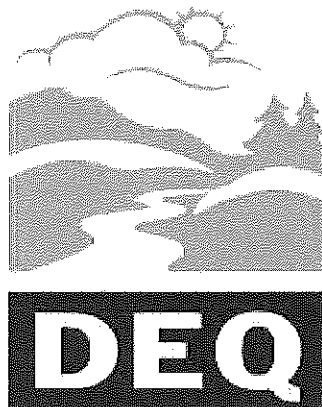


**OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 10/20/1994**



**State of Oregon
Department of
Environmental
Quality**

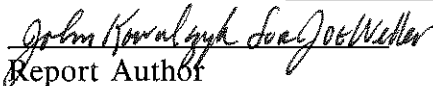
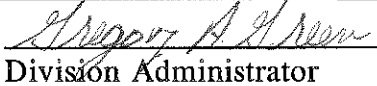
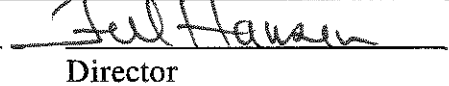
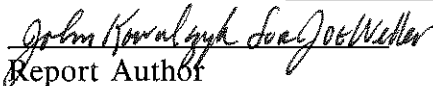
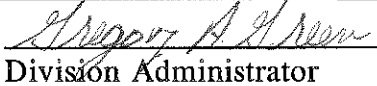
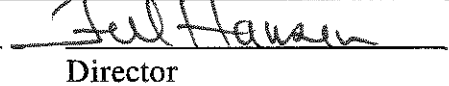
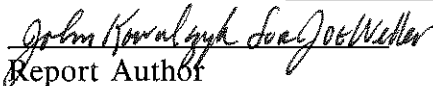
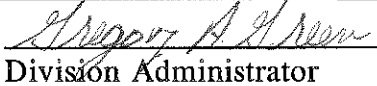
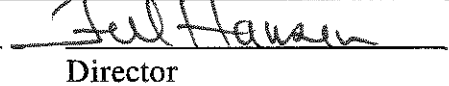
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Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item E
October 21, 1994 Meeting

Title: Gasoline Vapor Recovery Permits and Fees and Oxygenated Fuel Fees			
Summary: These rules are proposed to require Stage I and Stage II vapor recovery permits and fees and gasoline tanker permit fees. This proposal also repeals the existing oxygenated fuel permit fee on gasoline retailers and reduces the same fee on terminals and distributors.			
Department Recommendation: The Department recommends that the Commission adopt the rules regarding vapor recovery permits and fees and oxygenated fuel fees as presented in Attachment A to this report.			
<table style="width: 100%; border: none;"><tr><td style="text-align: center; width: 33%;"> Report Author</td><td style="text-align: center; width: 33%;"> Division Administrator</td><td style="text-align: center; width: 33%;"> Director</td></tr></table>	 Report Author	 Division Administrator	 Director
 Report Author	 Division Administrator	 Director	

September 26, 1994

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

State of Oregon
Department of Environmental Quality

Memorandum[†]

Date: October 4, 1994

To: Environmental Quality Commission
From: Fred Hansen, Director *Ful*
Subject: Agenda Item E, EQC Meeting

Proposed Rule on Gasoline Vapor Recovery permits and Fees and
Oxygenated Fuel Fees

Background

On August 16, 1994, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would reduce oxygenated fuel permit fees and require Stage I, Stage II and Tanker unit vapor recovery permits and fees.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on September 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 August 25, 1994.

A Public Hearing was held September 23, 1994 with Kevin Downing serving as Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearing.

Written comment was received through September 23, 1994. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, no modifications to the initial rulemaking proposal are being recommended by the Department.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of

[†]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 E
October 21, 1994 Meeting
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the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

Issue this Proposed Rulemaking Action is Intended to Address

Vapor recovery regulations require that certain gasoline dispensing facilities in Clackamas, Multnomah and Washington Counties, the Salem Transportation Study Area and the Medford-Ashland Air Quality Maintenance Area install and maintain Stage I and/or Stage II vapor recovery systems. The Department has no funding for ongoing education, technical assistance, enforcement, or inspection of these sites. Without such a program the Department cannot ensure that the capture of hydrocarbon emissions from these sites is adequate.

Gasoline tankers are currently required to obtain annual Department certificates which are provided when the tanker owner establishes proof that the tanker has successfully undergone leak detection tests. The Department needs to continue the tanker certification program and to annually inspect the facilities which are authorized to perform the leak detection tests.

Because the original fees approved for oxygenated fuel permits have proven to provide more revenue than required for the program, the oxygenated fuel permit account currently has a balance. The permit fee reduction in this proposal will reduce the accumulated balance over the next few years.

Relationship to Federal and Adjacent State Rules

Both Washington and California have extensive Stage I, Stage II, tanker certification and oxygenated fuel regulations. In both states, facilities are charged fees to support the programs.

This proposal does not conflict with any federal requirements. This proposal does not change any current requirements of gasoline handlers, except to increase or reduce fees and require permits on certain facilities.

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Authority to Address the Issue

Oregon Revised Statutes (ORS) 468.020 authorizes the Environmental Quality Commission (EQC) of the Department of Environmental Quality (DEQ) to adopt rules and standards as considered necessary to perform its statutory functions. ORS 468A.040 grants the EQC authority to require permits from certain parties. ORS 468.045 prohibits certain activities without first obtaining a permit.

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

An advisory committee was convened to guide the Department in identifying the best way to design the ongoing compliance program and to recommend a permit fee structure. Members of the committee represented all affected aspects of the gasoline marketing community. The committee was presented with two alternative proposals. One would have allowed a privatized program of inspections for the Stage I and II program. The tanker program already utilizes a privatized approach.

The second alternative proposal was to have the Department train and hire state employees to do the inspections. The committee met twice and endorsed this proposal at their second meeting.

Several committee members asked the Department to continue to explore ways to work together with the Department of Agriculture and reduce the number of site visits by these two agencies. The Department of Agriculture conducts periodic weights and measures inspections of some of the facilities inspected by DEQ.

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

If uncontrolled, gasoline transportation and dispensing is a significant source of hydrocarbon emissions. Stage I, Stage II and tanker truck regulations greatly reduce gasoline vapor emissions. When fully implemented, by June 1, 1994, Stage II vapor recovery systems will be installed to control 93% of all throughput in the tri-county

area. Emission reductions from Stage II amount to about 3000 tons per year of hydrocarbons.

Oxygenated fuel used from November through February can reduce ambient carbon monoxide levels. Fees to support an oxygenated fuels program were established several years ago at levels which are higher than necessary, resulting in a growing fund balance. Cost savings resulting from private laboratory analysis of gasoline samples, rather than DEQ lab analysis, is the chief reason for the fee fund balance. Originally, the fees were set at a level which would have been adequate for the DEQ lab to purchase expensive analyzing equipment. Sending gasoline samples to a private lab made that capital expenditure unnecessary. This cost savings is reflected in the new, lower fees proposed in these rules.

This proposed rule would:

1. Reduce oxy fuel permit fees:

Facility	Old Fee	New Fee
Terminals	\$5,700	\$2,500
Distributor	\$500	\$250
Retailer	\$100	\$0

2. Impose a new \$25 permit fee on tanker units which are already required to be permitted and tested yearly to prove leak tightness.

3. Impose a new permit requirement and a \$50 fee on all Stage I gasoline facilities, estimated to number about 700 in the State. These facilities are located in the Medford-Ashland AQMA, the Salem Transportation Study Area, and Clackamas, Multnomah and Washington Counties.

4. Impose a new permit requirement and a \$100 fee on all Stage II gasoline facilities estimated to number about 310, all located in Clackamas, Multnomah and Washington Counties.

The total amount of fees collected from these permits would be approximately \$44,000 per year less than is currently collected.

Summary of Significant Public Comment and Changes Proposed in Response

Three written comments were received on these proposed rule changes. Steve Carson of BearCat expressed dismay that a \$25 fee will be imposed for gasoline tank car permitting. He believes the administrative burden on the Department to process the permit fees is negligible. No change in the proposal is warranted based on this objection. The fees proposed for tanker units are reasonable and in fact are significantly less than the fees in California and in Southwest Washington.

Andy Anderson, representing the Oregon Flying Farmers expressed concern that the tank size for Stage I vapor recovery is being reduced from 1100 gallons to 550 gallons. He requests an exemption for residential and farm aviation from vapor recovery requirements. Mr. Anderson is incorrect in his assertion that the Department is changing the rules on which facilities must install Stage I vapor recovery. Those rules are not affected by this proposal. The only exemption from Stage I rules at this time is for underground storage tanks less than 550 gallons which are used for agricultural purposes. There is no compelling reason to exempt others from Stage I vapor recovery requirements.

Mike Sims representing the Oregon Gasoline Dealers Association opposes the rules because they represent a burden to gasoline dealers. The permit requirements for Stage I and Stage II will add to an increasing set of regulations on gasoline dealers. Dealers will have to obtain permits for Stage I and/or Stage II vapor recovery. For some dealers that will mean a permit fee increase, for others, a fee decrease. Overall the vapor recovery and oxygenated fuel fees will be reduced by \$44,000. Vapor recovery inspections are necessary to ensure that predicted emissions reductions are being achieved. Inspections to date reveal significant problems with operator error and improper maintenance, both of which lead to increased emissions of hydrocarbons. Inspections are needed and the best way to pay for them is to charge permit fees for those facilities which need inspection.

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

The fuels specialist located in the Northwest Region Underground Storage Tank section will serve as lead staff for vapor recovery and oxy fuel programs. Since the oxy fuel and tanker programs are unchanged, except for minor fee changes, there is no need to change the way those programs currently are run.

The Stage I and Stage II program will be generating enough revenue to hire some temporary inspectors in the areas which have Stage I and Stage II requirements. A training program for inspectors is being developed and an inspection protocol is under development. A Stage I and Stage II compliance program should be underway by July 1, 1995.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding the reduction of oxygenated fuel permit fees and the establishment of Stage I, II and tanker unit vapor recovery permits and fees as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule (Amendments) Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Memo to Interested Parties Notifying Public of Proposed Rulemaking
 - 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
- I. (Other Attachments as appropriate)

Memo To: Environmental Quality Commission
Agenda Item E
October 21, 1994 Meeting
Page 7

Reference Documents (available upon request)

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

Approved:

Section:



Division:

Report Prepared By: Joseph Weller

Phone: 229-6280

Date Prepared: 9-26-94

DIVISION 22

GENERAL GASEOUS EMISSIONS

Gasoline Dispensing Facilities

340-22-110

- (1) No person may transfer or cause or allow the transfer of gasoline from any delivery vessel which was filled at a Bulk Gasoline Terminal or nonexempted Bulk Gasoline Plant into any gasoline dispensing facility of less than 40,000 gallon capacity unless:
 - (a) The tank is filled by submerged fill;
 - (b) A vapor balance system is used which consists of a Certified Underground Storage Tank Device capable of collecting the vapor from volatile organic liquids and gases so as to prevent their emission to the outdoor atmosphere. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place;
 - (c) The vapors are processed by a system demonstrated to the satisfaction of the Department to be of equal effectiveness; or
 - (d) All equipment associated with the vapor balance system shall be maintained to be vapor tight and in good working order. No gasoline delivery shall take place unless the vapor return hose is connected by the delivery truck operator, if required by subsection (b) of this section.
- (2) Exemptions and Limitations:
 - (a) In the Portland-Vancouver AQMA, no person shall deliver gasoline to a gasoline dispensing facility unless the gasoline vapor is handled as required in subsection (1)(b) and (c) of this rule. Gasoline dispensing facilities with a monthly throughput of 10,000 gallons or less of gasoline (thirty-day rolling average) are exempt from these requirements;
 - (b) In the Medford-Ashland AQMA, all existing storage tanks at gasoline dispensing facilities with a rated capacity of 1,000 gallons or less shall be exempt from the submerged fill requirement in subsection (1)(a) of this rule;
 - (c) Transfers made to storage tanks of gasoline dispensing facilities equipped with floating roofs or their equivalent shall be exempt from OAR 340-22-100 through 340-22-300;
 - (d) Stationary gasoline storage containers of less than 2,085 liters (550 gallons) used for agricultural purposes shall be exempt from OAR 340-22-100 through 340-22-300;
 - (e) Stationary gasoline storage tanks with offset fill lines, welded-in drop tubes, or fill pipes of less than 3" diameter, if installed before January 1, 1979, shall be exempt from OAR 340-22-100 through 340-22-300.
- (3) Compliance with subsection (1)(b) of this rule shall be

determined by verifications of use of equipment identical to equipment most recently approved and listed for such use by the Department or by testing in accordance with Method 30 on file with the Department.

