiatives as opportunities to give farmworkers and families alternatives to living on-site, as well as to facilitate their access to community resources.**

#### Recommendation 4-6

##### **Encourage alternatives to traditional pesticide use.**

Examples of how the state can implement this recommendation include:

1. Continue to conduct research to further organic farming practices.
2. Provide a financial incentive for decreased pesticide use.
3. Explore funding for more effective technology, such as for shrouder sprayers.

## Chapter 5. Exposure To Household Pollution

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**Issue: Minority and low income groups may be more vulnerable to exposure to household pollutants such as lead, radon, and asbestos because of where they live and also because they may be less aware of environmental hazards compared to other segments of the population.**

### Directive

**Agencies are to evaluate their policies and actions related to household pollutants to assure that they protect all groups in the state's population.**

### Issue Topics and Discussion

Agency staff and community service providers who were present at the Committee's meeting on this issue area discussed the following issues:

**Topic 1. Lead exposure: All children in inner cities have greater risk for exposure. However, poor and minority children who are already disadvantaged by other factors are particularly vulnerable to lead poisoning.**

A number of studies indicate that lead poisoning can cause irreparable damage in children, which is manifested by symptoms such as behavioral problems, lowering of IQ points, and possible increased risk of dropping out of school in later years. Blood lead levels must be reported to the Oregon Health Division at 10 micrograms per deciliter. This level is set by the Centers for Disease Control, which lowered the level from 25 mg/dl in 1991.

The removal of lead from gasoline has been the single greatest contributing factor in lowering blood lead levels in the entire population. The greatest source now is lead-based paint, which children either breath in through dust or ingest from paint chips or through normal hand-to-mouth activity<sup>13</sup>. The risk for lead exposure is exacerbated in homes built before 1978, after which the lead content of paint was drastically reduced, or homes in which recent remodeling or renovation have taken place. Poor and minority children may be unduly exposed to soil contaminated by lead because lower income and minority groups tend to be more heavily concentrated in older urban areas. This also increases the likelihood of introducing lead through interior house dust.

Consumer products such as traditional medicines, cosmetics, and foods are also likely to affect specific ethnic groups. Certain traditional medicines used by southeast Asians have been found to contain very high levels of lead. Other sources of lead exposure include eating out of ceramic pottery or dinnerware from another country, parents who are involved in lead-related occupations or hobbies such as working with stained or leaded glass.

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<sup>13</sup> SCHWARTZ, J., LEVIN, R. (1992). "Lead: Example of the Job Ahead." EPA Journal. March/April. 175N-92-001.

Oregon's Childhood Lead Poisoning Prevention Project (OCLPPP) began in July 1992 with the mission to screen and test for lead in children's blood, determine the extent of childhood lead poisoning in the state, identify and provide help for lead poisoned children, educate the public about lead hazards, and prevent future lead poisoning. OCLPPP activities are underway in Deschutes, Jackson, Marion, and Multnomah counties. Data also includes that of children under Medicaid, who are now required to have their blood levels tested. OHD is gathering data on all childhood blood lead tests done in the state to help public officials map out the best strategy for dealing with childhood lead poisoning in Oregon.

Of the 1700 children who were screened in 1993, 5.4% had elevated blood levels and approximately 20 children needed medical and environmental follow-up. OCLPPP found that Hispanic and African-American children are two to three times more likely to have elevated blood levels. Southeast Asian children do not appear to have high blood levels, and there is some uncertainty as to whether test data exists in quantities sufficient to effectively assess the issue for this population.

A major challenge for OCLPPP and OHD is how to appropriately communicate lead hazards to communities in ways that they can understand and will find useful. Language issues must be addressed, as well as cultural implications, such as the fact that blood lead tests require the drawing of blood, which is forbidden in some cultures. There is also concern for residents of rental homes where the owner does not wish to abate once lead exposure is identified.

OCLPPP's Director discussed efforts by the Project's Housing and Environmental Issues Committee to develop lead legislation for the state. This legislation may include requirements for lead notification, inspector certification and lead abatement activities. Certification legislation is necessary for Oregon to be eligible for U.S. Housing and Urban Development grants. These monies could be used by eligible states to conduct lead-based paint hazard reduction and abatement activities in low income privately owned housing, both owner-occupied and rental, built before 1978.

**Topic 2. Asbestos exposure: Concern about efforts to inform managers and residents of public housing as well as low income homeowners of the hazards related asbestos exposure.**

Asbestos refers to a group of naturally occurring minerals that separate into strong, very fine fibers. These fibers are heat resistant and extremely durable, qualities which make asbestos useful in construction and industry. In the home, asbestos may or may not pose a health hazard depending on its condition. Only when material is considered friable, that is, easily crumbled or pulverized, can fibers be released and pose a health risk.

Asbestos tends to break down into a dust of microscopic fibers which remain suspended in air for long periods of time and can easily penetrate body tissues after being inhaled or ingested. Because of their durability, these fibers can remain in the body for many years and thereby become the cause of asbestos-related diseases. Because there is no known safe level of asbestos exposure, exposure to friable asbestos should be avoided.

Asbestos can be commonly found in older homes in pipe and furnace insulation materials, asbestos shingles, millboard, floor tiles, ceiling materials and in textured paints and other coating

materials. However, asbestos does not pose a problem unless the material is disturbed somehow. As long as the surface is stable and well-sealed against the release of fibers and is not damaged, the asbestos is considered safe.<sup>14</sup>

The major concern was whether minority and low income communities are adequately informed of the hazards associated with asbestos exposure. Renters do not have as many access points to information on asbestos as homeowners have. Rather, renters usually discover an asbestos problem from a repairperson. However, no laws exist that require contractors to report an asbestos problem if they find one in an apartment complex, though landlords should be required to do so in order to comply with landlord tenant laws. DEQ has worked with the Department of Housing and Community Services in the past to distribute information on asbestos.

DEQ allows owner-occupants of single family dwellings to conduct removal of asbestos, recognizing that not all homeowners can afford to hire an abatement contractor. It was recommended that information on safe removal of asbestos be directed toward low-income homeowners.

**Topic 3. Radon exposure: Need for awareness of low-income and minority groups who live in areas with high potential for risk exposure.**

Radon gas is a naturally occurring form of radiation exposure that is heavier than air and, as such, is generally found in basements. The most common source of indoor radon is uranium in the soil or rock on which homes are built. In a 1987 EPA ranking of the most significant environmental issues, indoor radon ranked first, tied with worker exposure to chemicals. EPA estimates that about 5,000 to 20,000 lung cancer cases a year may be attributed to radon<sup>15</sup>.

As with asbestos, the concern was expressed that the state's efforts to make low income and minority groups aware of the hazards related to radon, and what can be done to mitigate exposure, are not sufficient. OHD's Radiation Control program performs radon investigations and provides information on how to lower radon exposure upon request. However, information materials are directed towards homeowners, whereas low income people tend to rent rather than own their homes. Low income people may be even more vulnerable because rental units at basement level, where radon levels are likely to be highest, are the least expensive.

Witnesses also expressed the need for renters to have information on how they can deal with managers who refuse to test for radon, as well as what renters can do if they test for radon themselves and find elevated levels. Incentives for managers to test for and mitigate radon exposure were also discussed.

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<sup>14</sup> U.S. EPA. 1992. Asbestos In the Home: A Homeowner's Guide. Seattle, WA.

<sup>15</sup> U.S. EPA. 1988. The Inside Story: A Guide to Indoor Air Quality. EPA/400/1-88/004. Washington, D.C.



## **Committee Recommendation**

### Committee Recommendation 5-1

**Improve efforts to educate minority and low income groups on the potential hazards related to the household pollutants of lead, radon, and asbestos.**

Examples of how the state can implement this recommendation include:

1. Continue to distribute lead poisoning prevention materials through the county health system, a major source of health-related information for lower income groups.
2. Explore culturally sensitive ways to encourage communities to have their children's lead exposure level tested.
3. Encourage efforts by the Oregon Health Division's Housing and Environmental Issues Committee to develop enabling legislation on lead hazards.
4. Gear information on radon exposure toward renters and owners/managers of apartments and public housing as well as homeowners.
5. Continue to promote the testing and mitigation of radon exposure using television, radio and printed media.
6. Enhance efforts to provide homeowners with information on the correct procedures to use so that asbestos removal can be accomplished with the least amount of exposure to the occupants.
7. Explore opportunities for grants to include education for renters and landlords as well as homeowners on asbestos fiber exposure.
8. Coordinate DEQ's and the Department of Housing and Community Services' efforts to distribute information on asbestos exposure.

## **Chapter 6. Land Use Siting of Facilities**

**Issue: Concern expressed about the siting of industrial waste and other permitted facilities in or near areas that are largely minority and/or low income.**

### **Directive**

**State and local agencies are to incorporate environmental equity ethics into their procedures for the siting and review of permitted facilities.**

### **Oregon's Land Use Siting Process**

The Department of Land Conservation and Development and DEQ staff briefed the Committee on the authorities related to siting decisions for facilities in Oregon. Cities and counties are responsible for the land use approval and siting of industrial and all other land uses. State law requires each city and county to have a comprehensive plan, which is the controlling document for land use in the area covered by that plan. In turn, these local plans must be consistent with Oregon's statewide planning goals, which are state policies on land use, resource management, economic development, and citizen involvement. DLCD oversees the state's land use program and reviews amendments to and oversees periodic updates of the local land use plans.

DEQ has authorities regarding the pollution or emissions from sources rather than the siting authority itself. DEQ rules require that a local government must act upon a land use compatibility statement before DEQ can process and issue air, water, solid waste disposal, or hazardous waste permits. This process ensures that all issues regarding the appropriateness of the proposed land use are identified and resolved before the permitting process begins. When requested by the local government, DEQ staff provide technical assistance as to the perceived risk of a proposed facility.

Specific to hazardous waste, new treatment and disposal facilities must meet DEQ siting criteria in addition to local land use criteria in order to ensure public health and safety. This law was created in response to opposition to proposals to locate a PCB incinerator outside Arlington, a town in northeast Oregon. DEQ staff pointed out that since the law's creation in 1985, no such facilities have applied to locate anywhere in the state.

### **Issue Topics and Discussion**

At the Committee's July 13 meeting in Portland, Committee members and attendees discussed the following issues:

#### **Topic 1. Local zoning trends that lead to the concentration of industries and resultant pollution in North/Northeast Portland.**

Priorities in local zoning such as the granting of grandfather rights to prior uses often results in the location of incompatible uses in the area's lower income and minority residential

neighborhoods. Grandfather clauses allow existing uses, such as commercial and industrial, within an area to continue when zoning for the area is changed. An example of this trend was provided at the Committee's July 13 meeting by a citizen who spoke of a proposal to locate a plating company in a former battery plant in a predominantly minority Northeast Portland neighborhood. This neighborhood had previously been zoned for industrial use, then rezoned residential. Because the battery plant had been operating until very recently, the grandfather rights for industrial use applied to this site, allowing for the location of the plating company in a residential community.

*"...Plating companies regularly handle very toxic substances and it is very rare for them to be located adjacent to a residential area, let alone in the middle of one. A lot of sites like these are in predominantly minority communities...the Eliot Neighborhood is a predominantly minority community."*

— Eliot Neighborhood Association

The Committee discussed how local governments should develop more aggressive regulations that control the siting of such hazardous material-related uses. An example would be to require that grandfathered rights be revisited when zoning is changed from industrial/commercial to residential use.