- (4) All persons subject to OAR 340-22-100 and this rule shall obtain an annual vapor balance system permit from the Department. This permit shall be displayed or kept on file at the facility. Persons applying for this permit shall at the time of application pay a fee of \$50.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

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

Hist.: DEQ 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 12-1981(Temp), f. & ef. 4-29-81; DEQ 16-1983, f. & ef. 10-19-83; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93

Bulk Gasoline Terminals

340-22-130

- (1) No terminal owner or operator, shall allow volatile organic compounds (VOC) to be emitted into the atmosphere in excess of 80 milligrams of VOC per liter of gasoline loaded from the operation of loading truck tanks, and truck trailers at bulk gasoline terminals with a daily throughput of greater than 76,000 liters (20,000 gallons) per day of gasoline (determined by a thirty-day rolling average):
- (a) The owner or operator of a gasoline loading terminal shall only allow the transfer of gasoline between the facility and a truck tank or a truck trailer when a current leak test certification for the delivery vessel is on file with the terminal or a valid ~~inspection sticker~~ permit as required by OAR 340-22-137(1)(c) is displayed on the delivery vessel;
 - (b) The owner or operator of a truck tank or a truck trailer shall not make any connection to the terminal's gasoline loading rack unless the gasoline delivery vessel has been tested in accordance with OAR 340-22-137(1);
 - (c) The truck driver or other operator who fills a delivery truck tank and/or trailer tank shall not take on a load of gasoline unless the vapor return hose is properly connected;
 - (d) All equipment associated with the vapor recovery system shall be maintained to be vapor tight and in good working order.
- (2) Compliance with section (1) of this rule shall be determined by testing in accordance with Method 33 on file with the Department. The method for determining compliance with section (1) of this rule are delineated in 40 CFR Part 60, Subpart XX, §60.503.
- (3) Bulk Gasoline terminals shall comply with the following within the limits of section (1) of this rule:

- (a) All displaced vapors and gases during tank truck gasoline loading operations are vented only to the vapor control system;
- (b) The loading device must not leak when in use. The loading device shall be designed and operated to allow no more than 10 cubic centimeters drainage per disconnect on the basis of 5 consecutive disconnects;
- (c) All loading liquid lines shall be equipped with fittings which make vapor-tight connections and which close automatically and immediately when disconnected;
- (d) All vapor lines shall be equipped with fittings which make vapor-tight connections and which close automatically and immediately when disconnected or which contain vapor-tight unidirectional valves;
- (e) Gasoline is handled in a manner to prevent its being discarded in sewers or stored in open containers or handled in any manner that would result in evaporation. If more than 5 gallons are spilled, the operator shall report the spillage in accordance with OAR 340-20-350 to 340-20-380;
- (f) The vapor collection system is operated in a manner to prevent the pressure therein from exceeding the tank truck or trailer pressure relief settings.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

[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 21-1978, f. & ef. 12-28-78; DEQ 17-1979, f. & ef. 6-22-79; DEQ 23-1980, f. & ef. 9-26-80; DEQ 12-1981(Temp), f. & ef. 4-29-81; DEQ 3-1986, f. & ef. 2-12-86; DEQ 8-1991, f. & cert. ef. 5-16-91; DEQ 4-1993, f. & cert. ef. 3-10-93

Testing Vapor Transfer and Collection Systems

340-22-137

- (1) No person shall allow a vapor-laden delivery vessel subject to OAR 340-22-120(5) to be filled or emptied unless the delivery vessel:
 - (a) Is tested annually according to the test method 32 on file with the Department, or CFR Part 60, EPA Method 21 or 27, or California Air Resources Board Method 2-5;
 - (b) Sustains a pressure change of no more than 750 pascals (3 inches of H₂O) in 5 minutes when pressurized to a gauge pressure of 4,500 pascals (18 inches of H₂O) or evacuated to a gauge pressure of 1,500 pascals (6 inches of H₂O) during the testing required in subsection (1) (a) of this rule; and
 - (c) Displays a ~~sticker~~ valid permit near the Department of Transportation test date markings required by 49 CFR 177.824h, which:

- (A) Shows the year and month that the gasoline tank truck last passed the test required in subsections (1) (a) and (b) of this rule;
 - (B) Shows the identification of the ~~sticker~~ permit; and
 - (C) Expires not more than one year from the date of the leak-test test, or if tested in California, on the expiration date so specified.
 - (d) Has its vapor return hose connected by the truck operator so that gasoline vapor is not expelled to the atmosphere.
- (2) The owner or operator of a vapor collection system subject to this regulation shall design and operate the vapor collection system and the gasoline loading equipment in a manner that prevents:
- (a) Gauge pressure from exceeding 4,500 pascals (18 inches of H₂O) and vacuum from exceeding 1,500 pascals (6 inches of H₂O) in the gasoline tank truck being loaded;
 - (b) A reading equal to or greater than 100 percent of the lower explosive limit (LEL, measured as propane) at 2.5 centimeters from all points on the perimeter of a potential leak source when measured by the Method 31 and 33 on file with the Department, or unloading operations at gasoline dispensing facilities, bulk plants and bulk terminals; and
 - (c) Visible liquid leaks during loading or unloading operations at gasoline dispensing facilities, bulk plants and bulk terminals.
- (3) The Department may, at any time, monitor a gasoline tank truck, vapor collection system, or vapor control system, by the methods on file with the Department, to confirm continuing compliance with sections (1) or (2) of this rule.
- (4) Recordkeeping and Reporting:
- (a) The owner or operator of a source of volatile organic compounds subject to this rule shall maintain records of all certification testing and repairs. The records must identify the gasoline tank truck, vapor collection system, or vapor control system; the date of the test or repair; and if applicable, the type of repair and the date of retest. The records must be maintained in a legible, readily available condition for at least two years after the date of testing or repair was completed;
 - (b) Copies of all records and reports under subsection (4) (a) of this rule shall ~~immediately~~ be submitted~~made available~~ to the Department within 30 days of certification testing~~upon verbal or written request, at any reasonable time~~.
 - (c) Persons applying for a permit required by this rule shall at the time of application pay a fee of \$25.

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

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the Environmental Quality Commission under OAR 340-20-047.]

General Provisions

340-22-402

- (1) No person shall transfer or allow the transfer of gasoline into storage tanks, at gasoline-dispensing sites located in Clackamas, Multnomah or Washington Counties, whose annual throughput exceeds 120,000 gallons, unless the storage tank is equipped with:
 - (a) A stage I vapor collection system consisting of a vapor-tight return line from the storage tank, or its vent, to the gasoline transport vehicle;
 - (b) A properly installed on-site vapor control system connected to a vapor collection system; or
 - (c) An equivalent control system.
- (2) A stage I vapor collection system and submerged filling are not required for storage tanks with a capacity less than 550 gallons. A stage II vapor collection system is not required at gasoline-dispensing sites that are not subject to the stage I requirements of this section.
- (3) No owner and/or operator of a gasoline-dispensing site shall transfer or allow the transfer of gasoline into a motor vehicle fuel tank at gasoline-dispensing sites located in Clackamas, Multnomah or Washington Counties whose annual throughput exceeds 600,000 gallons, unless the gasoline-dispensing site is equipped with a stage II vapor collection system which must be approved by the Department before it is installed.

NOTES:

-1- Underground piping requirements are described in OAR 340-150-001 through 340-150-003 and 40 CFR 280.20(d). Systems installed according to American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System" or Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems" or American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System" are considered approved systems.

-2- Above-ground stage II equipment requirements are based on systems recently approved in other states with established stage II program. See the Oregon Department of Environmental Quality, Air Quality Division, for the list of approved equipment. Any other proposed equivalent systems must be submitted to the Department of Environmental Quality, Air Quality Division, for approval before installation.

- (4) Owners and/or operators of gasoline storage tanks, gasoline transport vehicles and gasoline-dispensing sites subject to stage I or stage II vapor collection requirements must:
 - (a) Install all necessary stage I and stage II vapor collection and control systems, and make any

- modifications necessary to comply with the requirements;
- (b) Provide adequate training and written instructions to the operator of the affected gasoline-dispensing site and the gasoline transport vehicle;
 - (c) Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I and stage II vapor collection systems; and
 - (d) Connect and ensure proper operation of the stage I and stage II vapor collection systems whenever gasoline is being loaded, unloaded or dispensed.
- (5) Approval of a stage I or stage II vapor collection system by the Department does not relieve the owner and/or operator of the responsibility to comply with other applicable codes and regulations pertaining to fire prevention, weights and measures and safety matters.
- (6) Regarding installation and testing of piping for stage I and stage II vapor collection systems:
- (a) Piping shall be installed in accordance with standards in OAR 340 Division 150;
 - (b) Piping shall be installed by a licensed installation service provider pursuant to OAR 340 Division 160; and
 - (c) Piping shall be tested prior to being placed into operation by an installation or tank tightness testing service provider licensed pursuant to OAR 340 Division 160.
- (7) Owners and/or operators of gasoline-dispensing sites subject to stage II vapor collection requirements must obtain an annual stage II vapor collection permit from the Department. This permit shall be displayed or kept on file at the facility. Persons applying for this permit shall at the time of application pay a fee of \$100.

NOTE: Test methods are based on methods used in other states with established stage II programs. See the Oregon Department of Environmental Quality, Air Quality Division, for copies of the approved test methods.

[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 7-1991, f. & cert. ef. 5-7-91 (and corrected 6-7-91)

**Owners of Gasoline at Terminals, Distributors and Retail Outlets
Required to Have Indirect Source Operating Permits**

340-20-136 The owner of gasoline at any gasoline terminal, distributor or retail outlet (defined in OAR 340-22-450(29), (12), (26)) shall not supply gasoline to any oxygenated gasoline control area during the control period (defined in OAR 340-22-450(6) and (10)) without an approved Indirect Source Operating Permit issued by the Department or Regional Authority having jurisdiction.

- (1) An Indirect Source Operating Permit must be renewed yearly, prior to supplying any gasoline to an oxygenated gasoline control area during the control period.
- (2) Persons applying for an Indirect Source Operating Permit shall at the time of application pay the following fees:
 - (a) Gasoline Terminals - ~~5,700~~ 2,500;
 - (b) Gasoline Distributors - ~~500~~ 250;
 - ~~(c) Gasoline Retailers - \$100.~~

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality Air Quality Division
OAR Chapter 340

DATE: September 23, 1994 **TIME:** 9:30 a.m.

LOCATION: Room 3A
DEQ Headquarters Building
811 SW 6th Ave.
Portland OR 97204

HEARINGS OFFICER: Kevin Downing

STATUTORY AUTHORITY: ORS 468.020 and ORS 468A.045 and 468A.040

ADOPT:

AMEND: OAR 340-20-047, OAR 340-20-136, OAR 340-22-110, OAR 340-22-130,
OAR 340-22-137, OAR 340-22-402

- This hearing notice is the initial notice given for this rulemaking action.
- This hearing was requested by interested persons after a previous rulemaking notice.
- Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY: These proposed rules will establish permit fees and require permits for gasoline dispensing sites subject to Stage I and Stage II vapor recovery requirements. Additionally, the rules would require that gasoline tankers which currently must be certified annually, submit a permit fee along with the certification test results. The oxygenated fuel permit fee currently imposed on gasoline retailers would be repealed. The oxygenated fuel permit fee currently imposed on terminals and distributors would be reduced.

LAST DATE FOR COMMENT: September 23, 1994

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

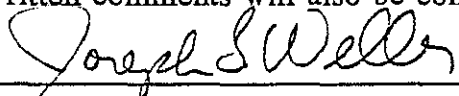
AGENCY RULES COORDINATOR: Christopher Rich, (503) 229-6775

AGENCY CONTACT FOR THIS PROPOSAL: Joe Weller, (503) 229-6280

ADDRESS: Department of Environmental Quality
811 S.W. 6th Avenue
Portland, Oregon 97204

TELEPHONE: 503-229-6280
or Toll Free 1-800-452-4011

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.



Signature

8-15-94
Date

Date: August 19, 1994

To: Interested and Affected Public

Subject: Rulemaking Proposal - Gasoline vapor recovery permits and fees and oxygenated fuel fees.

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules/rule amendments requiring Stage I and Stage II vapor recovery permits and gasoline tanker certification permits. This proposal also repeals the existing oxygenated fuel permit fee on gasoline retailers. This proposal would require that gasoline dispensing sites subject to Stage I and Stage II vapor recovery requirements obtain an annual permit. Gasoline tankers currently required to pass leakage tests will be required to obtain a permit and pay a permit fee along with the results of the leakage test. The permit fees collected by these rule changes will be used to support a vapor recovery inspection, education and enforcement program in those areas where Stage I or Stage II or gasoline tanker certification are required. These rules are being proposed in order to fund a compliance program to ensure that predicted hydrocarbon emission reductions are occurring.

This proposal also repeals the oxygenated fuel permit fee on gasoline retailers. Permit fees imposed on terminals and distributors are reduced. The oxygenated fuel program will continue to operate with reduced income because the initial permit fees exceeded the actual costs of an adequate compliance program.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

- | | |
|--------------|---|
| Attachment A | The actual language of the proposed rule (amendments). |
| Attachment B | The "Legal Notice" of the Rulemaking Hearing. (required by ORS 183.335) |

Attachment B-2 page 1

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

- Attachment C The official Rulemaking Statements for the proposed rulemaking action. (required by ORS 183.335)
- Attachment D The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335)
- Attachment E A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment F (Other attachments as appropriate and necessary)

Hearing Process Details

You are invited to review these materials and present written or oral comment in accordance with the following:

Date: September 23, 1994
Time: 9:30 a.m.
Place: Room 3A DEQ Headquarters
 811 SW 6th Ave
 Portland OR 97204

Deadline for submittal of Written Comments: September 23, 1994

Kevin Downing will be the Presiding Officer at this hearing. Following close of the public comment period, the Presiding Officer will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report and all written comments submitted. The public hearing will be tape recorded, but the tape will not be transcribed.

If you wish to be kept advised of this proceeding and receive a copy of the recommendation that is presented to the EQC for adoption, you should request that your name be placed on the mailing list for this rulemaking proposal.

What Happens After the Public Comment Period Closes

The Department will review and evaluate comments received, and prepare responses. Final recommendations will then be prepared, and scheduled for consideration by the Environmental Quality Commission (EQC).

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is October 20, 1994. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented **during** the hearing process so that full consideration by the Department may occur before a final recommendation is made. The EQC may elect to receive comment during the meeting where the rule is considered for adoption; however, such comment will be limited to the effect of changes made by the Department after the public comment period in response to testimony received. The EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department at the earliest possible date so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal

What is the problem

Vapor recovery regulations require that certain gasoline dispensing facilities in Clackamas, Multnomah and Washington Counties, the Salem Transportation Study Area and the Medford-Ashland Air Quality Maintenance Area install and maintain Stage I and/or Stage II vapor recovery systems. The Department has no funding for ongoing education, technical assistance, enforcement, or inspection of these sites. Without such a program the Department cannot ensure that the capture of hydrocarbon emissions from these sites is adequate.

Gasoline tankers are currently required to obtain annual Department certificates which are provided when the tanker owner establishes proof that the tanker has successfully undergone leak detection tests. The Department needs to continue the tanker certification program and to annually inspect the facilities which are authorized to perform the leak detection tests.

The oxygenated fuel permit fees are sufficient to run an oxy-fuel program without a permit

fee on gasoline retailers and with a reduction in permit fees for terminals and distributors.