Local governments do use neutral standards and criteria to site facilities. These focus on such issues as adverse environmental impact, nuisance issues (noise, odors) and impact on traffic circulation, regardless of community makeup. While these standards should have the effect of making facilities as acceptable to the community as possible, they do not avoid the aggregation of facilities such as landfills and hazardous waste sites in any one community. No affirmative requirements exist to avoid overloading these facilities in any one community. The Committee discussed how local zoning codes should regulate the number of businesses that use hazardous materials so as to reduce the aggregate off-site impact of these facilities. State and local governments should also improve coordination on the siting of such facilities, such as through increased technical assistance from the State to local governments on the environmental regulations that apply to a proposed facility.

**Topic 2. The adequacy of current citizen participation mechanisms:**

Land use decisions are often a struggle between the need for the facilities and appropriate siting. The concern is that the potentially affected communities, often low-income and minority neighborhoods, may not have input into these decisions. In accordance with Goal 1 of the state's planning program, every city and county has a special committee to monitor and encourage active citizen participation in planning. In addition, all cities and counties have a hearing process that relates to their planning and zoning regulations which allows for public input on these matters. However, these citizen involvement mechanisms are not always adequate. Community groups such as Portland's neighborhood associations are often not given sufficient time to receive and act on land use siting information. Furthermore, the makeup of citizen involvement committees often does not include minority or low income representation.

It was agreed that all local governments need to enhance communication with minority and low income groups with respect to land use decisions that could affect their communities. The Committee discussed the effectiveness of amending the statewide planning goal on citizen

participation (Goal 1) to affirmatively require more active communication with low income and minority groups. LCDC requires local governments to review their comprehensive land use plans every four to six years, at which time these governments would review their citizen involvement apparatus to determine the broadness of its outreach. LCDC can issue enforcement orders in cases where it has been verified that a local government has been violating its own land use plan. Citizens can bring petition to LCDC if a local government persistently violates the citizen involvement provisions of its plan.

## **Committee Recommendations**

### **Recommendation 6-1**

**Enhance participation of affected communities in land use siting and review processes.**

Examples of how the state and local governments can implement this recommendation include:

1. The statewide planning goal on citizen participation (Goal 1) would be amended to include language that affirms more effective communication with minority and low income groups regarding land use issues.
2. Local governments would provide public notice for the siting and review of solid waste facilities and for facilities that use hazardous materials.

### **Recommendation 6-2**

**Ensure equity in community development.**

Examples of how the state and local governments can implement this recommendation include:

1. The state and local government zoning agencies would improve coordination and/or oversight on the siting of hazardous material-related uses.
2. Local governments would develop more aggressive regulations that control the siting of businesses that use hazardous materials in residential areas.
3. Local zoning codes would regulate the number of businesses that use hazardous materials allowed in one area in order to reduce the off-site impact of these facilities.

## **Chapter 7. Cleanup of Contaminated Sites**

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**Issue:** Concern expressed regarding the state process for the cleanup of contaminated sites.

### **Directive**

State agencies are to ensure that environmental equity ethics are integral to the cleanup of contaminated sites.

### **DEQ's Cleanup Program**

DEQ identifies, evaluates and determines cleanup procedures for sites that are contaminated with hazardous wastes, petroleum products, and other hazardous substances. DEQ's Site Response section works on the highest priority, most seriously contaminated sites in the state. These are known as complex sites and include multiple releases over a large area to the soil, groundwater, air or surface water. DEQ's Voluntary Cleanup section grew out of requests by prospective property owners and current property owners for assistance with their own environmental cleanup efforts. Though many of the sites involved are simple sites (that is, small releases of a few substances to the area's soil only), the Voluntary Cleanup section has taken on more complex sites as well.

DEQ also maintains and updates its Environmental Cleanup Site Information System (ECSI), which is a list of sites around the state that are or may be contaminated and may require cleanup. DEQ also keeps a Confirmed Release List which includes all facilities with a confirmed release; and an Inventory, which includes facilities with confirmed release which, in addition, DEQ has determined through a preliminary assessment require further investigation, removal, remedial action, or related long-term environmental or institutional controls. The facilities in the Inventory are ranked based on the long and short-term threats they pose to public health and the environment. Once the nature and extent of contamination at a site has been determined, DEQ notifies the site's owner/operator and the immediate neighborhood as to the preferred option for remedial action. All public comments must be considered before a decision is made.

### **Issue Topic and Discussion**

**Topic 1. The adequacy of information on suspected and confirmed releases statewide that is available to the public:**

Staff acknowledged that early, meaningful and direct citizen participation can speed cleanups. At the national level, there has been criticism about EPA's willingness and ability to work with communities regarding cleanup efforts. Studies have shown disparities nationwide between white

and minority communities in the cleanup of Superfund sites<sup>16</sup>. Congress is currently debating the reauthorization of Superfund to include such provisions as the creation of citizen information and access offices and community working groups to provide a stronger community voice in cleanup efforts. Currently, technical assistance grants are available to community groups to deal with Superfund sites. This includes assistance on issues such as how the community is affected and how groups can effect the timeliness of the cleanup or how the remedy is selected.

#### ECSI and Citizens' Right-to-Know

A key step in the state's environmental cleanup process is to identify the contaminated sites. Understanding this, the Committee was particularly interested in ECSI, since it lists all sites to which the State knows there has been a release of contamination or that the State suspects of being contaminated. Citizens have a right to know about hazardous releases to their environment, either suspected or confirmed; therefore, such information should be shared with the affected communities. Efforts have been made in the past to transmit information to local governments as part of their periodic review of their comprehensive land use plans.

However, staff pointed out that while ECSI is available to the public, the list should be used only as an indicator because only those suspected or confirmed sites known to DEQ are included. Concern was expressed for predominantly low-income and/or minority areas that may or may not be contaminated by past practices, such as the Mississippi/Albina Corridor in Northeast Portland where many petrochemical businesses once operated but has been converted for residential use. Indeed, part of the challenge that cleanup efforts present is to assure that the information the State has is complete and accurate. ECSI may not be representative of all sites because no one is required to report to DEQ the past release of hazardous substances on a particular site. Individuals such as private environmental consultants who are contracted by a prospective or current property owner may have such information but are not currently required to share this information with the State. Keeping DEQ's lists updated would help assure that the State is aware of all sites that may warrant cleanup action.

### **Committee Recommendation**

#### Recommendation 7-1

**The State should improve ongoing efforts to update available information on suspected and confirmed hazardous substance release sites.**

Examples of how the State can implement this recommendation include:

1. Require any person to report the release or existence of hazardous substances on a particular site to DEQ.

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<sup>16</sup> LAVELLE, M. and COYLE, M. (1992). "Unequal Protection: The Racial Divide in Environmental Law." National Law Journal. September 21, 1992.

# Appendices

# Appendix A

## INTEREST GROUP INTERVIEW QUESTIONS

1. What does the term environmental equity mean to you?
2. Do you believe that environmental inequity exist in Oregon? If so, what problems are you aware of?
3. Are there environmental inequity issues that you are concerned with in your community?
4. Do you believe it is the state's responsibility to identify problems of environmental inequity? If so, what problems do you think are best addressed by the state? If not, who should bear the responsibility of addressing environmental inequity?
5. How would you like to see the state address the issue?
6. Who else should we talk to about this issue?



## **Appendix B**

### **SUMMARY OF POTENTIAL INEQUITY ISSUES IN OREGON (from agency and interest group/community organization interviews)**

- Public participation mechanisms are not accessible enough to minority and low income populations
- Education and information materials are not tailored to various audiences
- Occupational exposure to pesticides
- Housing for farmworkers and their families
- Contamination of soil surrounding farmworker housing
- Dependence on well-water in rural areas versus commercial water source
- Instream water rights process - priority given to fish over drinking water
- Fish consumption issues from Columbia River Slough and other waterways
- Use of "industrial waterways" for recreation
- Differential enforcement of water quality standards - east versus west portions of state
- Human exposure from out-of-compliance sewage treatment plants in small communities
- Portland combined sewer overflow problem economic impacts
- Inability of tribes to pay solid waste disposal fees
- Development siting - North Portland planned for the disadvantaged and "dirty" industries; how landfills and hazardous waste facilities are sited.
- Proximity of residences to freeways
- Exposure from contaminated sites
- "Dirty" military sites
- Radon exposure
- Lead exposure
- Asbestos exposure

# Appendix C

## INTEREST GROUP INTERVIEW PARTICIPANTS

Community Action Agency - Yamhill County  
Charlie Harris, CASA of Oregon (Newburg)  
Coquille Economic Development Corporation (Coos Bay)  
Confederated Tribes of Coos, Lower Umpqua and Siuslaw  
El Programa Hispano of Catholic Community Services (Gresham)  
Ecumenical Ministries of Oregon (Portland)  
Environmental Response Network (Portland)  
La Familia Sana (Hood River)  
La Familia Sana (Nyssa)  
Lutheran Family Services-Refugee Services (Portland)  
National Association of Minority Contractors (Portland)  
North Portland Citizens Committee  
North Portland Neighborhood Office  
Northwest Environmental Advocates (Portland)  
Odor Abatement Committee (Portland)  
Oregon Environmental Council (Portland)  
Oregonians for Food and Shelter (Salem)  
Oregon Chicano Concilio (Portland)  
Oregon Trout  
OSPIRG (Portland)  
River City Environmental Resource Network (Portland)  
Salud Medical Center (Woodburn)  
Confederated Tribes of Siletz Indians  
Sponsors Organized to Assist Refugees (SOAR)  
Tchinouk Tribe (Klamath Falls)  
United Community Action Network (Portland)  
Confederated Tribes of Warm Springs

## Appendix D

### RESOURCES

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WEST, P. (1992). "Health Concerns for Fish-Eating Tribes?" EPA Journal. March/April. 175N-92-001.

WGBH (1993) "Earthkeeping: You Can Fight City Hall: Lessons from the Grassroots." Boston, MA. (1 hour)  
Features examples of grassroots environmental justice efforts nationwide.

WNET (1992) "Environmental Racism." The MacNeil/Lehrer News Hour. New York, NY.  
(This segment 10 minutes)  
Discusses efforts to prevent the location of a hazardous waste incinerator near Kettleman City, CA, which is not only mostly Latino but is also already host community to a hazardous waste landfill.