How does this proposed rule help solve the problem

These rule changes will allow the Department to require permits and permit fees which will be used to establish an ongoing inspection, education, technical assistance and enforcement program to ensure adequate gasoline vapor recovery.

The oxygenated fuel permit account currently has a balance and this permit fee change will reduce the balance over the next few years.

How was the rule developed

An advisory committee was convened to guide the Department in identifying the best way to design the ongoing compliance program and to recommend a permit fee structure. Members of the committee represented all affected aspects of the gasoline marketing community. The committee met twice and endorsed this proposal at their second meeting. Several committee members asked the Department to continue to explore ways to work together with the Department of Agriculture and reduce the number of site visits by these two agencies. The Department of Agriculture conducts periodic weights and measures inspections of some of the facilities inspected by DEQ.

How does it affect the public, regulated community, other agencies

The public will benefit from this rule because the program will result in fewer emissions escaping into the environment from gasoline filling operations. Hydrocarbon emissions from refueling as well as toxic emissions from refueling will decrease. This will reduce public and gasoline station attendants' exposure to these evaporative emissions. The regulated facilities will have to pay annual permit fees and obtain permits, and will be subject to ongoing compliance checks by Department inspectors. Those gasoline retailers who pay an oxygenated fuel permit fee will not have to pay the oxy-fuel permit fee in the future. Gasoline terminals and distributors will have a permit fee reduction of at least 50%.

How does the rule relate to federal requirements or adjacent state requirements

These rule changes do not affect the existing state requirements for Stage I, Stage II or gasoline tanker vapor recovery requirements or oxygenated fuel regulations. Reduction in terminal and distributor permit fees will not affect any existing control requirements. Southwest Air Pollution Control Authority (Washington) has similar vapor recovery requirements and charges fees to support their compliance program. Stage II vapor recovery is not required for the Portland-Vancouver AQMA. It was chosen as a control strategy because it is a cost effective way to reduce ozone precursors. Stage I vapor recovery requirements have been in effect for many years and were also chosen because of cost effectiveness.

Memo To: Interested and Affected Public
August 19, 1994
Page 5

How will the rule be implemented

Annual permits will be required for all Stage I and Stage II gasoline dispensing facilities. They will be required to submit an application with a permit fee. The Department will provide the facility with a permit which must be on file or on display at the facility. Gasoline tankers are currently required to be leak tested annually. The Department provides tankers which pass the test with a sticker. This process will continue as before, except that tanker owners will have to submit a permit fee along with the test results in order to obtain the permit. Oxygenated fuel permit fees currently imposed on gasoline retailers will be eliminated as soon as the Commission acts on this rule package.

Are there time constraints

No

Contact for more information

If you would like more information on this rulemaking proposal, or would like to be added to the mailing list, please contact:

Joe Weller
Department of Environmental Quality
811 SW 6th Ave
Portland OR 97204
503-229-6280

or

Kevin McCrann
Department of Environmental Quality
Northwest Region
2020 SW 4th Ave
Portland Or 97201
503-229-5473

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Gasoline vapor recovery permits and fees and oxygenated fuel fees.

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
ORS 468A.045
ORS 468A.040

2. Need for the Rule

These rules have been developed to ensure that the reductions in gasoline vapor emissions expected by the Department for Stage I, Stage II and the gasoline tanker programs are occurring. These programs are important parts of the Department's overall efforts to control emissions of ozone precursors. These rules do not impose any additional control requirements on the affected parties. New permit fees will be imposed for permits and the funds will be used to implement an ongoing compliance program to include inspection, technical assistance, enforcement and training/education. The proposed permit fees imposed on the gasoline dispensing sites will be \$50 for Stage I and \$100 for Stage II facilities. Gasoline tankers will pay a \$25 permit fee to support the ongoing permit program already in place for those tankers.

The oxygenated fuel permit fees will be repealed for retail facilities and reduced for terminals and distributors. Thus, income from these fees will more nearly match expenditures.

3. Principal Documents Relied Upon in this Rulemaking

California Air Resources Board, *Gasoline Facilities Phase I and II Compliance Assistance Program*

Available for review at DEQ offices located at 811 SW 6th Ave, Portland or DEQ Northwest Region Offices, 2020 SW 4th Ave., Portland OR

4. Advisory Committee Involvement

The advisory committee met two times, June 6 and July 19, 1994, to provide the Department with guidance on issues related to the permit fees and whether the program ought to include private inspections for Stage I and II sites as an alternative to DEQ inspections. The Committee consisted of representatives of the regulated community i.e., gasoline station owners and operators, gasoline tanker owners, and those who install Stage I and Stage II equipment and owners of terminals and those who distribute gasoline. The committee members did not find fault with the proposed permit fee structure but did voice concern with the time constraints the Department imposed on them during the advisory process.

The committee asked that the Department continue to explore with the Department of Agriculture ways to reduce the number of inspections conducted by these two agencies by combining responsibilities. For example, the Department of Agriculture does weights and measures testing at some of the facilities which are required to have Stage I or Stage II permits. The committee wants the Department to see whether it is possible to combine these inspections so that only one visit is necessary, rather than two.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Gasoline vapor recovery permits and fees and oxygenated fuel fees.

Fiscal and Economic Impact Statement

Introduction

The changes proposed by these rules would require that certain gasoline dispensing sites required to have Stage I or Stage II vapor recovery obtain an annual permit. The cost of a Stage I permit would be \$50 and the cost of a Stage II permit would be \$100. For the 305 sites in Clackamas, Multnomah and Washington counties which are required to have both permits, the permit fees are additive. Total cost to these stations would be \$150. The other 403 sites in the state which are Stage I only sites would be assessed the \$50 permit fee.

Owners of gasoline tankers would be required to submit \$25 per unit to obtain an annual permit. These units already are required to submit documentation of test results for vapor leakage. This rule change adds the requirement of a permit fee.

Currently 544 gasoline dispensing sites in the Portland AQMA and in the Medford-Ashland AQMA and parts of Josephine and Klamath counties pay a \$100 per year oxygenated fuel permit fee. These rules would repeal this permit fee for the 544 gasoline dispensing sites. Oxygenated fuel permit fees on 21 terminals would be reduced from \$5,700 to \$2500 and 48 gasoline distributors would pay permit fees of \$250 rather than \$500.

Overall, the oxyfuel permit fees collected under these rules would be reduced from \$198,100 to \$64,500. Newly imposed Stage I, Stage II and Tanker certification permit fees would raise \$90,900.

General Public

This proposal will have no noticeable impact on the general public. The permit fees are so small relative to the overall cost of gasoline dispensing operations that resale price will not be affected.

Small Business

Some of the sites affected by the Stage I permit fees and the tanker permit fees may qualify as small businesses. The permit fee for these businesses will be \$25 (tanker permit) or \$50

(Stage I). Many of these Stage I sites will have a net reduction in permit fees due to the repeal of the oxygenated fuel permit fee.

Large Business

Many of the Stage II and gasoline tanker companies are large businesses. The permit fees for these companies will be \$25 (tanker permit) or \$150 (Stage I plus Stage II). Because of the proposed repeal of the oxygenated fuel permit fee, the net effect on Stage II sites will be an increased permit fee of \$50.

Local Governments

Local governments will be affected only if they own: gasoline storage tanks in Salem of a size over 550 gallons, gasoline tanks over 1000 gallons at sites in parts of Jackson County or facilities which dispense more than 120,000 gallons of gasoline per year in Multnomah, Clackamas or Washington counties. In these cases, the local governments would be required to obtain an annual permit and be subject to inspections of the gasoline dispensing sites. These sites do not currently pay an oxygenated fuel permit fee so repeal of the oxygenated fuel permit fee will not affect local governments.

State Agencies

- DEQ

There is currently one Full Time Equivalent for this work in the Northwest Region. This proposal would not add or reduce permanent staff levels, it provides for some temporary positions as needed and ongoing budget to support the one permanent position. This proposal would fund temporary positions in the Western Region.

- Revenues-would be approximately \$90,900 per year
- Expenses-would be approximately \$93,000 per year

- Other Agencies-There should be no effect on other State agencies.

Assumptions

There are currently 708 Stage I sites.

There are currently 305 Stage II sites.

There are 1000 gasoline tankers which will require permits.

There are 544 retail oxy-fuel facilities.

There are 21 gasoline terminals.

There are 48 gasoline distributors.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Gasoline vapor recovery permits and fees and oxygenated fuel fees.

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

These rules will establish permit fees and require permits for gasoline dispensing sites subject to Stage I and Stage II vapor recovery requirements. Additionally, the rules would require that gasoline tankers which currently must be certified annually, submit a permit fee along with the certification test results. The oxygenated fuel permit fee currently imposed on gasoline retailers would be repealed. Oxygenated fuel permit fees currently imposed on terminals and distributors would be reduced.

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

Yes ___ No X

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

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

Yes ___ No ___ (if no, explain):

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ

authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

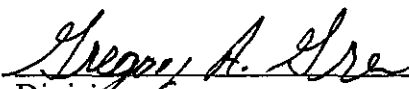
- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

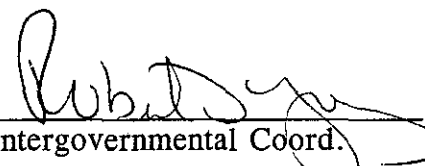
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

These rules require that certain gasoline dispensing facilities submit fees and keep a permit on hand. These rules do not change which facilities are subject to vapor recovery regulations or what those vapor recovery regulations are. Affected gasoline tankers must already obtain a certificate of compliance from the Department, this rule adds a permit fee to that requirement but changes neither the need for certification nor the number of tankers affected. Repeal of the oxygenated fuel permit fee currently imposed on gasoline retailers simply abolishes a permit fee but does not alter the oxygenated fuel requirements substantively.

Stage I and Stage II permits apply to systems such as tanks, dispensers and associated plumbing which is used to capture and recycle volatile emissions from gasoline. As such there is no impact on land use.

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


Division


Intergovernmental Coord.

8/11/94
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.

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

These rule changes do not in any way alter the gasoline vapor recovery or oxygenated fuel programs currently required by the Department, except to alter the need for permits and permit fees. Any federal requirements associated with these programs are unaffected by these rules.

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

Not applicable

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?*

Not applicable

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?*

No

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

Not applicable

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

Not applicable

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

The only requirements associated with these rule changes are for permits and permit fees. Permit fees will very nearly equal program expenditures, so those programs which require more attention will be paying higher fees.

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

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?*

Not applicable

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

Yes

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

The requirement of permits and permit fees for gasoline vapor recovery will result in a more effective program of preventing hydrocarbon emissions from gasoline filling operations.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 26, 1994

To: Environmental Quality Commission
From: Kevin ^{Reim} Downing, Presiding Officer
Subject: Hearings Report for Rulemaking Proposal - Gasoline vapor recovery permits and fees and oxygenated fuel fees

These rules are proposed to require Stage I and Stage II vapor recovery permits and gasoline tanker certification permits. This proposal also repeals the existing oxygenated fuel permit fee on gasoline retailers. The public comment period for these proposed rules was from August 19 to September 23, 1994. One hearing was held to accept testimony.

The hearing was held on September 23rd at 9:30 AM in Room 3A of the Department of Environmental Quality, 811 SW 6th Avenue in Portland. Four people attended the hearing, one submitted oral and written comments.

Written comments were also received from two individuals during the public comment period. Oral and written comments are summarized below.

Summary of Testimony

Michael Sims, Oregon Gasoline Dealers Association, PO Box 7065, Eugene OR 97401

Commentor opposes requirement for Stage I and Stage II vapor recovery permits for retail gasoline dealers because, although the increase in fees may seem small, it is part of an ever increasing burden of fees and requirements imposed on small business persons and gasoline dealers. Fuel costs to the dealer may also increase as a result of the pass-through of the tanker fee. The competitiveness of the gasoline marketing industry means that dealers are very sensitive to any increases in costs.

Increased inspections as a result of verifying compliance with these permit requirements will also mean an additional time burden for the dealer who must attend to and respond to the visits. Dealers are already required to be inspected for the accuracy of dispenser meters by Department of Agriculture rules. Commentor recommends that Stage I/II inspections be performed by these inspectors or by fuel quality inspectors if that program receives Legislative approval.

Commentor is glad to see that oxygenated fuel permit fees are being repealed.

Memo To: Environmental Quality Commission
September 26, 1994
Page 2

Andy Andersen, Oregon Flying Farmers, 803 Cessna St., Independence OR 97351

Commentor requests that the exemption for permits and inspections of fuel tanks be maintained at 1100 gallons capacity and that aviation tanks also be added to the residential and farm use exemption.

Without this exemption persons who live in airparks or otherwise store their aircraft near or attached to their homes may find the additional cost of inspection and permit fees will make the maintenance of home refueling facilities for aircraft more burdensome and inconvenient. Like farm use, the total effect of gasoline use by pilots should have a minimal impact on air quality.

Steve Carson, BearCat, 3301 Broadmore St., Klamath Falls OR 97603

Commentor objects to proposed new fees on haulers and dispensers of gasoline. The current process used to test cargo tanks is very adequate. Additional changes are only designed to justify jobs and funding.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for a
New Rule on Gasoline Vapor Recovery Permits and Fees and Oxygenated Fuel Fees

INDEX OF WRITTEN TESTIMONY

No.	Page	Date Received	Document Description
1.	1	9-23-94	Letter dated September 23, 1994 from Mike Sims, Oregon Gasoline Dealers Association, PO Box 7065 Eugene, Oregon, 97401 objecting to the permit and fee requirements associated with Stage I and II vapor recovery for gasoline dealers.
2.	2	9-19-94	Letter dated September 7, 1994 from Andy Anderson, for the Oregon Flying Farmers, asking for an exemption for those involved in agricultural and residential aviation.
3.	3	9-16-94	Letter dated September 13, 1994 from Steve Carson of BearCat objecting to the permit fee of \$25 to be placed on gasoline tanker units by this proposal.

Department of Environmental Quality

Rulemaking Proposal for a new rule on Gasoline Vapor Recovery Permits and Fees and
Oxygenated Fuel Fees

Department Evaluation and Response to Public Comments

One person offered oral testimony at the public hearing. Two persons provided written comments.