## WMCD BUDGET SUPPORT WORKLIST

<u>DATES</u>	<u>STATUS</u>	<u>DESCRIPTION</u>
9/29	COMPLETE	Update Proj System for POPs PS
10/04	COMPLETE	Update Proj System for HQ/REG SS
9/27	COMPLETE	Update Allotment for UST program
9/27	COMPLETE	Input allotment changes on-line
9/30	COMPLETE	Distribute August Tanks performance report
10/05	COMPLETE	Audit PROJSYS Summary against ABIS (new report on 10/04)
10/06	COMPLETE	PROJSYS Summary BALANCED against ABIS
10/06	COMPLETE	Route AR Request questions to pertinent personnel
		Update expenditures forecast, note limitation shift from ECD to HSW in Federal Funds
		Update HSW, ECD HIGHSUM spreadsheets to reflect budget
		Send copy of Agency Request/Budget Summaries to Sally Puent.
		Prepare Contract \$\$ summary for budget presentation (Monique?)
		Establish Drug Lab monitoring procedure w/ Ed Wilson
		Send out request for funding decision for UST program 10/94-12/94
		Review impact of UST shifts on other programs
		Break AR budget briefs down into sub-programs of SW, HW, ECD, Tanks.
		Prepare legislative AR briefs
		Review TQM/TQL tools for use in Work Session
10/03	DRAFT	Fungibility Chart
	I/P	Prepare Contract \$\$ summary actual vs bud for all programs
		Prepare response to Kris Juul's questions

# **Rigid Plastic Container Rules Presentation**

## **TABLE OF CONTENTS**

### **INTRODUCTION**

### **PRESENTATION**

- PG 1** HISTORY: 1971-1991
- PG 2** SB 66 Overview
- PG 3** Rigid Plastic Container Law
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- PG 5** Rigid Plastic Container Definition
- PG 6** Manufacturer Definition
- PG 7** Substantial Investment
- PG 8** Reduced Container Exemption
- PG 9** Dates & Rates
- PG 10** Federal Regulations
- PG 11** Comparisons With California's Rule

- PANEL** 3-5 Minute Presentations  
Q & A

# HISTORY

- ★ 1971 Bottle Bill
- ★ 1983 Opportunity To Recycle Act

## Solid Waste Hierarchy

Reduce  
Reuse  
Recycle  
Compost (1991)  
Recover Energy  
Dispose

- ★ 1990 Recycling Initiative

## *Options Approach For Packaging*

- ★ 1991 Year To Improve Solid Waste & Recycling Law

# 1991 Oregon Recycling Act

(SB 66)

- ★ Local Recovery Rates
- ★ Recycling program standards & choices
- ★ Agency purchase of recycled products
- ★ State Solid Waste Management Plan
- ★ Additional Household Hazardous Waste Collections
- ★ Recycling Markets Development Council
- ★ Addition of "Compost" to State SW Hierarchy
- ★ Recycled Content Requirements
  - Newspaper
  - Phone Directories
  - Glass
- ★ Rigid Plastic Container Requirements  
(2 pages of 76 page bill)



# Rigid Plastic Container Law

## 1991

- ★ Containers Must Comply By January 1, 1995
- ★ Options Approach To Comply
  - Recycled Content
  - Recycling Rate
    - Aggregate
    - Resin Specific
    - Brand or Product Specific
  - Reuse
  - Exempt Container
    - Medical
    - Exported
    - Tamper-resistant Parts
    - Reduced
    - Substantial Recycling Investment
- ★ Record Keeping
  - Container Manufacturers
  - Product Manufacturers
- ★ Report to 1993 Legislature On Containers Regulated By FDA

# 1993/1994

- ★ DEQ Reports to 1993 Legislature
  - Fundamental Change Needed In Law
  - DEQ Recommendation
    - Recycled Content (or)
    - Annual Fee
  
- ★ Law Changed
  - No Auditing/Compliance Determination Until Summer of 1996
  
- ★ Pyrolysis of Plastics
  - 1993 Legislative Issue
  - Attorney General Advice
  
- ★ Pyrolysis of Plastics Is Not Recycling To The Extent The End Product Of That Process Is A Form Of Energy
  
- ★ DEQ Rulemaking Process
  - 3 Task Forces

# **A Rigid Plastic Container definition:**

**▶ 8 ounces - 5 gallons**

*Issue: Buckets*

**▶ Holds A Product  
For Sale**

*Issue: Trays*

**▶ Maintains Shape**

*Issue: Tubes*

# **Manufacturer Definition:**

- ▶ **Container MFG:  
Makes Containers**
- ▶ **Product MFG:  
Fills Containers**

*Issue: Point-of-Sale*

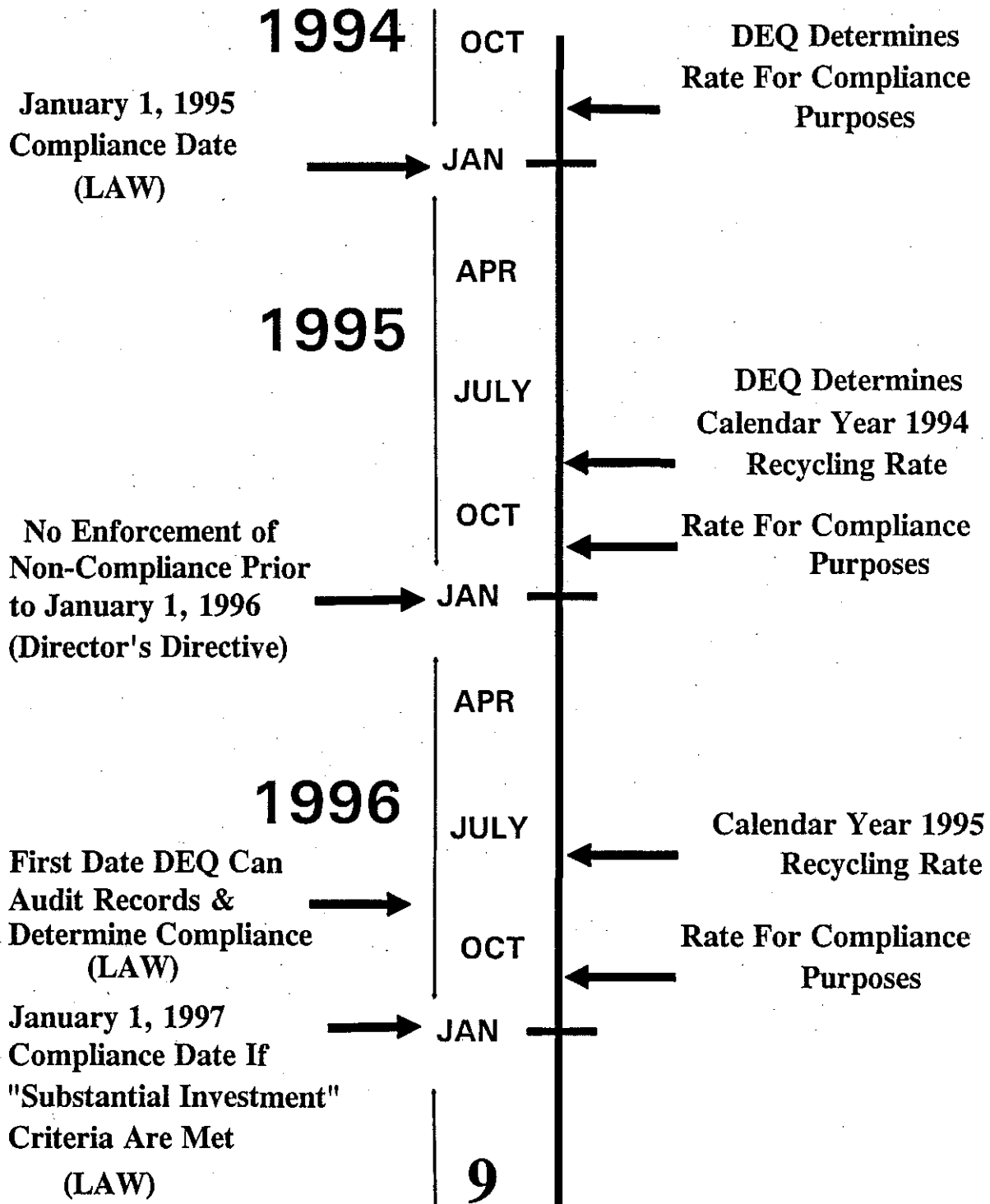
# **SUBSTANTIAL INVESTMENT**

- (i) Demonstrated viable market;
- (ii) Recycling rate is at least 20%;
- (iii) Recycling rates for previous two years increasing;
- (iv) 25% Recycling rate will be met by January 1, 1997.

# Reduced Container Exemption

- ▶ **Reduced by 10%**
  - a) **Container weight**
  - b) **Concentrated product**
  
- ▶ **Compared to 5 years earlier**
  - a) **Not in existence 5 years**
  - b) **New**

# Dates & Rates



# Federal Regulations

- ▶ **FDA**
- ▶ **FIFRA**
- ▶ **DOT**

*Issue: No Exemption*



# COMPARISONS WITH CALIFORNIA RULES

	California	Oregon
FIFRA Products:	Exempt by law	Not exempt by law
US DOT/UN:	Exempt until 1/1/96	Not exempt by law
US FDA (Foods):	Exempt until 1/1/96	Not exempt by law
New Products:	1-year compliance waiver	Must comply at introduction
Corporate averaging:	Manufacturers can average across product lines & compliance options to comply	Law does not provide for averaging

*Issue: Corporate Averaging*

# **PANEL MEMBERS**

**Gail Achterman**

Implementation Task Force Chairperson

**Jerry Powell**

Recycling Rate Task Force Chairperson

**Chris Taylor**

OSPIRG

**Patty Enneking**

American Plastics Council

**Paul Cosgrove**

Representing Soap & Detergent Association  
Proctor & Gamble

# OSPIRG

The Oregon State Public Interest Research Group

1536 SE 11th

Portland, Oregon 97214

(503) 231-4181, FAX: (503) 231-4007



Attn  
Bob Danko

## MEDIA ADVISORY:

### WHAT:

Rally and march to support plastics recycling. Supporters of plastics recycling will deliver a "message in a bottle" (hundreds of signed postcards inside plastic bottles) to the Environmental Quality Commission (EQC) urging them to adopt rigorous plastics recycling rules.

### WHO:

Senator Dick Springer, Rep. Mike Burton, Rep. George Eighmey, former DEQ Director Fred Hansen, OSPIRG recycling advocate Chris Taylor, and other leading proponents of plastics recycling. A broad spectrum students, recyclers, state legislators, local government officials, and concerned citizens will be present.

### WHERE:

Portland State University park blocks (behind Smith Center, between Harrison and Montgomery streets.)  
EQC hearing to follow at DEQ, 811 S.W. 6th Ave., Room 3A.

### WHEN:

9:00 a.m., Friday October 21st, 1994.

### WHY:

To ensure that Oregon's recycling laws are protected. The Environmental Quality Commission is holding a hearing at 10:00 am on October 21st to vote on the rules governing plastics recycling. This is the final stage in the process which began with the passage of the Oregon Recycling Act in 1991.

*For more information, contact:*

Chris Taylor, OSPIRG Recycling Advocate, 231-4181, x. 315. FAX: 231-4007

Post-It™ brand fax transmittal memo 7671 # of pages ▶ 15	
To <i>Olivia Clark</i>	From <i>L. Matthews</i>
Co.	Co. <i>NWPPA</i>
Dept.	Phone # <i>206 455-1323</i>
Fax #	Fax #

## NORTHWEST PULP & PAPER

October 17, 1994

William W. Wessinger, Chairman  
Environmental Quality Commission  
121 SW Salmon, Suite 1100  
Portland, OR 97204

Dear Chairman Wessinger:

This letter provides comments on behalf of the Northwest Pulp and Paper Association (NWPPA) on the proposed adoption of the Federal Operating Permit Program Rule Amendments, Agenda Item D, October 20-21, 1994 Meeting. NWPPA represents a majority of the pulp and paper mills in the State of Oregon, all of which are subject to the federal operating permit program.