Steve Carson

Mr. Carson objects to the fee of \$25 which these rules establish for the administration of the permit program associated with gasoline transport units. Until now, the administrative expenses associated with this program have been paid for out of the General Fund. In California, the state charges \$65 for administrative expenses and Southwest Washington Air Pollution Control Authority charges \$50 for the same service. The proposed fee of \$25 to cover administrative expenses related to the gasoline tanker program is reasonable. In addition to the permit processing, the fee will also make possible site visits by inspectors to those companies offering leak detection services.

Andy Anderson-Oregon Flying Farmers

Mr Anderson incorrectly believes that the proposed rules change the regulations which determine which facilities must install and maintain Stage I vapor recovery. These proposed rules do not change the minimum tank size or throughput requirements for determining which facilities must install stage I vapor recovery. Mr. Anderson may be confusing underground storage tank regulations with the vapor recovery requirements. Currently, if an underground storage tank in the Salem Area Transportation Study is under 550 gallons and used for agricultural purposes , it is exempt from Stage I requirements. In the Medford-Ashland Air Quality Maintenance Area, tanks under 1000 gallons are exempt from Stage I. In Multnomah, Clackamas and Washington Counties, facilities with throughput less than 120,000 gallons per year are exempt from Stage I requirements.

The proposed rules do not change any of the Stage I vapor recovery regulations, except to require fees and permits. Mr. Anderson asks the Department to consider exempting underground storage tanks used for aviation. That suggestion is beyond the scope of this proposal.

Mike Sims-Oregon Gasoline Dealers Association

OGDA objects to new permits and fees as being too burdensome to the gasoline dealer. Investigations at Stage I and Stage II facilities done to date indicate that a large portion

of them exhibit operator or maintenance failures which reduce the effectiveness of vapor recovery at these sites. In order to ensure that projected vapor recovery reductions are obtained, it is necessary to have a compliance program involving education, inspection and enforcement. California and Washington both have inspection programs for their Stage I and Stage II vapor recovery facilities. The money generated from the permit fees is needed to implement a compliance program since EPA money which has been used to date is due to run out in June 1995. The total of oxygenated fuel and vapor recovery fees collected from gasoline businesses in Oregon will decline by \$44,000 if this proposal is adopted. There should be little or no interruption of the dealers operations during inspection. Preliminary discussions have been held with the Department of Agriculture Weights and Measures division with regard to their assuming Stage I and II inspections, but there a number of issues which must be resolved prior to any agreement. This may take a long time to work out and the compliance program needs to start immediately.

Department of Environmental Quality

Rulemaking Proposal for a new rule on Gasoline Vapor Recovery Permits and Fees and
Oxygenated Fuel Fees

**Detailed Changes to Original Rulemaking Proposal made in Response to
Public Comment**

The Department recommends that no changes be made in the original Rulemaking Proposal.

GASOLINE VAPOR AND OXYFUEL FEES COMMITTEE LIST

Mike Sims
OGDA
Hanneman and Associates
777 13th St SE #120
Salem Or 97301

Rob Forrest
Metrofueling
PO Box 607
Wilsonville OR 97070

Dale Andert
Texaco R and M
1800 SW First Suite 180
Portland OR 97201

Mike Sherlock
OGDA
PO Box 7065
Eugene OR 97401

Gregg Miller
NW Pump and Supply
2045 SE Ankeny
Portland OR 97214

Terry Pyle
Plaid Pantries Inc
10025 SW Allen Blvd
Beaverton OR 97005

John Burns
WSPA
3650 US Bancorp Tower
111 SW 5th Ave
Portland Or 97204-3699

Bill Tuninga
PETRO
9140 SW Wilsonville Rd
Wilsonville OR 97070

Brian Boe
OPMA
PO Box 157
Portland OR 97207

John Phimister
Western Stations
PO Box 5969
Portland OR 97228-5969

Tom Gallagher
Arco
960 Liberty St SE #200
Salem OR 97302-4154

This Advisory committee was convened to guide the Department in identifying the best way to design the ongoing compliance program and to recommend a permit fee structure. The committee met on June 6, 1994 and on July 19, 1994. Members of the committee represented all affected aspects of the gasoline marketing community. The committee was presented with two alternative proposals. One would have allowed a privatized program of inspections for the Stage I and II programs. The tanker program already utilizes a privatized approach.

The second alternative proposal was to have the Department train and hire state employees to do the inspections. The committee met twice and endorsed this proposal at their second meeting.

Several committee members asked the Department to continue to explore ways to work together with the Department of Agriculture and reduce the number of site visits by these two agencies. The Department of Agriculture conducts periodic weights and measures inspections of some of the facilities which have Stage I and II vapor recovery.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Gasoline Vapor Recovery Permits and Fees and Oxygenated Fuel Fees

Rule Implementation Plan

Summary of the Proposed Rule

These rule changes will require that gasoline dispensing facilities which are subject to Stage I and/or Stage II vapor recovery regulations obtain a yearly permit and pay a permit fee for that permit. Gasoline tankers currently subject to leak detection certification requirements will be required to submit a permit fee along with the leak detection test results to receive an annual permit. Oxygenated fuel permit fees on certain gasoline retailers would be eliminated. Oxygenated fuel permit fees on terminals and distributors would be reduced.

Proposed Effective Date of the Rule

November 1, 1994

Proposal for Notification of Affected Persons

Gasoline tanker owners and owners of affected gasoline dispensing facilities and gasoline distributors and terminals will be notified about these rule changes immediately after the commission adopts the rules.

Proposed Implementing Actions

Tanker owners will be billed \$25 for each tanker unit permit issued after October 31, 1994. Tanker owners will renew their permits at any time during the year that their previous annual permit becomes out of date.

Owners of gasoline facilities, terminals and distributors affected by this proposed rule will receive the new permit forms beginning in June of 1995. These permits will be valid for one year beginning July 1.

Proposed Training/Assistance Actions

This rule requires that permits and fees be altered for vapor recovery and oxygenated fuel. Currently, permits are required for oxygenated fuel and tankers. This proposal alters the amount which must be submitted with permit applications, but the system for billing and receiving these permits and fees will remain unchanged. No training required.

Those facilities affected by the Stage I and Stage II permits and fees will be required to submit permit applications and fees for the first time. These facilities have no new regulatory burdens placed on them by this rule, but will be inspected to ensure compliance. DEQ inspectors will be trained by the Fuels Specialist and in addition, the Department is in the process of scheduling a several day long training program provided by the California Air Resources Board to be held in Portland. This training should give the inspectors and program management an excellent on the inspection procedure.

Gasoline facility management will also have the opportunity to attend one of a number of training sessions provided by the Department with funds made available from the ISTEA funds. The purpose of these trainings will be to provide the facility personnel with a good understanding of the kinds of problems inspectors are likely to encounter at the site.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item F
October 21, 1994 Meeting

Title:

**Proposed Amendments to Water Pollution Control
Revolving Fund (SRF) Program Rules**

Summary:

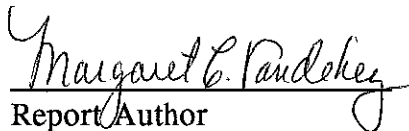
The State Revolving Fund (SRF) provides low cost loans to communities for the planning, design and construction of water pollution control facilities, and for estuary management plans. Division 54 of the Oregon Administrative Rules provides guidance for program operation, loan eligibility and project selection.

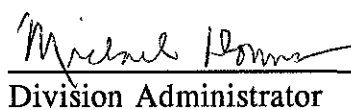
The proposed rule amendments address three problems: 1) the demand for SRF loans exceeds existing funds by five to one; 2) complaints that the way projects are scored for prioritization is inequitable; 3) complaints that the rules are fragmented and difficult to read.

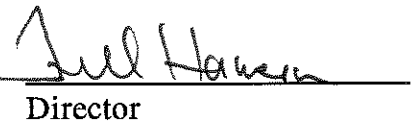
An Advisory Committee assisted in developing the rule revisions, which include: 1) amending the manner in which projects are selected and reformatting the selection criteria into a table that is easier to read and understand; 2) incorporating legislation passed in 1993 to allow the sale of bonds to leverage the Fund; 3) establishing some caps to ensure more broad coverage by the Fund; 4) modifications to interest rate calculations; 5) housekeeping changes for clarity.

Department Recommendation:

Adopt rules as proposed in Attachment A.


Report Author


Division Administrator


Director


September 28, 1994

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

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 4, 1994

To: Environmental Quality Commission
From: Fred Hansen, Director 
Subject: Agenda Item F, EQC Meeting October 21, 1994

Proposed Amendments to Water Pollution Control Revolving Fund Program Rules

Background

The State Revolving Fund (SRF) loan program was created by Congress through the Clean Water Act of 1987 which transferred the direct financing of municipal sewage treatment projects from the EPA to each state. Congress authorized \$18 billion for this program to be granted over a six year period. Each year, five out of every six dollars in the SRF are provided through U.S. EPA grants, and the sixth is state match. Money in this perpetual fund is lent at below market interest rates to communities who make principal and interest (re)payments back into the fund, availing the money to be relent.

The State of Oregon's SRF is now capitalized with six federal grants and the corresponding state match in the amount of \$122 million. Division 54 of Chapter 340 of Oregon Administrative Rules defines Oregon's SRF program, how it operates, what projects are eligible, how projects are selected and what the terms and conditions of the loans can be.

The SRF is the major tool through which communities receive help to make wastewater treatment investments more affordable. It continues to be water quality driven and all projects identified to receive financial assistance address high priority water quality problems. This proposal amends the rule to ensure that the SRF continues to be an effective, efficient and equitable tool for protecting the quality of Oregon's waters.

Authorities

The SRF was created by Congress through the Clean Water Act of 1987 (Public Law 100-4). States were designated as the entity to receive EPA grants with which to create a permanent source of financing for water pollution control projects. Federal authorities are as follows:

- Title VI of the Clean Water Act - State Water Pollution Control Revolving Funds
- EPA's Initial Guidance for State Revolving Funds
- Title VI - Questions and Answers
- 40 CFR Part 35 -State Revolving Fund Program Implementation Regulations - Subpart K--State Water Pollution Control Revolving Funds.

Oregon Revised Statutes (ORS) 468.427 establishes the Water Pollution Control Revolving Fund (State Revolving Fund) and ORS 468.440 authorizes the Commission to adopt rules implementing the program to make loans from the State Revolving Fund to public agencies.

ORS 468.020 authorizes the Environmental Quality Commission (EQC) of the Oregon Department of Environmental Quality (DEQ) to adopt rules and standards as considered necessary to perform its statutory functions.

ORS Chapter 468.433 establishes the Department of Environmental Quality as the administrator of the State Revolving Fund Loan Program.

The 1993 legislative session passed HB 2070 into law enabling DEQ to sell and repay bonds from the fund in order to leverage the SRF.

Issue this Proposed Rulemaking Action is Intended to Address

The proposed amendments to the rules address three problems. First, the demand for SRF loans exceeds existing funds by five to one. According to a 1992 study by EPA, Oregon's current municipal sewer needs total \$1.4 billion. Second, each year the Department receives complaints that the way projects are scored for prioritization is inequitable. Third, there have been complaints from program staff, loan applicants and borrowers that the rules are fragmented and difficult to read. This proposal also includes rules about leveraging the State Revolving Fund.

Rulemaking Development Process

DEQ Reviews

The proposed SRF rules were developed through three written internal reviews which included various water quality perspectives within DEQ. These reviews resulted in a considerable number of editorial and organizational amendments and met the following biennial Periodic Review Requirements:

- Continued need for the rule.
- Complexity of the rule.
- Extent to which the rule duplicates, overlaps or conflicts with other state rules, federal regulations, and local government regulations.
- Degree to which technology, economic conditions, and other factors have changed in the subject area affected by the rule.
- Potential for the rule to enhance job-producing enterprises.
- Legal basis for the rule.

Several topic meetings were held to develop equitable Project Priority List Point Assignments. Amendments to the priority points include perspectives from financial staff, regional staff, surface and ground water staff.

Staff comments and discussion bullets were included in the Advisory Committee manual to help the committee understand the issues and the rationale behind staff's proposed amendments.

Advisory Committee

A diverse Advisory Committee was selected from around the state. It was chaired by Roger Jordan, City Manager of Dallas and Chairman of the Water/Wastewater Committee of the League of Oregon Cities. The thirteen members represented large and small communities; special districts and tribal governments; ground and surface water perspectives; point and nonpoint source perspectives; and special need areas (e.g. shell fish producing estuaries, wild and scenic rivers, water quality limited streams, Outstanding Resource Waters, and communities participating in the Department's Environmental Partners for Oregon Communities initiative.)

Memo To: Environmental Quality Commission
October 4, 1994
Page 4

Advisory Committee meetings were held between July 20 and August 16, 1994. All committee rule recommendations were incorporated into the proposed rule. The SRF Advisory Committee strongly recommends a statutory amendment to include federally recognized Indian tribes as eligible borrowers. During a committee meeting, EPA informed the State that a recent Office of General Counsel opinion concludes that Indian tribes must be eligible to borrow from the State Revolving Fund. Representatives of the Department of Justice are of the opinion that the current definition does not include Indian tribes. The easiest way to make this change would be to make a statutory change to the definition of "public agency" for SRF program use only. (See Attachment E for citations.)

See Attachment F for a list of Advisory Committee members and the Advisory Committee Main Point Summary reports.

Public Hearing

Hearing Authorization: On July 14, 1994, the Director authorized the Wastewater Finance section of the Water Quality Division to proceed to a rulemaking hearing on proposed amendments to the Water Pollution Control Revolving Fund Program, commonly called the State Revolving Fund (SRF).

Notice: Consistent with the authorization, hearing notice was published in the Secretary of State's Bulletin on August 1, 1994. On August 3, 1994, the Department mailed the Hearing Notice and informational documents to persons or groups who are known to be interested or who may be potentially affected by amendments to the SRF Loan Program. The notice did not include the proposed rule but made it available upon request. There were seven requests for copies of the proposed rules.

Public Hearing: A Public Hearing was held on September 7, 1994, at 1:00 pm in room 3A of DEQ headquarters with Martin Loring serving as Presiding Officer. The Presiding Officer's Report (Attachment C) states that no one attended the Public Hearing and no testimony was presented in any form.

Written Comments: Written comments were received through September 13, 1994. No written comments were received.

Proposal Summary

Leveraging: This proposed rule would incorporate legislation passed during the 1993 session which amended ORS 468.423 to 468.440. It enables the Department to increase the volume of low cost loans that can be made by selling bonds to leverage the fund. Leveraging language is found in OARs 340-54-020 (4) and (5); and 340-54-065 (12). (See Attachment A - pages 11 and 47, respectively.)

Details about how leveraging works will be developed in consultation with financial advisors and bond counsel for inclusion in the procedures manual. The manual will be reviewed by a document review committee. A recommendation whether or not to leverage each year will be presented to the steering committee and will be based on the demand for SRF loans to address high priority water quality problems, market conditions, and current staff workload.

Project Selection: This proposal would also amend the manner in which projects (Project Priority List Point Assignments) are selected to be allocated SRF moneys. The proposal in OAR 340-54-025 (3) (Attachment A - pages 14 through 18) reformats the rule into a table for clarity. It reassigns project points that address Receiving Waterbody Sensitivity, Enforcement Activities and Water Quality Violations. This proposal places a maximum of 10 points for the Population category and adds an Affordability category to address community economics and project affordability. Ground water and surface water projects are more evenly ranked in this proposal than in the existing rule. However, comparable ground water situations are still ranked slightly higher in recognition that ground water contamination is more difficult to identify and to remedy. There are a maximum of 100 points possible under the proposed rule.

Reserves and Caps: The Small Community and the Facility Planning Reserves (Attachment A - page 20) would have a cap until all eligible projects for the reserve have been allocated available funds. The Small Community Reserve's cap is the "greater of \$750,000 or 25%" of the reserve and the Facilities Planning Reserve cap is \$400,000. Among all SRF projects, no project may receive more than the greater of \$2.5 million or 15% of the SRF until each eligible project has received an allocation (Attachment A - page 19.)

Interest Rates: OAR 340-54-065 (5) (Attachment A - pages 45 through 46) proposes the use of a Base Rate, still using the Bond Buyer's Index, to calculate interest rates. Facility planning and discretionary loans would be made at an interest rate equal to one half of the Base Rate. All other direct loans would be made at a fixed interest rate equal to the greater of two thirds of the Base Rate or the Base Rate minus 200 basis points. Interest rates on leveraged loans (Attachment A - page 47) are established under 340-54-065 (12)(b)(B) at no more than the greater of two thirds of the bond interest rate, or the bond interest rate minus 200 basis points.

Editorial Changes: Division 54 was edited and reorganized to create a more logical order, create parallel structures, remove redundancies, correct grammatical errors, correct inconsistencies, and conform to the AG's Guidance on Rulemaking. Detail more appropriate for a guidance document would be moved to the proposed SRF Procedures Manual.

Relationship to Federal and Adjacent State Rules

The Department is not aware of any conflicting requirements being imposed by the federal government or other states. Through the Clean Water Act of 1987, each state was authorized to develop an SRF loan program to meet their state's needs within the federal requirements. Therefore, program comparisons to contiguous states is not applicable to the State Revolving Fund.

SRF loans must adhere to sixteen Title II requirements as required by section 602 (b)(6) of the Act until the total of loans in compliance equals the sum of all federal capitalization grants received. It states in part:

Treatment works eligible under section 603(c)(1) of this Act which will be constructed in whole or in part before fiscal year 1995 with funds made available by capitalization grants under this title and section 205(m) of this Act will meet the requirements of...

It is proposed that procedures to follow these requirements be removed from rule and placed in the SRF Procedures Manual to simplify the transition when the requirements have been met.

Reference Documents

All documents supporting the rule development process or the proposal are available upon request. These include internal review documents and comments, the Advisory Committee manual, and analytical spreadsheets.

Implementation Summary

The majority of implementation activities will be within the Wastewater Finance section of the Water Quality Division. The section will staff committee work regarding leveraging and document development (Attachment A - pages 47 and 50, respectively). Loan portfolio management and bond issue management activities will increase and those activities will require additional skills that will be learned through bond counsel and fund managers. This will be an evolutionary process as leveraging is implemented. (See Attachment D - Rule Implementation.)

In addition to regional staff's ongoing involvement in and concurrent with this rulemaking process, reference documents have been prepared to inform regional SRF staff of rule amendments. The impact in terms of how the regions perform SRF work is negligible. Training will be achieved through electronic mail, during project meetings and through the document review process. However, leveraging will increase workload by increasing the number of loans made. Staffing considerations will be a factor in each year's decision whether or not to leverage.

The regulated community will experience minimal implementation activity.

Recommendation for Commission Action

Staff and the SRF Advisory Committee recommend that the Commission adopt the rule amendments regarding the State Revolving Fund as presented in Attachment A of the Department Staff Report.

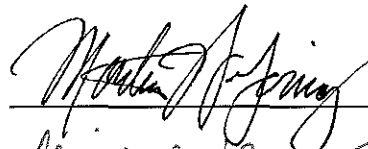
The committee and staff also request that the Commission decide as a matter of policy that the statutory definition of "public agency" be expanded to include Indian tribes for the purposes of the SRF program only, as presented in Attachment E.

Attachments

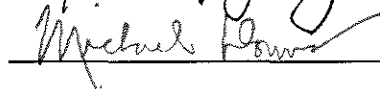
- A Proposed Rule Amendments
- B Process Documentation
 - Chance to Comment*
 - Notice of Proposed Rulemaking Hearing*
 - Rulemaking Statement*
 - Fiscal and Economic Impact Statement*
 - Land Use Evaluation Statement*
 - Stringency*
- C Presiding Officer's Report
- D Rule Implementation Plan
- E SRF Eligibility - Public Agency
- F Advisory Committee Members and Reports

Approved:

Section:



Division:



Report Prepared By: Margaret C Vandehey

Phone: (503) 229-6878

Date Prepared: September 19, 1994

Margaret C. Vandehey:crw
MW\WC12\WC12986.5
9/19/94

**ATTACHMENT A
Proposed Rule Amendments**

STATE REVOLVING FUND PROGRAM

OAR 340-54-005	Purpose
OAR 340-54-010	Definitions
OAR 340-54-015	Project Eligibility
OAR 340-54-020	Uses of the Fund
OAR 340-54-025	<u>Preliminary Application Process;</u> {SRF } Project Priority List, { and } Intended Use Plan
OAR 340-54-035	Final Application Process [for SRF Financing for Facility Planning for Water Pollution Control Facilities, Nonpoint Source Control Projects, Estuary Management Projects and Storm Water Control Projects
OAR 340-54-040	Final Application Process for SRF Financing for Design or Construction of Water Pollution Control Facilities
OAR 340-54-050	Environmental Review]
OAR 340-54-055	Loan Approval and Review Criteria
OAR 340-54-060	Loan Agreement and Conditions
OAR 340-54-065	Loan Terms and Interest Rates
{OAR 340-54-070	Special Reserves
OAR 340-54-075	Loan Limitations]
<u>OAR 340-54-080</u>	<u>SRF Procedures Manual</u>

PURPOSE

340-54-005

These rules are intended to implement ~~{OR 468.423 - 468.440}~~ under which financial assistance is made available to ~~{and utilized by}~~ Oregon ~~{municipalities}~~ **public agencies** to plan, design and construct water pollution control facilities through the Water Pollution Control Revolving Fund, also known as the State Revolving Fund (SRF)

||| The following text was moved from 340-54-065.

These rules are established in order to provide loans to projects which enhance or protect water quality; to provide loans to public agencies capable of repaying the loan; to establish an interest rate below market rate so that the loans will be affordable; to provide loans to all sizes of communities which need to finance projects; and to provide loans for the types of projects described in these rules which address water pollution control problems.

DEFINITIONS

340-54-010

As used in this Division unless otherwise required by context:

(1) "Allocation Cycle" means the funding cycle as determined by the Department.

||| *All references to fiscal cycles were removed. Allows the Department to move to a year-round, quarterly or semi-annual cycle. All other funding agencies have a year-round cycle.*

~~{1}~~(2) "Alternative ~~{treatment}~~Technology" means any proven wastewater collection, treatment, or disposal process or technique which provides for the reclaiming and reuse of water, productive recycling of wastewater constituents, other elimination of the discharge of pollutants, reduction of capital costs or the recovery of energy.

(3) "Applicant" means an eligible State Revolving Fund (SRF) applicant.

~~{2}~~(4) "Available SRF" means the State Revolving Fund (SRF) minus ~~{monies}~~ moneys for SRF administration and prior obligations.

(5) "Borrower" means an eligible SRF loan recipient.

~~[(3)] "Categorical Exclusion" means an exemption from environmental review requirements for a category of actions which do not individually, cumulatively over time, or in conjunction with other actions, have a significant effect on the quality of the environment. Environmental impact statements, environmental assessments and environmental information documents are not required for categorical exclusions.]~~

||| The above text was removed -- the section that contained CEs was placed in the procedures manual.

- ~~[(4)](6)~~ "Change Order" means a written order and supporting information from the ~~[borrower]~~ **Borrower** to the contractor authorizing an addition, deletion~~[-]~~ or revision in the work within the scope of the contract documents, including any required adjustment in contract price or time.
- ~~[(5)](7)~~ "Clean Water Act" means~~[- Title VI of]~~ the **federal** Clean Water Act as amended by the Water Quality Act of 1987, Public Law 100-4 and any subsequent amendments. **Also referred to as "the Act".**
- ~~[(6)](8)~~ "Collector Sewer" means that portion of the public sewerage system which is ~~[primarily]~~ installed **primarily** to receive wastewater directly from individual residences and other individual public or private structures.
- ~~[(7)](9)~~ "Combined Sewer" means a sewer that is designed as both a sanitary and a storm water sewer.
- ~~[(8)](10)~~ "Construction" means the erection, installation, expansion or improvement of a water pollution control facility.
- ~~[(9)](11)~~ "Default" means nonpayment **by the Borrower of the principal or interest amount of an SRF loan on the payment's due date**~~[- of SRF repayment by a Borrower when due]~~, failure to comply with SRF loan covenants, a formal bankruptcy filing~~[-]~~ or other written admission of inability to pay SRF obligations.
- ~~[(10)](12)~~ "Department" means the Oregon Department of Environmental Quality.
- ~~[(11)](13)~~ "Director" means the Director of the Oregon Department of Environmental Quality.
- ~~[(12)](14)~~ "Documented Health Hazard" means areawide failure of on-site sewage disposal systems or other sewage disposal practices resulting in discharge of inadequately treated wastes to the environment **as** demonstrated by sanitary surveys or other data collection methods and confirmed by the ~~[Department and]~~ **Oregon** Health Division as posing a risk to public health~~[- This includes a mandatory health hazard annexation required]~~ pursuant to ORS 222.850 to 222.915 or ORS 431.705 to 431.760.

||| 222.850-915 = Health Hazard Abatement/431.705-760 =
Health Hazard Annexation or District Formation

- ~~[(13)](15)~~ "Documented Water Quality Problem" means water pollution resulting in violations of water quality statutes, rules or permit conditions demonstrated

by data and confirmed by the Department as causing a water quality problem.

~~{(14) "Environmental Assessment" means an evaluation prepared by the applicant to determine whether a proposed project may have a significant impact on the environment and, therefore, require the preparation of an environmental impact statement (EIS) or a Finding of No Significant Impact (FNSI). The assessment shall include a brief discussion of the need for a project, the alternatives, the environmental impacts of the proposed action and alternatives and a listing of persons or agencies consulted.}~~

~~{(15) "Environmental Impact Statement (EIS)" means a report required by the Department analyzing the impacts of the proposed project and discussing project alternatives. An EIS is prepared when the environmental assessment indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project.}~~

Two definitions above were removed -- section was placed in procedures document.

(16) "EPA" means the U.S. Environmental Protection Agency.

(17) "Estuary Management" means the development and implementation of a plan for the conservation and management of an estuary of national significance as described in §320 of the Clean Water Act.

§320 = National Estuary Act

(18) "Excessive Infiltration/Inflow" means the quantities of infiltration/inflow which can be ~~economically~~ cost-effectively eliminated from a sewer system as determined in a cost effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow ~~from sanitary sewers~~.

(19) "Facility Plan" means a systematic evaluation of environmental factors ~~and~~, engineering alternatives and financial considerations affecting a proposed project area. ~~{considering demographic, topographic, hydrologic, and institutional characteristics of a proposed project area} that demonstrates that the selected alternative is cost effective and environmentally acceptable.~~

(20) "Federal Capitalization Grant" means federal dollars allocated to the State of Oregon for a federal fiscal year from funds appropriated by U.S. Congress for the State Revolving Fund under Title VI of the Clean Water Act. ~~{This does not include state matching monies.}~~

(21) "~~Groundwater~~ Ground Water Management Area" means an area in which contaminants in the ground water have exceeded the levels established under ORS ~~[468.694,]~~ 468B.165 and the affected area is subject to a declaration under ORS ~~[468.698]~~ 468B.180.

165 = Ground water Contaminants maximum levels; establishing; rules.

180 = Declaration of ground water management area; standards.

~~[(22)]~~ *"Highly Controversial" means public opposition based on a substantial dispute over the environmental impacts of the project. The disputed impacts must bear a close causal relationship to the proposed project.*

~~[(23)]~~(22) "Infiltration" means the intrusion of ground water into a sewer system ~~through defective pipes, pipe joints, connections, or manholes in the sanitary sewer system~~.

~~[(24)]~~(23) "Inflow" means a direct flow of water other than wastewater **and ground water into a sewer system.** ~~that enters a sewer system from sources such as, but not limited to, roof gutters, drains, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, or street wash waters.~~

~~[(25)]~~(24) "Initiation of Operation" means the date on which the facility is ~~substantially~~ **operationally** complete and ready for the purposes for which it was planned, designed, and built.