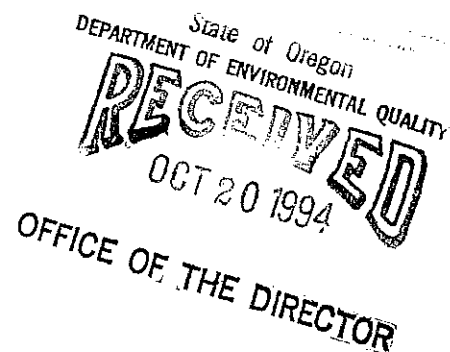
### I. NWPPA POSITION

NWPPA supports the changes recommended by the Department that would:

- 1) Add to the list of categorically insignificant activities in OAR 340-28-110(15); and
- 2) Clarify the requirements under OAR 340-28-2270, Construction/Operation Modifications.

NWPPA is extremely concerned about the stringency of this program relative to the federal and other state programs with respect to one key issue. States are allowed to specify activities and emissions which are insignificant and therefore not subject to full Title V air operating permit requirements. It is important to note at the very outset that this is not an issue of what is the cutoff for defining whether or not an activity or emission is regulated; the issue is at what level do reduced regulatory requirements apply.

The significance for the pulp and paper mills in the State of Oregon has to do with the burdensomeness of preparing applications for air operating permits under Title V. The proposed thresholds for establishing insignificant emissions are inappropriately low and will make Oregon's program by far the most extreme program in the country. The federal requirements of Title V already impose unprecedentedly burdensome requirements on permit applicants to characterize emissions. For Oregon to extend all of these requirements to numerous, very tiny sources (deemed insignificant in virtually every other state) accomplishes no real purpose and creates additional cost to industry.



The heart of this issue is the definition of "aggregate insignificant emissions" in OAR 340-28-110(5) which includes pollutant-specific thresholds to determine what is insignificant. Oregon is already more stringent than other states in terms of using an aggregate rather than activity-specific threshold.

Based on the detailed discussion that follows, NWPPA seeks adoption of the following changes to OAR 340-28-110(5), with matter to be added underlined and matter to be deleted struck out:

- (5) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities as a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities shall be less than or equal to the lowest applicable level specified in this section. ~~Emissions from the usage on non-exempt insignificant mixtures may be included in the aggregate provided that the criteria of this section are met.~~ The aggregate insignificant emissions levels are:
- (a) One ton each for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, and any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act each criteria pollutant, except lead;
  - (b) 120 pounds for lead;
  - (c) 600 pounds for fluoride;
  - (cd) 500 pounds for PM<sub>10</sub> in a PM<sub>10</sub> nonattainment area;
  - (e) 10 tons for carbon monoxide;
  - (f) 4 tons each for nitrogen oxides, sulfur dioxide, and all volatile organic compounds (VOCs);
  - (g) 2.5 tons for particulate matter;
  - (h) 1.5 tons for PM<sub>10</sub> outside a PM<sub>10</sub> nonattainment area;
  - (di) The lesser of the amount established in OAR 340-32-4500130, Table 31, or OAR 340-32-5400, Table 3, or 5,000 pounds for each Hazardous Air Pollutant;
  - (ej) An aggregate of 10,000 pounds for all Hazardous Air Pollutants.

## II SUPPORTING ANALYSIS

### The Federal Program

The federal operating permit program is the most pervasive permitting program ever adopted under federal environmental laws. The scope and details of this new program impose serious burdens on both the agencies charged with implementation and on the

sources which are to be permitted. EPA has provided one feature that can alleviate some of these burdens to prevent this program from failing under its own weight. This feature is called **insignificant emissions and activities**.

EPA allows permit programs to exempt from permitting, with certain restrictions, a class of emissions or activities that are deemed "insignificant" in that the permitting of this class would result in only trivial or no value. State and local permitting authorities were given flexibility to determine what is an appropriate definition for insignificant activities and emissions. EPA itself will also be defining insignificant emissions and activities in the 40 CFR Part 71 rule. Based on comments received from EPA Region X, EPA's rules will adopt thresholds equivalent to those adopted by the Washington State Department of Ecology.

### **Other State Programs**

Most states that have considered insignificant emissions thresholds have adopted numbers much higher than Oregon. Attached is a chart comparing these other programs. Only two states, Oregon and Minnesota, have adopted aggregate thresholds, which apply to an entire facility. Most states have thresholds for each emissions unit at a source, without limitation as to the number of units that can be insignificant. Aggregate thresholds are likely to be more stringent than unit-specific thresholds where a source has a large number of units each with relatively low emissions. Most states have found that it is not likely that a facility could "split" emissions units into smaller units to avoid being insignificant. Several of these states are analyzed in further detail in the attached letter from NWPPA to Dave Berg of DEQ dated May 26, 1994.

### **Background of the Oregon Rule**

The DEQ's Industrial Source Advisory Committee discussed these issues in 1993 and came to a tentative decision to include the current numbers in the rule. However, the business community agreed to this only for the purposes of having a "place-holder" in the rule which would be reconsidered within one year from adoption, based on experience gained through implementation of the program by the Pilot Group.

NWPPA has over the past year repeatedly urged DEQ staff to reconsider the aggregate insignificant thresholds to ease the burdens on sources and DEQ alike. While most permitting agencies have been able to exercise their professional judgment and current state of knowledge in determining thresholds, DEQ staff has always insisted upon the business community providing "data" to support our contentions that the thresholds are too low. While having data on insignificant emissions would be ideal, the whole concept is intended to relieve sources from having to provide such data in the first place. Indeed, the emissions inventories which could provide this data have not been available until very recently, as the first permit applications are not due until November 15, 1994.

### **Emissions Data on Insignificant Emissions**

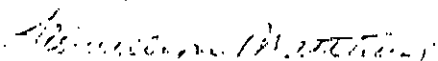
One pulp and paper mill made available its preliminary emissions inventory for analysis of the current thresholds. NWPPA retained a consultant to review three pollutants (carbon monoxide, volatile organic compounds, and acetaldehyde) and compare the effects of alternative thresholds. A copy of the results of this analysis are attached.

The report indicates that the current insignificant emissions thresholds can be substantially increased and still represent a very small percentage of total emissions. At the same time, the increase will ease the burdens of permitting for both the DEQ and the

source by including additional activities as insignificant. NWPPA suggests that the thresholds could be increased to at least 10% of the significant emission rates for criteria pollutants (20 tpy CO, 8 tpy NOX, SO2, VOC etc.) and to the proposed § 112(g) de minimis levels for hazardous air pollutants, and maintain a small percentage of emissions below the insignificant thresholds. These levels would still be much lower than other states.

Thank you for your consideration of these concerns.

Sincerely,



Llewellyn Matthews  
Executive Director

LM:sd

Enclosures

cc: Douglas Morrison

**Example A****PULP AND PAPER MILL****Volatile Organic Compounds**

77 Activities Emitting VOC

3130 tons per year (TPY) VOC

**At current threshold (proposed rule):**

Approximately 10 activities are insignificant

One tpy are insignificant

0.03% of total emissions

**At 8 tpy aggregate threshold:**

21 activities are insignificant

8 tpy are insignificant

0.2% of total emissions

**At 4 tpy aggregate threshold (NWPPA supports):**

18 activities are insignificant

4 tpy are insignificant

0.13% of total emissions



**Example B**  
**PULP AND PAPER MILL**

**Carbon Monoxide**

6 activities emitting CO

7078 tons per year (TPY) total emissions

**At current threshold (proposed rule):**

0 activities are insignificant

0 tpy are insignificant

0% of total emissions

**At 20 tpy aggregate threshold:**

2 activities are insignificant

20 tpy are insignificant

0.3% of total emissions

**At 10 tpy aggregate threshold (NWPPA supports):**

2 activities are insignificant

10 tpy are insignificant

0.14% of total emissions

**Example C**  
**PULP AND PAPER MILL**

**acetaldehyde**

56 activities emitting acetaldehyde

109 tons per year (TPY) total emissions

Proposed 112(g) de minimis level - 9 tpy

**At current threshold (proposed rule):**

17 activities are insignificant

0.5 tpy are insignificant

0.5% of total emissions

**At 2.5 tpy aggregate threshold:**

30 activities are insignificant

2.5 tpy are insignificant

2.3% of total emissions

**At 9 tpy aggregate threshold (NWPPA supports):**

9 tpy are insignificant

8.2% of total emissions

## NORTHWEST PULP & PAPER

May 26, 1994

Dave Berg  
Department of Environmental Quality  
811 S.W. 6th Avenue  
Portland, OR 97204

Dear Dave:

The Northwest Pulp and Paper Association requests that DEQ consider the following comments on the Division 28 Federal Operating Permit Program rules related to insignificant emissions and activities. NWPPA participated on the Industrial Source Advisory Committee that reviewed these rules in 1993 and acquiesced in their adoption with the condition that these rules would be revisited after one year of program operation. We believe that it is in the best interests of the DEQ and permittees to substantially revise the scope of insignificant emissions and activities to ensure that the permitting process occurs efficiently.

1. **Categorically insignificant emissions may be omitted from permit applications, and other insignificant emissions and activities need only be listed in the application, without quantification.**
  - A. **ORS 468A.310 limits the authority of the agency to require listing of categorically exempt emissions and to estimate other insignificant emissions.**

It should be clear to the DEQ that ORS 468A.310 limits the authority of the EQC to adopt only those federal requirements necessary to obtain EPA approval of the program (unless there is a scientific demonstration that more is necessary). In this instance, where EPA has provided explicit instructions as to what is required to obtain approval, DEQ and the EQC are bound to adopt those exact requirements absent the scientific demonstration. EPA provides at 40 CFR § 70.5(c):

**The Administrator may approve as part of a State program a list of insignificant activities and emissions levels which need not be included in permit applications. However, for insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application. An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to § 70.9 of this part. (emphasis added)**

Therefore, the list of categorically insignificant activities found at OAR 340-28-110(15) (with the exception noted below) and the emissions for which levels are below the "aggregate insignificant emissions" thresholds in OAR 340-28-110(5) may be omitted from permit applications entirely. Those insignificant activities—such as space heating rated less than 0.4 mm Btu/hr—that are subject to size or production limits must be listed in permit applications. None of these insignificant activities or emissions are required to be estimated in applications.

Dave Berg  
May 26, 1994  
Page 2

- B. Listing or quantification of insignificant emissions is not required to determine the applicability of the PSEL rule nor to impose the requirement for a PSEL.

The issue has been raised whether insignificant emissions must be listed or quantified to determine the applicability of, or to impose, the Plant Site Emission Limit (PSEL) rule. Information on insignificant emissions is not needed to determine the applicability of the PSEL rule, as it applies to every major source (but not necessarily every emission). Such information is likewise not needed to impose the requirement for a PSEL. The requirements for PSELs have always been interpreted to exempt emissions and activities that the DEQ has found to be "insignificant." A review of any existing Air Contaminant Discharge Permit will reveal that most if not all of the emissions and activities now defined as categorically exempt do not appear in the permit or its detail sheets. This is because the DEQ has heretofore not concerned itself with these emissions due to the quantity or impact of the emissions or because they were not amenable to quantification or control. Therefore, the PSEL rules have always had an implied "insignificant" level of applicability and the omission of information on insignificant emissions from applications will not hinder the purposes of the PSEL rule.