~~[(26)]~~(25) "Innovative Technology" means developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement **in environmental impacts or economics of construction or operations** over ~~the state of the art in terms of significant reduction in life cycle cost of the project or environmental benefits when compared to an appropriate~~ conventional technology.

~~[(27)]~~(26) "Intended Use Plan (IUP)" means a ~~report~~ **document** which must be submitted annually by the Department to **the** EPA identifying proposed uses of the SRF ~~including, but not limited to a list of public agencies ready to enter into a loan agreement for SRF funding within one year and a schedule of grant payments~~.

~~[(28)]~~(27) "Interceptor Sewer" means a sewer which is primarily intended to receive wastewater from a collector sewer, **and/or** another interceptor sewer, ~~an existing major discharge of raw or inadequately treated wastewater, or a water pollution control facility.~~

~~[(29)]~~ *"Interim Loan" means funds borrowed for the construction/project period or three years, whichever is less. At the discretion of the Department, a longer period loan may be considered an interim loan under extraordinary circumstances.*

~~[(30)]~~ *"Long-term Loan" means any loan not considered an interim loan.*

Two words defined above were only used once within these rules.

~~[(31)]~~(28) "Maintenance" means **regularly scheduled** work performed to ~~make~~ repair[s], ~~make minor~~ replace[ments] **or upgrade equipment in the facility;** or prevent or correct **the** failure or malfunction[ing] of the water

pollution control facility ~~in order to preserve~~ **so that** the functional integrity and efficiency of the facility, equipment and structures **are preserved**.

~~[(32)](29)~~ "Major Sewer Replacement and Rehabilitation" means the repair and/or replacement of interceptor or collector sewers~~, including replacement of limited segments~~.

~~[(33)](30)~~ "Nonpoint Source Control" means **the** implementation of a ~~plan for managing~~ nonpoint source pollution **management program** as described **under section** ~~in §~~319 of the Clean Water Act **as authorized by 40 CFR 35.3115(b)**.

~~[(34)](31)~~ "Operation" means control of ~~the~~ **collection system pumping stations and treatment** unit processes and equipment ~~which make up the treatment system and process~~, including financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

~~[(35)](32)~~ "Operation and Maintenance Manual" means a **procedural and guidance document** ~~guide used by an operator~~ for ~~operation,~~ **operating** and ~~maintenance~~ **maintaining** ~~of the~~ a water pollution control facility.

~~[(36)](33)~~ "Project" means ~~facility planning, design, or construction~~ **the** activities or tasks identified in the **application or the** loan agreement for which the ~~borrower~~ **Borrower** may expend~~,~~ **or** obligate~~,~~ **or** commit funds ~~to address a water pollution problem or a documented health hazard~~.

Broadened to include nonpoint source and estuary management projects.

~~[(37)] "Public Agency" any state agency, incorporated city, county sanitary authority, service district, sanitary sewer service district, metropolitan service district, or other district authorized or required to construct water pollution control facilities.~~

Above definition is in statute. See Attachment E.

~~[(38)](34)~~ "Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary **for the ongoing operation** during the design or useful life, whichever is longer, of the water pollution control facility to maintain the facility for the purpose for which it was designed and constructed.

~~[(39)](35)~~ "Reserve Capacity" means that portion of the water pollution control facility that ~~is designed and~~ **was** incorporated into the **design** ~~constructed facilities~~ to handle future increases in sewage flows and loadings **identified at the time of design as being generated** from ~~existing or~~ future development consistent with local comprehensive land use plans acknowledged by the **Department of Land Conservation and Development** ~~Commission~~.

- [(40)](36) "Sewage Collection System" means **publicly owned** pipelines, ~~or~~ conduits, pumping stations, force mains[,] and any other related structures, devices[,] or ~~applications~~ **equipment** used to convey wastewater to a sewage treatment facility.
- [(41)](37) "Sewage Treatment Facility" means any **publicly owned** device, structure[,] or equipment used to treat, neutralize, stabilize[,] or dispose of wastewater and residuals.
- [(42)](38) "Significant Industrial Dischargers" means water pollution control facility users as defined in ~~the Department's Pretreatment Guidance Handbook~~ **40 CFR 403.3(t)**.

Handbook is not readily available. It defers to 40 CFR 430.3(t).

- [(43)](39) "Small Community" means a public agency with a population of 5,000 or less.
- [(44)](40) "SRF" means **the wastewater** State Revolving Fund and includes funds from ~~state match,~~ federal capitalization grants, **state matching funds**, SRF loan repayments, interest earnings[,] and any additional funds provided by the state[,], **also referred to under** ORS 468.427 ~~uses the phrase~~ **as the** "water pollution control revolving fund". ~~This is the SRF, and the two phrases are synonymous.~~
- [(45)](41) "Surface Water" means streams, lakes, reservoirs, ~~and~~ **estuaries and the topographical features which define their volume.**
- [(46)](42) "Wastewater" means waters ~~carried~~ **carrying** wastes from **individual, public or private structures combined with non-excessive infiltration and inflow.** ~~residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.~~
- (43) "Waters of the State" means the same as Waters of the State as defined OAR 340-41-006.**

340-41-006 (14) "Waters of the State" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those waters that which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

- [(47)](42) "Water Pollution Control Facility" means a sewage disposal, treatment and/or collection system.
- [(48)](43) "Water Pollution Control Revolving Fund" -- See "SRF".
- [(49)](44) "Wellhead Protection Area" means a state-designated surface and subsurface area surrounding a well or well field that supplies a public water system

through which contaminants are likely to pass and eventually reach the well or well field.

- (50) "Value Engineering" means a specialized cost control technique which uses a systematic approach to identify cost savings which may be made without sacrificing the reliability or efficiency of the project.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;

PROJECT ELIGIBILITY
340-54-015

- (1) A public agency may apply for an SRF loan for up to 100% of the cost of the following types of projects and project related costs ~~(including financing costs, construction period interest, and loan reserves)~~:
- (a) Facility plans, including supplements or updates. ~~are limited to one complete facility plan financed by the SRF per project;~~
 - (b) Secondary treatment facilities~~;~~.
 - (c) Advanced waste treatment facilities, if required to comply with Department water quality statutes and rules~~;~~.
 - (d) Reserve capacity for a sewage treatment or disposal facility ~~receiving SRF funding~~ which will serve a population not to exceed a twenty-year population projection, and for a sewage collection system or any portion thereof not to exceed a fifty-year population projection~~;~~.
 - (e) Sludge disposal and management~~;~~.
 - (f) Interceptors, ~~and associated~~ force mains and pumping stations~~;~~.
 - (g) Infiltration and ~~inflow correction~~.
 - (h) Major sewer replacement and rehabilitation, if ~~components are~~ a part of a ~~an~~ Department approved infiltration/inflow correction project~~;~~.
 - (i) Combined sewer overflow correction, if required to protect sensitive estuarine waters or ~~if required~~ to comply with Department water quality statutes, ~~and~~ rules~~;~~ or ~~if required by Department~~ permits, ~~and if~~ provided the project is the cost effective alternative ~~for the next 20 years;~~.
 - (j) Collector sewers, if required to alleviate documented water quality problems or to serve an area with a documented health hazard~~;~~.
 - (k) Storm water control, if project is a cost effective solution for infiltration/inflow correction to sanitary sewer lines~~;~~.
 - (l) Estuary management, if needed to protect sensitive estuarine waters ~~and if~~ provided the project is publicly owned ~~and~~ .
 - (m) Nonpoint source control, if required to comply with Department water quality statutes and rules ~~and if~~ provided the project is publicly owned.
- (2) Limitations on the applications and use of SRF loan proceeds.
- (a)~~(2)~~ Funding for projects ~~listed under section (1) of this rule~~ may be limited by Section 201(g)(1) of the Clean Water Act.
 - (b)~~(3)~~ Loans ~~will~~ shall not be made to cover the ~~non federal~~ matching share of an EPA grant.
 - (c)~~(4)~~ ~~Plans~~ Projects funded in whole or in part from the SRF must be consistent with plans developed under Sections 208, 303(e), 319~~;~~ and 320 of the Clean Water Act.
 - (d)~~(5)~~ Loans shall be available only for projects on a ~~the SRF~~ Project Priority List, described in OAR 340-54-025.

~~[(6) A project may receive SRF allocations from more than one year's funding if the allocation in the first year is less than the total project cost.]~~

~~(e)[(7)]~~ SRF loans will not be available ~~[to refinance]~~ **for refinancing** long-term loans. **However,** SRF loans will ~~[, however,]~~ be available to ~~[communities which have paid project costs with an]~~ **refinance** interim loans or self-generated funds ~~[and want to provide long-term financing of these costs with an SRF loan and comply with]~~ **used to pay Department approved project costs subject to** the following conditions:

~~[(a)](A)~~ Prior to project commencement, the public agency must provide **the DEQ with a written** notice of the ~~[it]~~ intent to **apply for long-term financing through the SRF loan program and to** proceed with ~~[a]~~ **the project** ~~[which is financed with]~~ **using** interim loans or self-generated funds~~].~~ **A completed Preliminary Application is sufficient written notice to meet the first part of this requirement.**

~~[(b)](B)~~ The ~~[public agency]~~ **Applicant** must agree to proceed at its own risk without regard to whether SRF financing will ultimately be available to provide the long-term financing~~].~~ ~~[and].~~

~~[(c)](C)~~ The ~~[public agency]~~ **Applicant** agrees to comply with project review and approval requirements established in OAR Chapter 340, Division 52~~];~~ DEQ permit requirements as established in OAR Chapter 340, Division 45~~];~~ and requirements of Title VI of the Clean Water Act.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;

**USES OF THE FUND
340-54-020**

The SRF may only be used for the following ~~project~~ purposes:

- (1) To make loans, fund reserves for SRF loans, purchase bonds~~;~~ or acquire other debt obligations~~;~~.
- (2) To pay SRF program administration costs ~~that~~ not to exceed an amount equal to the total of 4% of all of the federal capitalization grants or as otherwise allowed by federal law~~;~~.
- (3) To earn interest on fund accounts.
- (4) To establish reserves for bonds issued by the State for use by the fund.
- (5) To pay principal and interest of bond obligations sold to benefit the fund.

||| (4) and (5) are for leveraging.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;

**PRELIMINARY APPLICATION PROCESS; ~~{SRF}~~ PROJECT PRIORITY LIST; ~~{~~
AND} INTENDED USE PLAN
340-54-025**

~~{(1)}~~ ~~General.~~ The Department ~~{will}~~ **shall** develop a ~~{n annual Intended Use Plan which includes SRF}~~ Project Priority List (PPL) **by numerically ranking all eligible preliminary ~~{SRF}~~ applications submitted by ~~{public agencies}~~ eligible applicants. The Project Priority List will be included in the annual publication of the Intended Use Plan (IUP) and only projects on this list shall be eligible for SRF financing.** ~~{Only projects on the SRF Project Priority List will be eligible for SRF financing. This list will be part of the Intended Use Plan which the Department prepares and submits to EPA annually indicating how SRF funds will be spent.}~~ **The Department shall develop the IUP through the following processes:**

~~{(2)}~~ **(1) Preliminary Application** ~~{ SRF Project Priority List Development}~~:

- (a) The Department ~~{will}~~ **shall** notify interested parties of the opportunity to submit a preliminary ~~{SRF}~~ application. Interested parties include but are not limited to **counties, special districts, and all of the Incorporated Cities and Towns listed in the current edition of the Oregon Blue Book.** ~~{public agencies on the SRF mailing list}~~;
- (b) In order for a project to be considered for inclusion on the ~~{SRF}~~ Project Priority List ~~{,}~~:
- (A) The ~~{the}~~ Department must receive a completed preliminary ~~{SRF}~~ application ~~{for a project}~~ which addresses a ~~{documented}~~ water quality problem on or before the deadline ~~{or a documented health hazard}~~.**

||| The problem does NOT have to be "documented" -- may be a "suspected" water quality problem.

(B) The project must ~~{also}~~ be eligible under OAR 340-54-015(1).

(C) The SRF loan amount must be for at least \$20,000.

||| Text moved from 340-54-075 (2).

~~{(2)}~~ ~~{(3)}~~ Draft ~~{SRF Project Priority List and}~~ Intended Use Plan Public Notice and Review:

- (a) The Department ~~{will}~~ **shall** publish a public notice and distribute **excerpts of the draft IUP** ~~{the proposed SRF Project Priority List}~~ to all Applicants. ~~{public agencies that submitted preliminary applications}~~;
- (b) The Department shall make the entire draft Intended Use Plan available to any group or member of the public who requests a copy.**
- ~~{(b)}~~ The Department ~~{will}~~ **shall** allow at least thirty (30) days after issuing ~~{of}~~ the draft ~~{SRF Project Priority List}~~ **IUP** for review and ~~{for}~~ public

comments to be submitted:

- (A) During the comment period, any ~~[public agency]~~ **Applicant** may request the Department to re-evaluate a project's rank on the proposed ~~[SRF]~~ Project Priority List or to make other changes to the Intended Use Plan~~[-]~~.
- (B) The Department shall consider all requests submitted during the comment period before establishing the Final ~~[SRF Project Priority List and]~~ Intended Use Plan~~[-]~~.
- (C) The Department ~~[will]~~ **shall** distribute the Final ~~[SRF Project Priority List]~~ IUP to all ~~[public agencies]~~ **Applicants** with projects on the Final ~~[SRF]~~ Project Priority List.

||| The section that immediately follows was substantially changed and placed in the table format.

- ~~[(4) SRF Project Priority List Ranking Criteria. The numerical ranking of water quality pollution control projects will be based on points assigned from the following three criteria:~~
- ~~(a) Enforcement/Water Quality Violation Points.~~
 - ~~(A) 50 points will be assigned for:~~
 - ~~(i) Environmental Quality Commission orders pertaining to water quality problems;~~
 - ~~(ii) Stipulated consent orders and agreements pertaining to water quality problems;~~
 - ~~(iii) Court orders pertaining to water quality problems;~~
 - ~~(iv) Department orders pertaining to water quality problems;~~
 - ~~(v) EQC rules requiring elimination of an existing water quality problem related to inadequate water pollution control facilities;~~
 - ~~(vi) Documented health hazards with associated documented water quality problems; or~~
 - ~~(vii) Streams or stream segments where the Environmental Quality Commission has established Total Maximum Daily Loads.~~
 - ~~(B) 40 points will be assigned for non-compliance with the Department's statutes, rules or permit requirements resulting from inadequate water pollution control facilities;~~
 - ~~(C) 30 points will be assigned for documented health hazards without documented water quality problems;~~
 - ~~(D) 10 points will be assigned for existing potential, but undocumented, water quality problems noted by the Department.~~
 - ~~(b) Population Points: Points shall be assigned based on the current population the project will serve as follows:~~
~~Points = (Population)^{2 log 10}~~
 - ~~(c) Receiving Waterbody Sensitivity Points:~~
 - ~~(A) Surface Water:~~
 - ~~(i) If a discharge is to surface water, water quality points will be assigned~~

~~based on total water quality points from Oregon's Clean Water Strategy statewide ranking report. CWS points range from 0 to 90;~~

- ~~(ii) If a discharge is to a stream segment not listed in the report, then the points assigned to the next downstream segment will be assigned to that discharge;~~
- ~~(iii) If discharge is to the ocean, ten points will be assigned;~~
- ~~(iv) If discharge is to any other surface waterbody not referenced above ten points will be assigned.~~

~~(B) Groundwater:~~

- ~~(i) 90 points will be assigned to discharges to an EPA designated sole source aquifer;~~
- ~~(ii) 70 points will be assigned to:
 - ~~(I) Discharges to groundwater where the discharge has been documented to have increased the concentration of a contaminant above both the groundwater background level and an adopted state standard for groundwater quality; or~~
 - ~~(II) A wellhead protection area.~~~~
- ~~(iii) 50 points will be assigned to:
 - ~~(I) Discharges to groundwater where the discharge has been demonstrated to have increased the concentration of a contaminant above the groundwater background level but the contamination level is below an adopted state standard for groundwater quality; or~~
 - ~~(II) The groundwater is within a designated groundwater management area; or~~~~
- ~~(iv) 30 points will be assigned to discharges to groundwater where the discharge is suspected of causing a groundwater contamination problem but there is not direct evidence to substantiate the problem;~~
- ~~(v) 10 points will be assigned to suspected discharges to groundwater where a discharge could cause a contamination problem.]~~

~~(3)(4)~~

Project Priority List Ranking: The Project Priority List shall be compiled by ranking water pollution control projects based on the sum of the most significant documented Water Quality Description within each of the four Point Criteria listed in Table 1. In order to earn the points indicated in Criteria #1, Receiving Water Body Sensitivity, or Criteria #2, Enforcement Activities and Water Quality Violations, the project must directly impact the waters identified or the enforcement situation described.

**TABLE 1
PROJECT PRIORITY LIST POINT ASSIGNMENTS**

<u>Point Criteria</u>	<u>Point Assignment</u>	<u>Water Quality Description</u>
<u>1) Receiving Water Body Sensitivity: (One choice only.)</u>	<u>50</u>	<u>Facility discharges to waters of the state where the EOC has established Total Maximum Daily Loads (TMDL) and associated waste load allocations (WLA).</u>
		<u>Facility discharges to an EPA designated sole source aquifer.</u>
	<u>40</u>	<u>Facility discharges to waters of the state that are listed in the current 305(b) Report under the Beneficial Uses column as "not supporting".</u>
		<u>Facility discharges to ground water that has a documented increase in the concentration of a contaminant above the ground water background level and levels in Tables 1 or 2 of OAR Chapter 340, Division 40.</u>
		<u>Facility discharges to ground water located in a designated wellhead protection area.</u>
	<u>30</u>	<u>Facility discharges to waters of the state which are any of the following: (1) designated as a Wild and Scenic River by the federal government; (2) designated as a State Scenic Waterway by ORS 390.826; (3) designated as Outstanding Resource Waters by the EOC; (4) referenced in OAR 340-41-470 with special restrictions; (5) determined to be a sensitive estuarine habitat by the DEQ; (6) listed under Fishes in the latest Endangered and Threatened Wildlife and Plants (50 CFR 17.11 & 17.12) as threatened or endangered in Oregon.</u>
		<u>Facility discharges to ground water that has a documented increase in the concentration of a contaminant above the ground water background level but the contamination level is below the levels in Tables 1 and 2 of OAR Chapter 340, Division 40.</u>
	<u>Facility discharges to ground water located in a designated ground water management area.</u>	
<u>20</u>	<u>Facility discharges to waters of the state that are listed in the current 305(b) Report under the Beneficial Uses column as "partially supporting".</u>	

<u>Point Criteria</u>	<u>Point Assignment</u>	<u>Water Quality Description</u>
		<u>Facility discharges to ground water where the contaminant in the discharge is listed in Tables 1 and 2 of OAR Chapter 340, Division 40 and is known to cause ground water contamination but there is no ground water quality data available to substantiate the problem.</u>
		<u>Facility discharges to ground water that has a documented increase in the concentration of a contaminant above the ground water background level and levels in Table 3 of OAR Chapter 340, Division 40.</u>
		<u>Facility discharges to waters of the state not referenced elsewhere in this criteria.</u>
	<u>10</u>	<u>Facility discharges to the ocean, the Columbia River or the Snake River.</u>
		<u>Facility discharges to ground water that has a documented increase in the concentration of a contaminant above the ground water background level but the contamination level is below the levels in Table 3 of OAR Chapter 340, Division 40.</u>
	<u>2) Enforcement Activities and Water Quality Violations (One choice only)</u>	<u>30</u>
<u>Mutual Agreements and Orders.</u>		
<u>Court Orders.</u>		
<u>Department Orders or permit conditions mandating action.</u>		
<u>EQC rules requiring elimination of a specific water quality problem related to inadequate water pollution control facilities.</u>		
<u>Documented health hazards with associated documented water quality problem.</u>		
<u>20</u>		<u>Noncompliance with the Department's statutes, rules or permit requirements resulting from inadequate water pollution control facilities.</u>
<u>10</u>		<u>Documented health hazards without documented water quality problem.</u>
		<u>An enforcement order of the Oregon Health Division relating to safe drinking water.</u>
		<u>Existing potential water quality problem as noted by the Department but undocumented.</u>

<u>Point Criteria</u>	<u>Point Assignment</u>	<u>Water Quality Description</u>
<u>3) Affordability (10 pts. max.)</u>	<u>7</u>	<u>The cost per household of the wastewater treatment system (including operation, maintenance, and debt service for prior and new wastewater projects) exceeds 1.5% of the median household income of the community.</u>
	<u>10</u>	<u>The cost per household of the wastewater treatment system (including prior capital improvements outstanding and the proposed project) exceeds 1.75% of the median household income of the community.</u>
<u>4) Population (10 pts. max.)</u>	<u>LOG(Current Population)²</u>	<u>Points calculated based upon the population directly affected by the project.</u>

The above proposal went through extensive reviews, both internally and through the Advisory Committee process. These reviews stressed that the SRF program primarily focus on the quality of the receiving water bodies, and offer financial assistance to those communities who have documented violations of water quality standards. All points have been reweighed with a maximum of 100 points available.

Point Criteria 1: The Clean Water Strategy has been eliminated as an indicator of water quality priority and replaced by indicators that clearly list the priority of the water body to the Department, state and federal governments (e.g. TMDL streams, ground water management areas, Wild and Scenic Rivers, etc.) The 305(b) Report and OAR Chapter 340, Division 40 are also used as indicators. Overall, ground water is still ranked slightly higher than comparable surface water situations to recognize the difficulty of cleaning up ground water contamination.

Point Criteria 2: In order to recognize the difficulty communities have when they attempt to respond to multiple mandates, 10 points are available to communities under orders of OHD relating to safe drinking water.

Point Criteria 3: Community and project affordability are considered under the new Affordability category.

Point Criteria 4: An amendment to the Population category places a maximum points at ten rather than the original 13. This was done to keep the overall possible points at 100. Small community needs were carefully considered. The Advisory Committee agreed that projects that impact the greatest number of people should receive more points. This criterion serves to break ties between closely ranked projects.

Exemplary operations and a community's commitment to water quality enhancement were carefully considered to receive points through new criteria. Despite criticism that the SRF rewards non-compliance, the committee recommended that SRF monies should accompany enforcement activities to correct violations. Staff found no published indicators for these criteria and points would need to be assigned subjectively.

The overall point scores are more evenly distributed than with previous scoring systems.

||| *The following section has been incorporated into (3) above and (4) below.*

- ~~{(5) — SRF Point Tabulation Method. Point scores will be accumulated as follows:~~
- ~~(a) — Points will be assigned based on the most significant documented water quality pollution problem within each point category;~~
 - ~~(b) — The score used in ranking a water quality problem will consist of the sum of the points received in each of the point categories.~~
- ~~(6) — Project Priority List Categories:~~
- ~~(a) — The SRF Project Priority List will consist of three parts: the Fundable Category, the Planning Category, and the Supplementary Category. The Fundable Category will include projects which are ready to receive funding and for which there are available SRF funds. The Planning Category includes projects which are ready to receive funding but for which SRF funds are not currently available. The Supplementary Category consists of prior years' fundable category projects for which loan agreements have not been completed;~~
 - ~~(b) — The ordering of projects within the Fundable Category will be established in the following manner:~~
 - ~~(A) — Loan increases: First, loan increases will be awarded to previously funded projects to the extent necessary and permitted by this rule;~~
 - ~~(B) — Small Community Reserve:
 - ~~(i) — Next, small community projects are selected from the SRF Project Priority List in rank order not to exceed 15 percent of the available SRF funds;~~
 - ~~(ii) — Communities receiving small community reserve funding for facility planning will count toward filling both the small community reserve and the facility planning reserve.~~~~
 - ~~(C) — Facility Planning Reserve:
 - ~~(i) — After funds are awarded for loan increases, and after 15 percent of the available SRF funds are awarded to small communities or after all small community loan requests are funded (whichever occurs first) facility planning projects are selected from the SRF Project Priority List in rank order, not to exceed ten percent of the available SRF funds;~~
 - ~~(ii) — Small communities will continue to be eligible for the facility planning~~~~

~~reserve if their project is next in rank order.~~

- ~~(D) General Fund: The remaining projects, including facility planning and small community projects, will be awarded loans in rank order to the extent of available SRF funds.~~
- ~~(c) The ordering of projects within the Planning Category will be established in the following manner:~~
- ~~(A) After all available funds are allocated to projects in the Fundable Category, any remaining projects will be arranged in rank order of priority and comprise the Planning Category of the SRF Project Priority List;~~
- ~~(B) This Planning Category will be maintained until the next year's SRF Project Priority List is prepared. It is the source from which to obtain additional projects for the current year's Fundable Category should projects be removed pursuant to section (7) of this rule.~~
- ~~(d) The ordering of projects within the Supplementary Category will be established in the following manner:~~
- ~~(A) The Supplementary Category consists of projects from the Fundable Category of prior years' SRF Project Priority Lists;~~
- ~~(B) After the first year a project is listed in the Fundable Category, it will be moved to the Supplementary Category until a loan agreement for the project is completed;~~
- ~~(C) Projects in the Supplementary Category will not be ranked with projects in the current year's Fundable and Planning Categories discussed in subsections (6)(b) and (c) of this rule, except to the extent necessary to provide loan increases to projects in the Supplementary Category;~~
- ~~(D) Funding for projects on the Supplementary list is limited to the loan amount allocated on the original Fundable List plus DEQ approved loan increases.}]~~

||| The following was substantially reorganized. It includes OAR 340-54-075 which was repetitive and out of logical sequence.

~~(4) [(6)]~~ **Project Priority List Development:**

- ~~(a) In any allocation cycle, no Borrower on the Project Priority List may be allocated (including both loan increases and new project loans) more than the greater of \$2.5 million or 15% of the total available funds. However, if SRF funds are still available after allocating this limit to each eligible applicant, additional funds may be allocated above this limit.~~

||| Included 340-54-075 (1) - information was duplicated. The committee considered the possibility of underfunding projects, over-taxing staff with too many small loans, and leaving out the mid-sized communities. They voted unanimously to change the maximum from the original 15% to include the greater of the 15% or \$2.5 million.

(b) Allocations shall be made in the following sequence:

- (A) Loan Increases. Increases to previously funded projects shall be allocated available funds, including additional funds for construction if the design of the project was partially or fully financed with SRF funds. At the discretion of DEQ, the increase may take the form of an additional loan at the current interest rate rather than as an increase to the existing loan.**
- (B) Small Community Reserve. Allocations from the Small Community Reserve shall not exceed 15% of the available funds. Design and/or construction projects shall be selected from the Project Priority List in rank order for this reserve.**

||| *Includes OAR 340-54-070 (2) - information was duplicated.*

- (i) Each project allocation from this reserve shall be for not more than the greater of \$750,000 or 25% of the reserve until all small community requests have been allocated funds. If Small Community Reserves remain, these will be allocated to unfunded portions of the small community loan requests.**

||| *Added "the greater of \$750,000" to ensure that a small community project will receive a meaningful allocation in a weak federal grant year.*

- (ii) If preliminary applications from small communities total less than 15% of available funds, the balance of the 15% reserve may be allocated to other Applicants.**

(C) Facility Planning Reserve. Allocations from the Facility Planning Reserve shall not exceed 10% of the available funds. Projects shall be selected from the Project Priority List in rank order for this reserve.

- (i) Each individual allocation from the Facility Planning Reserve shall be for not more than \$400,000 until all requests from this reserve have been allocated funds. If reserve funds still remain, these will be allocated to the unfunded portions of the facility planning loan requests in rank order.**

||| *The Advisory Committee reaffirmed that the Facility Planning Reserve was necessary to get projects "into the pipeline" and that funding a few plans completely was better than funding a few plans partially. Staff and the committee considered "lean" and "fat" federal grant years and agreed that \$400,000 would adequately fund the majority of facility planning projects.*

(ii) If preliminary applications for facility planning total less than 10% of available funds, the balance of the 10% reserve may be allocated to other Applicants.