Moreover, EPA Region X has allowed the Washington State Department of Ecology to include as insignificant those emissions that are subject to requirements of state-wide applicability. Attachment 1 is a rule (awaiting only the signature of the Director) from Ecology on insignificant emissions that was amended in response to public comment on this issue, including comment by David Bray of EPA Region X who I understand has agreed to the language found at WAC 173-401-530(2)(a) that reads:

Notwithstanding any other provision of this chapter, no emissions unit or activity subject to a federally enforceable applicable requirement (other than generally applicable requirements of the state implementation plan) shall qualify as an insignificant emissions unit or activity. For purposes of this section, generally applicable requirements of the state implementation plan are those federally enforceable requirements that apply universally to all emissions units or activities without reference to specific types of emission units or activities.  
(emphasis added)

The state-wide requirements in Washington such as the requirement for all sources to install Reasonably Available Control Technology or the general opacity limit do not prevent any particular emission or activity from being classified as insignificant. The same should be true of emissions and activities that may be subject to a PSEL in Oregon. Indeed, the PSEL rule at OAR 340-28-1060(1) has already been changed to exclude some insignificant emissions from PSELs. The fact that those categorically exempt insignificant emissions already excluded by rule need not be quantified in an application supports the contention that estimates of insignificant activities and emission levels may be omitted from permit applications. This is true even though the status of insignificance does not preempt any applicable requirements. Sources must comply with all applicable requirements even though they may be insignificant, or they are omitted from applications and permits.

Dave Berg  
May 26, 1994  
Page 3

2. The thresholds for aggregate insignificant emissions must be increased to alleviate the administrative burdens imposed on the DEQ and permittees and to avoid the practical difficulties that will be created by these relatively low numbers.
  - A. EPA would approve insignificant thresholds for criteria pollutants that are much higher, and that are applied to individual emissions units rather than plant-wide.

Attachment 2 is a letter from David Bray of EPA Region X in which he states on page 3 support for the insignificance thresholds proposed by the Washington Department of Ecology (except for the number for lead):

The proposed thresholds, as far as they go, meet EPA's current criteria for Title V program approval. Note, however, the proposed rule does not include thresholds for all regulated pollutants (e.g., noncriteria pollutants regulated under § 111 or Title VI pollutants). Without threshold levels, any emission of those pollutants would make an emission unit or activity "significant."

Our comments, therefore, are based on scientific concerns and not EPA approval policy. First, the thresholds for criteria pollutants are sound and should not be increased. These levels are comparable to those being proposed by other states and to levels being considered by EPA for the Part 71 rules. (emphasis added)

The insignificance thresholds proposed by Ecology in WAC 173-401-530(4) were:

- (a) 5 tons per year of carbon monoxide;
- (b) 2 tons per year of nitrogen oxides;
- (c) 2 tons per year of sulfur oxides;
- (d) 2 tons per year of volatile organic compounds (VOC);
- (e) .75 tons per year of PM10 as defined in Chapter 173-400-030(53);

Importantly, these insignificance thresholds apply to "an emission unit or activity" as opposed to the aggregate emissions for an entire plant. Thus the universe of insignificant emissions and activities that would be approved by EPA is vastly larger than what is currently defined by DEQ rule. Such a large difference raises the issue whether the EQC has authority to adopt regulations which clearly exceed what is necessary to obtain EPA approval for the program.

- B. Many other states with final operating permit regulations have adopted more expansive insignificance thresholds for criteria pollutants, indicating that they are approvable by EPA.

As mentioned by Dave Bray in the letter to Ecology, many other states have insignificance thresholds much higher than DEQ's rule. Given that most states are in close contact with EPA regarding the approvability of their programs, this supports our contention that higher insignificance thresholds in Oregon would be approved by EPA. We have reviewed rules in the following states regarding their treatment of insignificant emissions:

Dave Berg  
May 26, 1994  
Page 4

**•Washington**

In addition to the higher insignificance thresholds and the application to emissions units and activities discussed above, the following elements of the Washington rules (WAC 173-401) should be considered by DEQ:

1. The inclusion of most fugitive emissions as insignificant under 530(1)(d) (unless they are subject to source category or source specific requirements).
2. There are no record keeping or reporting obligations for insignificant emissions or activities unless specifically required by rule, as in 530(2)(c).
3. Insignificant emissions and activities are not subject to compliance certification, according to 530(2)(d).
4. Emissions which may be above the numerical thresholds expressed in 530(4) but which are not detectable with methods approved by the permitting authority are nonetheless deemed to be insignificant.
5. Ecology's rule at 530(4)(g) - (o) includes insignificance thresholds for additional noncriteria pollutants regulated by CAA § 111 and elsewhere, as suggested by Dave Bray.
6. Documentation of insignificance need not be provided unless requested by the permit authority under 530(5).

**•Wisconsin**

The state of Wisconsin has adopted final federal operating permit regulations. Chapter NR 407. These regulations allow permit applicants to omit emissions information if the emissions unit, operation or activity emits less than 2,000 pounds per year of carbon monoxide, nitrogen oxides, particulate, PM10, volatile organic compounds or sulfur dioxide, or has less than 10,000 pounds per year of these pollutants for the entire facility. Emissions are measured as the "maximum theoretical emissions" and emissions units, operations and activities that perform identical or similar functions are to be combined.

**•Minnesota**

Minnesota has proposed a rule to amend the Title V permit program it had adopted earlier. These proposed rules at 7007.1300 Subp. 4, require only the listing of insignificant emissions at less than:

5.7 lbs/hr (= 25 tons/yr)	)	carbon monoxide
2.28 lbs/hr (= 10 tons/yr) (potential)	)	nitrogen oxides, sulfur dioxide, particulate matter less than 10 microns and volatile organic compounds
1 ton/yr (actual)	)	

These thresholds apply on an emission unit basis. Quantification of emissions below these thresholds is not required in applications unless requested by the agency.

Dave Berr  
May 26, 1994  
Page 5

**-Ohio**

The Ohio Administrative Code 3745-77-02(G) provides that emissions levels below certain thresholds are exempt from the permit application provided that insignificant activities exempt due to size or production rate are listed in the application. The thresholds are found in the definition of "insignificant activities and emissions levels" at 3745-77-01(U)(3) which includes:

Any emission unit with the potential to emit five tons or less per year of any regulated pollutant other than a hazardous air pollutant and not more than twenty percent of an applicable major source source threshold under the act. [i.e., 2 tons for any single HAP, 5 tons for all HAPs combined].

- C. The HAP Thresholds should be established at the same levels as proposed for 40 CFR §63.44 and no less, as these levels are approvable by the EPA and DEQ has made no scientifically defensible showing of need for lower levels.

The preamble to EPA's final Part 70 rule states that insignificance levels for HAP emissions cannot be below the levels established under CAA § 112(g). 54 Fed. Reg. 32250, 32273 (July 21, 1993). This implies that EPA would approve the use of the § 112(g) levels if adopted by a state as criteria for insignificant HAP emissions. DEQ must either adopt the 112(g) levels or provide a scientifically defensible demonstration that lower levels are necessary to protect public health or the environment. This statutory limitation on DEQ's authority is discussed above.

- D. DEQ should concentrate permitting efforts on those emissions that are "significant" in that they are subject to applicable requirements such as monitoring or emissions limitations, and should not be distracted by including insignificant emissions in the permit process.

Under the current Division 28 rules, many emissions will be classified as "significant" without any applicable requirements. An effect of the current insignificance thresholds is that with limited state and private resources, too much attention will be on insignificant emissions which will distract us from those emissions that are targeted for monitoring and control. This is a misallocation of the scarce resources of both the DEQ and permittees.

This approach may result in some insignificant emissions being subject to a Plant Site Emission Limit but not monitoring or controls. In this circumstance, a portion of the PSEL could be allocated to the insignificant emissions and this amount would not require any compliance demonstration. The DEQ could use this information to identify large quantities of insignificant emissions for source or source-category specific attention. The result is that only those sources with large quantities of insignificant emissions will be targeted for estimation and possibly control of these emissions and those with fewer insignificant emissions will be able to concentrate on permitting of their larger emissions.

Dave Berg  
May 26, 1994  
Page 6

As discussed above, the statutory constraints on the EQC would require that the rules adopt what is clearly approvable by EPA, as evidenced above, and nothing more stringent unless accompanied by a scientifically defensible demonstration of need to protect human health and the environment.

- E. For those sources subject to MACT standards, the permit program rule should define as insignificant all hazardous air pollutant emissions that are not subject to control requirements.

EPA in developing MACT standards reviews a source category to determine which components of each source, which HAP emissions, and which emission points will be subject to controls. See the preamble to the proposed MACT rule for pulp and paper mills (58 Fed. Reg. 66078 at 66134, December 17, 1993). In doing so, EPA makes a conscious decision about which emissions at a source are significant—and which are insignificant—based on the need for control. Having gone through this process, there would be little if anything gained from having a state program that identifies those EPA *de minimis*-classified emissions as significant. Permittees would have to estimate the emissions below the EPA *de minimis* values but above the DEQ insignificance levels. DEQ will have to devote resources to assess these emissions when the likelihood of ever imposing controls is very slight. Therefore, DEQ should draft a rule that classifies as insignificant, for those source categories for which EPA has proposed MACT, any HAP emission that is not subject to control under a final MACT standard, or under a proposed MACT standard until the standard becomes final.

Under such a rule, the following pulp and paper industry emissions (or emission units) would be classified as insignificant:

1. Deckers and screens (at existing mills only);
2. Emissions from enclosed process equipment which maintain either
  - a) volumetric flow rate less than 0.0050 standard cubic meters per minute; or
  - b) mass flow rate less than 0.230 kilograms of total HAP per hour; or
  - c) mass flow rate less than 0.0010 kilograms of total HAP per megagram of air dried pulp (ADP).
3. Process equipment at which the sum of all pulp and process wastewater streams entering the process equipment maintains a HAP mass loading of less than 0.050 kilograms of total HAP per megagram of ADP. 40 CFR § 63.444(a) (proposed).

Rather than attempt to incorporate all MACT exclusion thresholds in rule for all source categories, DEQ should define as insignificant any HAP emissions at a source subject to a proposed or final MACT standard that are not subject to controls. This would allow sources to prepare applications based on a proposed rule and either amend the permit application or reopen the permit (if within the first two years) when the final MACT rule is issued. Sources for which there is no proposed or final MACT rule would rely on the HAP specific *de minimis* values to determine significance. Of course, those HAP emissions that are subject to a source or source-category specific regulation or limit would not be insignificant.



Dave Berg  
May 26, 1994  
Page 7

3. DEQ should retain the concept of categorically exempt insignificant mixtures and amend the insignificant mixture rule as proposed in the topic discussion form distributed at the ISAC meeting on April 6, 1993.

NWPPA agrees with the DEQ's recommendation on revisions to the insignificant mixture rule presented to the Industrial Source Advisory Committee on April 6, 1994. That proposal was to eliminate the requirement to quantify emissions from mixtures when the concentration of the regulated pollutant was less than 1% (0.1% if carcinogenic), and to eliminate any distinction between "exempt" and "non-exempt" mixtures.

Please contact me if you have any questions or would like to discuss these comments.

Sincerely,



Douglas S. Morrison  
Environmental Counsel

cc  
John Ruscigno

DEQ 10/11/94

## SUMMARY OF STATES AGGREGATE INSIGNIFICANT EMISSION LEVELS FOR CRITERIA POLLUTANTS

EPA Region/State	NO <sub>x</sub>	SO <sub>2</sub>	VOC	PM	PM <sub>10</sub>	CO	Lead	Emission	Additional Comments
Region 1	-	-	-	-	-	-	-	-	States are choosing to only define insignificant activities.
Region 2 New Jersey Puerto Rico	.22 tpy .22 tpy	.22 tpy .22 tpy	.22 tpy .22 tpy	- -	.22 tpy .22 tpy	.22 tpy .22 tpy	-	emission unit emission unit	These levels are proposed and being revised upwards or deleted entirely. Other states in Region 2 are listing only insignificant activities.
Region 3 Delaware	25 tpy	40 tpy	25 tpy	40 tpy	15 tpy	-	-	emission unit	EPA deemed Delaware's submittal incomplete EPA recommended lowering the emission limits.
Maryland	1 tpy	1 tpy	1 tpy	1 tpy	1 tpy	10 tpy	-	emission unit	These are Maryland's draft rules. They have not submitted a program to EPA yet.
Virginia	10 tpy	10 tpy	7 tpy	10 tpy	-	100 tpy	.6 tpy	emission unit	EPA is reviewing Virginia's submittal.
Region 4 Florida	5 tpy	-	5 tpy	5 tpy	-	-	.25 tpy	emission unit	Other states are using 2-5 tpy limit. EPA has advised 2 tpy. EPA recommended lowering Florida's lead limit to .01 tpy.
Region 5 Wisconsin	-	1 tpy	1 tpy	-	-	1 tpy	-	emission unit	Also has a facility aggregate limit of 5 times the emission unit levels.
Indiana	4.56 tpy	9.13 tpy	2.74 tpy	4.56 tpy	-	4.56 tpy	-	emission unit	See Region 6 comment.
Minnesota	10 tpy	10 tpy	10 tpy	3.7 tpy	-	25 tpy	.1 tpy	aggregate	
Illinois	4 tpy	4 tpy	4 tpy	4 tpy	4 tpy	-	-	emission unit	EPA recommended lowering the limits to 2 tpy.
Ohio	5 tpy	5 tpy	5 tpy	5 tpy	5 tpy	-	-	emission unit	EPA recommended lowering the limits to 2 tpy.
Region 6 New Mexico	1 tpy	1 tpy	1 tpy	1 tpy	1 tpy	1 tpy	-	emission unit	Multiple emission units, operations and activities that perform similar functions are combined to determine insignificant levels.
Region 7 Nebraska	0 tpy	0 tpy	0 tpy	0 tpy	0 tpy	0 tpy	0 tpy	emission unit	All other states in Region 7 are still drafting rules. Nebraska is waiting to define higher levels pending public comment.
Region 8 Wyoming	2 tpy	2 tpy	2 tpy	2 tpy	2 tpy	-	-	emission unit	Wyoming has been given interim approval for its program.
Utah	-	-	-	-	-	-	-	-	Defining insignificant emissions on a case by case basis.
Region 9	-	-	-	-	-	-	-	-	Region 9 has 45 submittals from states and regional air pollution control authorities. The submittals only list insignificant activities, not insignificant emissions.
Region 10 Oregon	1 tpy	1 tpy	1 tpy	1 tpy	.25 tpy	1 tpy	.06 tpy	emission unit	
Washington	2 tpy	2 tpy	2 tpy	-	.75 tpy	5 tpy	.005 tpy	emission unit	
Alaska	2 tpy	-	2 tpy	.75 tpy	-	5 tpy	.03 tpy	emission unit	Also has an aggregate limit of three times the emission levels.

SENT BY: 10-20-94 3:21PM NWPPA:206 455 1323- 503 229 5850:#15/15



DEPARTMENT OF JUSTICE

PORTLAND OFFICE  
1515 SW 5th Avenue  
Suite 410  
Portland, Oregon 97201  
Telephone: (503) 229-5725  
FAX: (503) 229-5120  
TDD: (503) 378-5938

January 20, 1994

Fred Hansen, Director  
Department of Environmental Quality  
811 SW Sixth Street  
Portland, Oregon 97204

Re: Recycling of Plastics and Pyrolysis  
DOJ File No.: 340-410-P0158-93

Dear Mr. Hansen:

You have asked for legal advice concerning the requirement in ORS 459A.655 that plastic containers in Oregon meet certain minimum recycling requirements by January 1, 1995.<sup>1</sup> Your inquiry is triggered by information from the American Plastics Council (APC) concerning a project in which plastics would be taken to a plant in the state of Washington and subjected to a process commonly referred to as "pyrolysis."<sup>2</sup> According to the APC, the process would involve the heating of plastic material in an enclosed chamber, thereby producing liquid hydrocarbons that could be sold to refineries and petrochemical facilities for

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<sup>1</sup> Recent amendments to the statutes prohibit DEQ from enforcing these recycling requirements before January 1, 1996. Or Laws 1993, ch 568, § 3.

<sup>2</sup> The question whether pyrolysis of plastics would be considered recycling under Oregon law arose during the 1993 legislative session. DEQ initially requested advice on the question at that time. A preliminary advice letter was provided on July 12, 1993. Subsequently, APC requested a meeting with Attorney General Kulongoski to discuss legal concerns with the preliminary advice letter. The meeting occurred on September 13, 1993. APC then submitted a letter dated September 27, 1993, supplementing its position. Because of the importance of this matter, you and Attorney General Kulongoski requested that we review the arguments again and provide more definitive advice.

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eventual conversion into a variety of materials, including monomers for plastic products, synthetic materials for clothing, lube oils and fuels. By-products of the process are described as charcoal or carbon black, as well as gas that is the energy source for the pyrolysis system.

Your questions and our answers are set forth below, followed by a discussion of the issues raised.

#### QUESTIONS

As a matter of Oregon law, does the pyrolysis of plastic materials constitute recycling? What authority, if any, does the Environmental Quality Commission have to define the circumstances under which pyrolysis might constitute recycling?

#### ANSWERS

Pyrolysis of plastics is not recycling to the extent the end product of that process is a form of energy. Beyond this limitation, the Environmental Quality Commission has considerable authority to interpret the statutes, preferably by rule, and to determine when the products of plastics pyrolysis would constitute recycling.

#### DISCUSSION

##### A. Statutory Background

The key statutes that govern your questions are found in ORS chapter 459, which deals broadly with the management of solid waste, and ORS chapter 459A, which deals somewhat more specifically with the reuse and recycling of solid waste. Several important provisions of these statutory chapters date back to the landmark legislation enacted by the 1983 Legislative Assembly and referred to as the Opportunity to Recycle Act. Or Laws 1983, ch 338. See generally L. Parker, Oregon's Pioneering Recycling Act, 15 Env'tal Law 387 (1985).

This 1983 legislation expressed an aggressive state policy with respect to the management of solid waste, a policy that is popularly referred to as the solid waste hierarchy. Or Laws 1983, ch 729, § 14. In its current form, the pertinent part of the policy states as follows:

"(2) In the interest of the public health, safety and welfare and in order to conserve energy and natural resources, it is the policy of the State of Oregon to

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establish a comprehensive statewide program for solid waste management which will:

"(a) After consideration of technical and economic feasibility, establish priority in methods of managing solid waste in Oregon as follows:

"(A) First, to reduce the amount of solid waste generated;

"(B) Second, to reuse material for the purpose for which it was originally intended;

"(C) Third, to recycle material that cannot be reused;

"(D) Fourth, to compost material that cannot be reused or recycled;

"(E) Fifth, to recover energy from solid waste that cannot be reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and

"(F) Sixth, to dispose of solid waste that cannot be reused, recycled, composted or from which energy cannot be recovered by landfilling or other methods approved by the department."

ORS 459.015(2) (emphasis added).

This policy presents the ambitious objective that solid waste should, in the first instance, be reduced, and to the extent that it cannot be reduced, it should be managed according to priorities that seek to conserve energy and natural resources.

Of particular relevance to your questions, these priorities place recycling of solid waste above the use of solid waste for energy recovery. In their current form, the statutes define these key terms as follows:

"'Recycling' means any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity."

ORS 459.005(20).

"'Energy recovery' means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material."

ORS 459.005(9).<sup>3</sup>

Since 1983, the legislature has enacted a series of statutes that specifically amended or otherwise enhanced the Opportunity to Recycle Act. See, e.g., Or Laws 1991, ch 385; Or Laws 1987, ch 876. These statutes have placed more specific requirements both on manufacturers of products that may become waste and on local governments that manage solid waste. The clear thrust of these statutes has been to reinforce the management of solid waste consistent with the state's solid waste hierarchy.

The statute designed to promote the reuse and recycling of plastics is of particular relevance to your questions. Specifically, as amended by the 1993 legislative session, ORS 459A.655 provides in pertinent part:

"(1) Except as provided in ORS 459A.660(5), any rigid plastic container sold, offered for sale or used in association with the sale or offer for sale of products in Oregon shall:

"(a) Contain 25 percent recycled content by January 1, 1995;

"(b) Be made of plastic that is being recycled in Oregon at a rate of 25 percent by January 1, 1995; or

"(c) Be a package that is used five or more times for the same or substantially similar use.

"(2) A rigid plastic container shall meet the requirements in subsection (1)(b) of this section if the container meets one of the following criteria:

"(a) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in the state at a rate of 25 percent by January 1, 1995;

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<sup>3</sup> All statutory quotations include amendments enacted by Or Laws 1993, ch 560 and Or Laws 1993, ch 568, unless otherwise noted.

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"(b) It is a specified type of rigid plastic container and that type of rigid plastic container, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995; or

"(c) It is a particular product-associated package and that type of package, in the aggregate, is being recycled in the state at a rate of 25 percent by January 1, 1995."

To complete the statutory framework for your questions, we also note the provisions delineating the powers of the EQC under ORS chapters 459 and 459A. The EQC is given express and broad rulemaking authority under both statutory chapters. Under ORS 459.045, the EQC is directed to "adopt reasonable and necessary solid waste management rules" dealing with several specified issues, but then is further directed to "adopt rules on other subjects as necessary to carry out" most of the general solid waste management statutes in ORS chapter 459. ORS 459.045(1), (3). Under ORS 459A.025(1), the EQC is directed to "adopt rules and guidelines necessary to carry out the provisions of ORS \* \* \* 459A.005 to 459A.665 \* \* \* ." Notably, the referenced statutory provisions include those governing the recycling of plastics. Furthermore, in adopting rules under this authority, the EQC is specifically directed to consider, among other factors, "[t]he purposes and policy stated in ORS 459.015 \* \* \*," which includes the solid waste hierarchy discussed above.

#### B. Statutory Analysis

Your questions require that we focus on the second prong of the plastics statutes--namely, the requirement that plastic is being recycled at a rate of 25 percent. ORS 459A.655(1)(b). You ask for advice on whether the pyrolysis of plastics can be used to meet this requirement and whether the EQC has a role in making this determination.

Several principles of statutory construction guide our analysis. The overriding objective in interpreting statutes is to give effect to the intent of the legislature. ORS 174.020; State v. Person, 316 Or 585, 853 P2d 813 (1993). The language of the statute is the best evidence of legislative intent, and the words in the statute should usually be given their plain and ordinary meaning. State v. Curnutt, 317 Or 92, 852 P2d 1312 (1993). At the same time, the entire statutory scheme and context should be considered, and individual provisions should not be construed in a manner that is either illogical or negates other provisions. See Boone v. Wright, 314 Or 135, 138, 836 P2d 727 (1992).

In addition, in explaining the respective authority of the courts and agencies to give meaning to various statutes, the Oregon Supreme Court has offered a categorization of statutory terms. Springfield Education Assn. v. School Dist., 290 Or 217 (1980). The three categories of terms can be summarized as follows:

1. Exact terms

An agency has virtually no interpretive or policy making authority concerning exact terms.

2. Inexact terms

Generally, an agency may express its interpretation on an inexact term either by rule or by order in a contested case. The court will review only to determine whether the agency's interpretation "is consistent with or tends to advance a more generally expressed legislative policy." Id. at 226.

3. Delegative terms

With such terms, the legislature in effect charges the agency with the responsibility, usually through rulemaking, to complete the legislative policy. The court will review only to determine that the agency has not contravened the broad legislative delegation.

Although the courts have cautioned that these categories are primarily directed at the questions of authority and judicial scope of review, the categories are helpful in determining how much latitude an agency has to interpret statutes it administers. See Trebesch v. Employment Division, 68 Or App 464, 469 (1984).

We return now to the statutory requirement that plastics be recycled at a 25 percent rate and the legislature's definition of "recycling" as "any process by which solid waste materials are transformed into new products in a manner that the original products may lose their identity." ORS 459.005(20). Viewing this language in isolation, an argument could be made that pyrolysis of plastics meets the definition of recycling. According to this argument, pyrolysis simply transforms plastics into a new product of a different identity--i.e., liquid hydrocarbons, and this product may eventually be transformed into other products, including new plastic products or fuel.



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Upon review of the statutory scheme as a whole, however, this argument collapses, at least insofar as pyrolysis yields fuel. Indeed, we think that this argument, taken to its extreme, would undermine the fundamental legislative objective of the solid waste and recycling statutes. The fallacy of the argument is most evident when we recall that the legislature created priority categories of solid waste management, including both "recycling" and "energy recovery," and that it assigned a higher priority to the former. Furthermore, it defined "energy recovery" as "recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material." ORS 459.005(9) (emphasis added).

A conclusion that pyrolysis constitutes recycling, even when the process is used to create a form of energy, would contravene the existing statutory scheme. The practical effect would be to negate the category of energy recovery with respect to plastics and further to undermine the state's priority for recycling over energy recovery. Such results do not achieve the clear legislative policy behind the solid waste and plastics statutes and do not conform with the previously discussed principles of statutory construction.

We find further guidance on your question in other parts of the statutes. For example, the 1991 legislature specifically confronted the policy question of whether to encourage the use of waste tires to produce fuel. Apparently for reasons involving the limited market for waste tires, the legislature ultimately answered this policy question in the affirmative. Yet, in doing so, the legislature made it clear that the production of fuel from waste tires would not normally be considered recycling. The 1991 legislature adopted the following specific amendment to ORS chapter 459:

"Notwithstanding any other provision of ORS 459.015, for purposes of encouraging the use of waste tires under ORS 459.705 to 459.790, the use of processed source-separated waste tires having a positive market value as a new product to recover energy shall be considered recycling under ORS 459.015(2)(a)(C)."

ORS 459.772 (emphasis added).

Representative Mike Burton, who sponsored the amendment, noted in testimony before the House committee that under the state hierarchy the production of tire-derived fuel was "just one step above landfilling in this hierarchy." Testimony of Rep. Mike Burton, House Committee on Environment and Energy (HB 2246),

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February 8, 1991, tape 35, side B, at 300. Representative Burton further testified that the amendment was designed to "move it [tire-derived fuel] up" so that DEQ's reimbursement rates under the existing reimbursement for use of waste tire regulations would treat production of tire-derived fuel equally with recycling. Id.

This legislative amendment and history strongly indicates that the legislature wished to encourage the use of waste tires for fuel but recognized that this would not be considered recycling under the existing language of ORS chapter 459. In short, had the legislature intended that the production of tire-derived fuel would constitute recycling, no such amendment would have been necessary.

Clearly, the legislature could make the policy choice to encourage pyrolysis of all or certain plastics and amend the statutes accordingly. Indeed, we understand that there was some effort, or at least discussion, to this effect in the 1993 session. The important point, however, is that, unlike waste tires, the legislature has not yet chosen to do so with respect to plastics.

There are still other parts of the statutes that demonstrate a clear legislative recognition of the distinction between recycling and energy recovery. One example involves the portion of the statutes that establishes and implements the state goal of recovering at least 50 percent of the general solid waste stream. ORS 459A.010. These statutes include the following provision:

"If there is not a viable market for recycling a material \* \* \*, the composting or burning of the material for energy recovery may be included in the recovery rate for the wasteshed."

ORS 459A.010(4)(b).

This is simply one more illustration that the legislature considers recycling and burning for energy as distinct activities.

We recognize that the pyrolysis of plastics involves two factual circumstances that require further consideration. First, the proponents of pyrolysis stress that the process, as applied to plastics, does not primarily involve burning for energy or even the production of fuel. Rather, it produces liquid hydrocarbons that could not be used as fuel without further refinement.

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We are not convinced that this fact affects the analysis. It is clear to us that the legislature's concern is the disposition of the solid waste. The fact that a material is temporarily transformed into a different form is not determinative. Surely the pyrolysis of plastics would not constitute recycling if the liquid hydrocarbons were disposed of in a landfill. We think it is equally obvious that pyrolysis does not constitute recycling when the liquid hydrocarbons are ultimately used as a form of energy.

Secondly, the proponents of pyrolysis also stress that a significant percentage of the liquid hydrocarbons will be converted into usable products, such as polyester fiber for clothing and in some cases new plastic containers, which clearly are not fuel. This fact may indeed be significant. Nothing in our analysis has suggested that the pyrolysis of plastics may never qualify as recycling. Rather, we have only said that recycling does not occur to the extent that the pyrolysis process results in a form of energy.

This brings us to the second aspect of your questions--namely, the role of the EQC in determining under what circumstances pyrolysis of plastics may constitute recycling. In short, we think the role of the EQC is considerable. As noted above, the EQC has express rulemaking authority to carry out all of the pertinent statutes, and this authority includes at a minimum the authority to interpret and refine these statutes. Furthermore, as the Springfield court's analysis indicates, a court will review an agency's interpretation of inexact terms only to determine whether the interpretation is consistent with the policies of the legislature.

As should be abundantly evident, the statutes in question are replete not only with inexact terms but also with some seemingly overlapping definitions. The most relevant example is the term "product" in the definition of recycling. ORS 459.005(20). Clearly, the word "product" is an inexact term that may be reasonably interpreted by the EQC. We have identified only one limitation in this letter--i.e., that the term "product" cannot include a form of energy, because that interpretation would negate the statutory category of energy recovery and contravene the legislature's solid waste policies. Otherwise, the EQC has broad interpretive authority, limited only by the guidance of the legislature.

Along these lines, we understand that one frequently debated issue is whether recycling should be limited to the conversion of

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material into the same type of material--i.e., paper into paper products, glass into glass products and plastic into plastic products. You advise us that in many technical and policy circles, such a limitation is considered to be the common understanding of recycling and the preferred environmental policy. According to this school of thought, the essence of recycling is to produce materials that can directly substitute for virgin materials and to do so in a manner that requires minimal processing and use of energy.

Our review of the pertinent legislation and legislative history did not reveal any definitive evidence that the legislature intended to mandate this limitation. Nonetheless, this is precisely the sort of question the EQC would appear to have the authority to resolve through interpretive rulemaking, providing its facts and reasons comport with the legislature's policies.

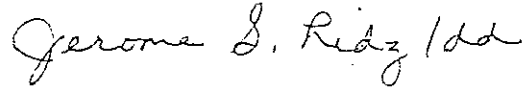
In closing, we would reiterate that the objective of sound statutory interpretation is to give effect to the intent of the legislature. Our office has previously cautioned against "wooden literalism"--namely, the strict literal reading of isolated statutory language, and we think that caution is especially germane in this situation. Letter of Advice dated May 15, 1985, to Dan Smith, Administrator, Building Codes Division, Department of Commerce (Supplement to OP-5774); see Letter of Advice dated April 2, 1987, to Fred Hansen, Director, Department of Environmental Quality (OP-6043) at 11. The proponents of pyrolysis argue that because pyrolysis meets the literal definition of "recycling," the inquiry must end there.

We disagree. We would note that pyrolysis also meets the literal definition of "energy recovery," because it is undisputed that with pyrolysis "all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material." ORS 459.005(9). (Emphasis added.) The more important point, however, is that these statutory definitions simply cannot be interpreted so rigidly and without consideration of the broader statutory context. With certain limitations, the task of reconciling and applying the solid waste statutes falls to the EQC. Obviously, the EQC cannot adopt an interpretation that eliminates either the category of

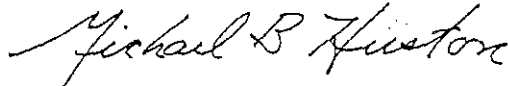
Fred Hansen, Director  
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recycling or the category of energy recovery. Providing, however, that the EQC's interpretations comport with the purpose of the legislation, we think they will be upheld by a court.

Sincerely,



Jerome S. Lidz  
Attorney-in-Charge  
Natural Resources Section



Michael B. Huston  
Assistant Attorney General



Larry Edelman  
Assistant Attorney General

MBH:JL:LE:dld MBH0058.let  
c: Mary Wahl, DEQ  
Bob Danko, DEQ

**CHUHAK & TECSON, P.C.**

ATTORNEYS AT LAW

Thomas S. Chuhak  
 John P. Fadden  
 Barry A. Feinberg  
 Dennis A. Ferraro  
 Cary S. Fleischer  
 Albert L. Grasso  
 Rick Hammond  
 Edwin I. Josephson  
 Arnold E. Karolewski  
 John Laurence Kienlen  
 Stephen M. Margolin  
 James W. Naiekhif  
 Donald J. Russ, Jr.  
 Andrew P. Tecson  
 Joseph A. Tecson

225 West Washington Street  
 Suite 1300  
 Chicago, Illinois 60606-3418  
 (312) 444-9300  
 Fax: (312) 444-9027

Writer's Direct Line

(312) 855-4352

October 20, 1994

John P. Adarag  
 Thomas A. Bell  
 Barbara J. Bond  
 Barbara A. Brant  
 Alan P. Collins  
 John M. Foley  
 Stephen A. Gluckman  
 Karen S. Kogach  
 Jeffrey A. Kerensky  
 Raymond S. Makowski  
 John F. Mahoney  
 Laurie A. Pugh  
 Shawn P. Ryan  
 Stacy E. Slichter  
 Don M. Sowers  
 Mitchell D. Weinstein  
 Michael D. Wells

Of Counsel:

Lawrence E. Gillick  
 Joseph O. Rubinelli  
 Mary Jane Rubinelli

**VIA FEDERAL EXPRESS**

Ms. Deanna Muller-Crispin  
 Department of Environmental Quality  
 Waste Management and Cleanup Division  
 811 S. W. 6th Avenue  
 Portland, Oregon 97204

Dear Deanna:

Per our conversation this morning, please find enclosed a copy of the letter dated September 1, 1994 from Peter Giammanco, Jr., President of Central Can Company. On September 1, 1994, this letter was faxed to the DEQ at 503-585-1921, as evidenced by the fax confirmation sheet attached hereto. Additionally, the letter was delivered by UPS Overnight Mail and signed for by an individual named "Cook".

Because this letter was received by the Department prior to the 5:00 p.m., September 6, 1994 deadline for submission of written comments, the comments of Mr. Giammanco should be presented to the Environmental Quality Commission. Accordingly, please incorporate this letter into the staff report dated October 4, 1994 and distribute such copies as are necessary for review by the EQC on October 21, 1994.

Thank you for your cooperation with this matter. If you require any additional information or materials, please do not hesitate to contact the undersigned.

Very truly yours,



Michael B. McVickar

MBM:ef  
 Enclosures  
 mbm\deanna.let

# CENTRAL CAN COMPANY

3200 S. KILBOURN AVE., CHICAGO, IL 60623 · 312/254-8700



September 1, 1994

Department of Environmental Quality  
Waste Management and Cleanup Division  
811 S. W. 6th Avenue  
Portland, Oregon 97204

Gentlemen:

Central Can Company is a manufacturer of High Density Polyethylene (HDPE) bottles primarily used to package products that are governed by the EPA under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). Shipments of a considerable portion of these products are also regulated by the U.S. Department of Transportation under Code of Federal Regulations 49, Parts 100 through 199, governing the transportation of hazardous materials throughout the United States and the rest of the world.

We respectfully submit the following comments for Oregon's Rigid Plastic Container Law:

1. Packaging of FIFRA regulated products could pose a serious threat to the public safety if containers were manufactured from less than 100 percent virgin polyethylene.
2. Containers we produce are manufactured with 100 percent virgin polyethylene to preclude the transmission of the contents of the container through the wall of the container.
3. There is a major issue of shelf life and stress-cracking resistance. FIFRA regulated products are usually very expensive and might be in storage in agricultural warehouses, farmers' barns, local garden stores and households for many years. In order to minimize the possibility of stress-cracking in storage, handling or shipping problems, virgin polyethylene with good stress-cracking resistance is the only HDPE material that should be used to manufacture these containers. The possibility of stress-cracking of these containers requires that careful construction and longer testing govern the manufacture and use of these containers.
4. Post-consumer regrind polyethylene is available basically in two different varieties:



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- A. Homopolymer which are the materials used to manufacture most milk and water containers. This material does not perform well for containers of FIFRA regulated products. Homopolymers tend to stress-crack very quickly and have very short shelf life expectancy. We believe this could cause major unsafe conditions for the public at large.
  - B. Copolymers used in post-consumer regrind would contain multiple additives and colorants. This material would also contain residues of the original products packaged. This residue occurs because the original products migrate into the sidewall of the containers.
5. No resin manufacturer or reprocessor will unconditionally guarantee the integrity and quality of either homopolymer or copolymer post-consumer regrind resin when used for FIFRA regulated HDPE bottles.
  6. It is illegal for manufacturers of products regulated by FIFRA and DOT to ship products across state lines ignoring federal regulations. Also, the commerce provisions of the U.S. Constitution clearly mandates that the federal government will regulate the commerce of the United States.
  7. Present Federal EPA FIFRA Law states that a State: "...shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter."

We strongly urge that Oregon exempt FIFRA products and hazardous material products governed by the Department of Transportation Regulation CFR49 from Oregon Rigid Plastic Container Law.

We sincerely believe that if our customers packaged FIFRA controlled products in bottles that contain post-consumer regrind, the public health and safety would be jeopardized and the public would be at risk.

Sincerely,

Peter Giammanco, Jr.  
President



Change to proposed rules, Attachment A, Agenda Item H, Oct 21, 1994 EQC Meeting

Substantial investment exemption criteria  
Corrects reference to recycling rate for compliance purposes

**On page A-8, Delete lines 40 and 41 and insert after line 39 "(C) The 1995 recycling rate for compliance purposes is at least 20%;"**

**On Page A-21, Delete lines 17 and 18 and insert after line 16 "(iii) The 1995 recycling rate for compliance purposes is at least 20%;"**

Change to proposed rules, attachment A, Agenda Item H, Oct, 21 1994 EQC Meeting

Rigid Plastic Container Definition  
Clarifies exclusion of tubes from the definition

**One page A-5, line after line 25 insert "(Comment: Plastic tubes and blister packs are excluded from the definition of a rigid plastic container.)"**

# RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

## OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

### *Issue:*

(5)(a) (A) and (B) Source reduced container comparison for existing packages

### *Proposed DEQ Rule:*

(5)(a)(A) For a container which has been changed to a reduced container after January 1, 1990 and before January 1 1995:

- (i) Comparison shall be made to the container/product ratio of the equivalent container sold five years earlier;
- (ii) The exemption shall start on January 1, 1995; and shall run until January 1, 2000.

(5)(a)(B) For a container which has been changed to a reduced container on or after January 1, 1995:

- (i) Comparison shall be made to the container/product ratio of the equivalent container sold five years earlier
- (ii) The exemption shall start on the date the reduced container was first used by the product manufacturer and shall run for five years

### *Discussion:*

This section of the regulations requires a five year comparison for source reduction purposes. This DEQ recommendation is a reversal of the Implementation Task Force recommendation. The regulations as written preclude any products in rigid plastic packages introduced after January 1, 1990 to be exempted through source reduction, because the source reduction is not being allowed to occur until after the law takes effect. This is of critical importance to food manufacturers, since source reduction is basically the only way food manufacturers will be able to meet the law due to food safety and package integrity concerns with recycled content and reuse compliance options, and because of our inability as a manufacturer to control the recycling rate.

As an example, an existing product in a rigid plastic container introduced in 1993 is not allowed by regulation to be source reduced until 1998. To remain in the marketplace a package must meet the law by January 1, 1995. Yet, the regulations do not allow the package to be source reduced until 1998 -- 3 years after the package must meet the law. So if a manufacturer introduced a package in 1993, and source reduction is not allowed as an option to meet the law until 1998, the package will have to be withdrawn from the marketplace from 1995 until 1998.

There is nothing in the statute that gives DEQ the authority to preclude an option to meet the law from being used. The regulations go beyond statutory scope, are impractical and unworkable for food packages in rigid plastics in the marketplace today.

October 20, 1994  
EQC Workshops

## RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

### OAR 340-90-340 (5)(a)(A) and (B) EXEMPT RIGID PLASTIC CONTAINERS

#### ***Recommended Rule Language:***

To enable products introduced from 1/1/90 until 1/1/95 from being entitled to use source reduction to meet the law, the EQC should adopt Alternative B as it was put out for public comment. Although this does not address new products introduced in rigid plastic containers after 1/1/95, Alternative B does address those between 1990 and 1995.

Delete proposed rule (5)(a)(A) and (B) and replace with:

- (5)(a)(A) For a container which has been changed to a reduced container after January 1, 1990 and before January 1, 1995:
- (i) Comparison shall be made to the container/product ratio of the equivalent container :
    - (I) Sold before January 1, 1990; or
    - (II) For containers not sold before January 1, 1990, when the container was initially introduced
  - (ii) The exemption shall start on January 1, 1995 and shall run until January 1, 2000.
- (5)(a)(B) For a container which has been changed to a reduced container on or after January 1, 1995;
- (i) Comparison shall be made to the container/product ratio of the equivalent container:
    - (I) Sold five years prior to the date the reduced container was first used by the product manufacturer; or
    - (II) For containers which have been sold less than five years, the date the original container was first used by the product manufacturer
  - (ii) The exemption shall start on the date the reduced container was first used by the product manufacturer and shall run for five years.

# RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

## OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

### ***Issue:***

Source reduction exemption for new rigid plastic packages manufactured after 1/1/95.

### ***Proposed DEQ Rule:***

No proposed rule language allowing for source reduction exemption of new rigid plastic packages manufactured after 1/1/95.

### ***Discussion:***

The proposed rule does not allow for source reduction of new rigid plastic packages manufactured after 1/1/95. In order for a package to be source reduced, it must have an original package to compare it to. The rules, however, allow no mechanism to establish a base weight container in the marketplace after 1/1/95.

Source reduction is basically the only way food manufacturers will be able to meet the law due to food safety and package integrity concerns with recycled content and reuse compliance options, and because of our inability as a manufacturer to control the recycling rate. Because source reduction is our only compliance option, the proposed rules effectively prohibit new food packages manufactured after 1/1/95 from being introduced into Oregon. This is an unacceptable situation both for the consumers and businesses of Oregon, and is an inappropriate implementation of the statute.

The regulations should allow a procedure by which new products and packages can be introduced, and be given a time period to establish a base package for which to compare a source reduced package.

# RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

## OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

### *Recommended Rule Language:*

Add a subsection (5)(C) to OAR 340-90-340 to read:

- (5)(C) For a rigid plastic container that the manufacturer will seek a reduced exemption after 1/1/95 because no rigid plastic container existed for comparison within the 5 years prior, for the purposes of being a source reduced container:
- (i) The baseline product/package ratio is that ratio at the time of manufacture.
  - (ii) The reduced container exemption will begin five years after the date of manufacture, and extend for five years. During the period of January 1, 1995 but prior to the qualifying date for a reduced exemption, the container does not have to meet other compliance options.
  - (iii) Product manufacturers of containers seeking reduced container exemptions after January 1, 1995 will maintain compliance records verifying intent to meet the reduced container exemption. If audited by the Oregon DEQ prior to the reduced exemption taking place, the manufacturer shall provide to the DEQ a record of intent to obtain a reduced exemption. If the reduced exemption is not achieved by the end of the five year period, the product manufacturer will be in violation of the Act since the enforcement date.

# **RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW**

## **OAR 340-90-330 RIGID PLASTIC CONTAINERS**

### ***Issue:***

(1)(b)(C) Volume measurement

### ***Proposed DEQ Rule:***

(1)(b)(C) For containers which have a labeled product liquid volume of five gallons or less and a measured container liquid volume of more than five gallons the labeled product volume shall be used.

### ***Discussion:***

This subsection differentiates a distinct methodology for determining volume of five gallon containers versus any other rigid plastic container. There is absolutely no basis for establishing different volume criteria of a five gallon container from any other rigid plastic container. This inconsistency in volume determination between rigid plastic containers is totally unfounded.

### ***Recommended Rule Language:***

Delete (1)(b)(C) from the rule.

# RULES TO IMPLEMENT OREGON'S RIGID PLASTIC CONTAINER LAW

## OAR 340-90-330 RIGID PLASTIC CONTAINERS

### *Issue:*

(2)(b) Definition of rigid plastic container - Inclusion of trays that are not a "package"

### *Proposed DEQ Rule:*

(2)(b) Plastic trays that have sidewalls designed to contain a product in the tray

### *Discussion:*

This subsection includes trays with sidewalls in the definition of a rigid plastic container. Inclusion of trays inconsistent with statutory definition of a "package" and a "rigid plastic container" of Oregon SB66.

The Oregon law defines a package as"

"Any container used to protect, store, contain, transport, display or sell products."

The Oregon law defines rigid plastic container as:

"Any package composed predominantly of plastic resin ..."

It is clear from the statutory language that a rigid plastic container is the package and that it is able to contain a product on its own. A tray - even with sidewalls-is not a package. It cannot contain a product on the shelf without additional packaging material. Therefore, to be consistent with the statute, the regulations must not include rigid plastic containers that are not packages, such as trays, which cannot contain a product on the shelf on its own.

### *Recommended Rule Language:*

Amend (2)(b) to read:

"Plastic trays which have sidewalls designed to contain a product in the tray without additional packaging material or lid, closure, etc."