(D) General Fund. The remaining projects, including facility planning and small community projects not already allocated funds from the reserves or allocated less than the total loan requested, shall be awarded loans in rank order to the extent of available funds.

(c) At the end of the allocation cycle, all projects which have been allocated funds but for which loan agreements have not been completed shall be maintained on the Supplementary sublist.

(d) The Planning sublist shall include projects for which SRF funds are not currently available. The ordering of projects within the Planning sublist shall be in rank order of priority.

~~(5)(7)~~ ~~{SRF}Project Priority List Modification[-].~~

(a) The Department may remove a project from the ~~{SRF}Project Priority List (PPL)~~ if it is determined that the project does not meet eligibility requirements, ~~{if}the Department determines that the project is not ready to proceed according to the schedule in the preliminary application,~~ the final application is not received by the date on which it is due, or ~~{if}the {applicant}Applicant requests removal[-].~~

(b) When the Department plans to ~~remove[s]~~ a project ~~{which is not ready to proceed}from the PPL,~~ it ~~{will}shall~~ give written notice to the Applicant~~[-applicant whose project is proposed for removal]~~ and allow ~~{the applicant}thirty (30) days~~ after the notice for the Applicant to demonstrate to the Department's satisfaction the ability to complete a loan agreement in a reasonable period of time and the ability to proceed with the project on a revised schedule acceptable to the Department. ~~{its readiness and ability to immediately complete a SRF loan agreement or to withdraw the applicant's request to be removed from the Project List.}~~

(c) When a project is removed from the ~~{SRF}Project Priority List,~~ the Department will reallocate the funds set aside for the project in the following priority:

(A) ~~{First, allocate funds to loan amendments for }~~To loan increases to other projects with approved ~~{SRF}loans[-].~~

(B) ~~{Second, allocated }~~To additional funds to projects which have received insufficient allocations ~~{for loans}of loan funds~~ but for which loan agreements have not yet been signed~~[- and].~~

(C) ~~{Third, move }~~To projects from the ~~{SRF Project Priority List }Planning~~ ~~{Category}sublist in rank order~~ ~~{to the Fundable Category sublist to the extent that there are adequate SRF funds available.}~~or to new projects in the following allocation cycle.

(d) The Department may add projects to the ~~{SRF}Project Priority List~~ only if there is an inadequate number of projects~~[- in the Fundable Category and Planning Category]~~ ready to receive funding. To add projects to the ~~{SRF}Project Priority~~

List, the Department ~~will~~ **shall** follow the process outlined in section ~~(2)~~ **(1)** of this rule.

(e) The Department may reallocate funds without regard to Small Community reserves, Facility Planning reserves or the 15% limit on the allocation of loans.

~~(8)~~ **(6)** Short Term, Construction Financing Exception. Notwithstanding other provisions of OAR 340-54-025, short term, construction period financing may be provided to ~~otherwise~~ qualified projects ~~in the Planning Category of the Intended Use Plan~~ if all of the following conditions can be met:

- (a) Liquidity of the Fund is sufficient to provide the financing without adversely affecting the amount and timing of **disbursements** ~~financing~~ needed by **funded** projects ~~in the Fundable Category of the Intended Use Plan; and~~
- (b) The ~~borrower~~ **Borrower** has a legally enforceable obligation for long term ~~take out~~ financing of the project satisfactory to the Department.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;

~~[FINAL APPLICATION PROCESS FOR SRF FINANCING FOR FACILITY PLANNING FOR WATER POLLUTION CONTROL FACILITIES, NONPOINT SOURCE CONTROL PROJECTS, ESTUARY MANAGEMENT PROJECTS AND STORM WATER CONTROL PROJECTS~~

~~340-54-035~~

~~Applicants for SRF loans for nonpoint source control projects, estuary management projects, storm water control projects, and facility planning for water pollution control facilities must submit:~~

- ~~(1) A final application on forms provided by the Department.~~
- ~~(2) Evidence that the public agency has authorized development of nonpoint source control project, estuary management project, storm water control projects or water pollution control facility plan.~~
- ~~(3) A demonstration that applicant complies with the requirements of OAR 340-54-055(2) and 340-54-065(1).~~
- ~~(4) Any other information requested by the Department.~~

Stat. Auth.: ORS Ch. 468.423 – 468.440

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 1-1993, f. & cert. ef. 1-22-93

~~[FINAL APPLICATION PROCESS FOR SRF FINANCING FOR DESIGN OR CONSTRUCTION OF WATER POLLUTION CONTROL FACILITIES~~

~~340-54-040~~

~~Applicants for SRF loans for design or construction of water pollution control facilities must submit:~~

- ~~(1) A final SRF loan application on forms provided by the Department (see also OAR 340-54-055(2), Loan Approval and Review Criteria).~~
- ~~(2) A facilities plan which includes the following:~~
 - ~~(a) A demonstration that the project will apply best practicable waste treatment technology as defined in 40 CFR 35.2005(b)(7);~~
 - ~~(b) A cost effective analysis of the alternatives available to comply with applicable Department water quality statutes and rules over the design life of the facility and a demonstration that the selected alternative is the most cost effective;~~
 - ~~(c) A demonstration that excessive inflow and infiltration (I/I) in the sewer system does not exist or if it does exist, how it will be eliminated;~~
 - ~~(d) An analysis of alternative and innovative technologies. This must include:~~
 - ~~(A) An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process;~~
 - ~~(B) An evaluation of improved effluent quality attainable by upgrading the operation and maintenance and efficiency of existing facilities as an alternative or supplement to building new facilities;~~
 - ~~(C) A consideration of systems with revenue generating applications;~~
 - ~~(D) An evaluation of the opportunity to reduce the use of energy or to recover energy; and~~
 - ~~(E) An evaluation of the opportunities to reduce the amount of wastewater by water use conservation measures and programs.~~
 - ~~(e) An analysis of the potential open space and recreational opportunities associated with the project;~~
 - ~~(f) An evaluation of the environmental impacts of alternatives as discussed in OAR 340-54-050;~~
 - ~~(g) Documentation of the existing water quality problems which the facility plan must correct;~~
 - ~~(h) Documentation and analysis of public comments and of testimony received at a public hearing held before completion of the facility plan.~~
- ~~(3) Adopted sewer use ordinance(s):~~
 - ~~(a) Sewer use ordinances adopted by all municipalities and service districts discharging effluent to the water pollution control facility must be included with the application;~~

- ~~(b) The sewer use ordinance(s) shall prohibit any new connections from inflow sources into the water pollution control facility, without the approval of the Department;~~
- ~~(c) The ordinance(s) shall require that all wastewater introduced into the treatment works not contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety and adversely affecting the treatment works or precluding the selection of the most cost effective alternative for wastewater treatment sludge disposal.~~
- ~~(4) Documentation of pretreatment surveys and commitments:~~
- ~~(a) A survey of nonresidential users must be conducted and submitted to the Department, as part of the final SRF application which identifies significant industrial discharges as defined in the Department's Pretreatment Guidance Handbook. If the Department determines that the need for a pretreatment program exists, the borrower must develop and adopt a program approved by the Department before initiation of operation of the facility;~~
- ~~(b) The borrower must document to the satisfaction of the Department that necessary pretreatment facilities have been constructed and that a legally binding commitment or permit exists with the borrower and any significant industrial discharger(s), being served by the borrower's proposed sewage treatment facilities. The legally binding commitment or permit must ensure that pretreatment discharge limits will be achieved on or before the date of completion of the proposed wastewater treatment facilities or that a Department approved compliance schedule is established.~~
- ~~(5) Adoption of a user charge system:~~
- ~~(a) General. The borrower must develop and obtain the Department's approval of its user charge system. If the borrower has a user charge system in effect, the borrower shall demonstrate that it meets the provisions of this section or amend it as required by these provisions;~~
- ~~(b) Scope of the user charge system:~~
- ~~(A) The user charge system must, at a minimum, be designed to produce adequate revenues to provide for operation and maintenance (including replacement expenses);~~
- ~~(B) Unless SRF debt retirement is reduced by other dedicated sources of revenue discussed in OAR 340-54-065, the user charge system must be designed to produce adequate revenues to provide for SRF debt retirement.~~
- ~~(c) Actual use. A user charge system shall be based on actual use, or estimated use, of sewage treatment and collection services. Each user or user class must pay its proportionate share of the costs incurred in the borrower's service area;~~

- ~~(d) Notification. Each user charge system must provide that each user be notified, at least annually, in conjunction with a regular bill or other means acceptable to the Department, of the rate and that portion of the user charge that is attributable to wastewater treatment services;~~
- ~~(e) Financial management. Each borrower must demonstrate compliance with state and federal audit requirements. If the borrower is not subject to state or federal audit requirements, the borrower must provide a report reviewing the account system prepared by a municipal auditor. A systematic method must be provided to resolve material audit findings and recommendations;~~
- ~~(f) Adoption of system. The user charge system must be legislatively enacted before loan approval and implemented before initiation of operation of the facility. If the project will serve two or more municipalities, the borrower shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works.~~
- ~~(6) A financial capability assessment for the proposed project which demonstrates the applicant's ability to repay the loan and to provide for operation and maintenance costs (including replacement) for the wastewater treatment facility.~~
- ~~(7) Land use compatibility statement from the appropriate local government(s) demonstrating compliance with the LCDC acknowledged comprehensive land use plan(s) and statewide land use planning goals.~~
- ~~(8) Department approved plans and specifications for the project, if the project is for construction only;~~
- ~~(9) A value engineering study, satisfactory to the Department, if the total project cost will exceed \$10 million, and if the project is for construction only.~~
- ~~(10) Any other information requested by the Department.~~
- ~~(11) Exception for minor projects in unusual circumstances. The Department may waive the requirement for preparation of a facilities plan as set out in section (2) of this rule, as well as other requirements not mandated by Oregon Revised Statutes, interagency agreement, or the federal Water Quality Act of 1987 when it can be demonstrated to the Department's satisfaction that compliance is not cost effective and the waiver will not be detrimental to the interests of the borrower or the state. Requests for such an exemption will only be considered from projects that would be eligible for a categorical exclusion under provisions of OAR 340-54-050(3).~~

~~Stat. Auth.: ORS Ch. 468.423—468.440~~

~~Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93]~~

||| The following combines 340-54-035 and 340-54-040 which contained duplicate information.

FINAL APPLICATION PROCESS FOR SRF FINANCING
340-54-035

- (1) All Applicants for SRF financing must submit:**
- (a) A fully executed and complete final application on forms provided by the Department.**
 - (b) Evidence that the Applicant has authority to undertake the project.**
 - (c) The following financial management documentation:**
 - (A) Financial capability assessment on forms provided by the Department for the proposed project which demonstrates the Applicant's ability to repay the loan and to provide for operation and maintenance costs, and replacement for the wastewater treatment facility for which the applicant is responsible.**
 - (B) Three years' audited financial statements and the current budget for the Applicant or for the consolidated sewer system.**
 - (C) The budget of the total project including proposed capital costs, site work costs, engineering costs, administrative costs and any other costs which will be supported by the proposed loan; a breakdown of the line item budget by each funding source (including SRF loan).**
 - (d) Any other information requested by the Department.**
- (2) Additionally, Applicants for SRF loans for design or construction of a project must submit:**
- (a) A facilities plan prepared in accordance with the Facilities Planning section of the Department's SRF Procedures Manual.**

||| *Facility Planning rules were moved "as is" to the procedures manual until staff completes a draft document that has been prepared according to 340-54-080.*

- (b) An adopted sewer use ordinance which meets the Department's approval and the provisions of this section:**
 - (A) Sewer use ordinances adopted by all municipalities and service districts serviced by this project must be included with the application.**
 - (B) The sewer use ordinance shall prohibit any new connections from inflow sources into the water pollution control facility without the approval of the Department.**
 - (C) The ordinance shall require that no wastewater introduced into the treatment works contain toxics or other pollutants in amounts or concentrations that have the potential of endangering public safety and adversely affecting the project or precluding the selection of the most**

cost-effective alternative for the project.

- (c) Pretreatment documentation. If the Department determines that the need for a pretreatment program exists, the Applicant must develop and adopt a program approved by the Department before Initiation of Operation of the project. The documentation must include:
- (A) A survey of nonresidential users which identifies significant industrial discharges.
- (B) Proof that there is a legally binding commitment or permit between the Applicant and any significant industrial discharger being served by the Applicant's proposed project, and evidence that the necessary pretreatment facilities have been or are being constructed and operated in a manner consistent with the Applicant's requirements. The legally binding commitment or permit must ensure that pretreatment discharge limits will be achieved on or before the date of completion of the proposed project or that a Department approved compliance schedule or enforcement order is established.
- (d) A demonstration of the adoption of a user charge system which meets the Department's approval and the requirements of the User Charge System section of the SRF Procedures Manual.

||| *Moved "as is" until staff completes the section for the procedures manual according to 340-54-080.*

- (e) If the project will serve two or more municipalities, the Applicant shall submit the executed intermunicipal agreements, contracts or other legally binding instruments necessary for the financing, building and operation of the proposed treatment works.
- (f) A Land Use Compatibility Statement from the responsible government demonstrating compliance with the Department of Land Conservation and Development (DLCD) acknowledged comprehensive land use plan and statewide land use planning goals.
- (g) Department approved plans and specifications for the project, if the loan is for construction only.
- (h) A value engineering study prepared in accordance with the requirements of the SRF Procedures Manual for all projects with estimated costs in excess of \$10 million.

||| *Old version was placed "as is" in the procedures manual until the rules have been adopted and staff has observed OAR 340-54-080.*

- (i) An environmental review prepared in accordance with the requirements of the SRF Procedures Manual.

||| *This statement was added to replace OAR 340-54-054 "Environmental Review"*

which was placed in the procedures manual since it is a federal requirement. It was placed "as is" until rules are approved and staff has followed the requirements of OAR 340-54-080.

- (j) Any other information requested by the Department.**
- (k) Exception for minor projects in unusual circumstances. The Department may waive the requirement for preparation of a facilities plan as set out in section (2) of this rule, as well as other requirements not mandated by Oregon Revised Statutes, interagency agreement or the federal Water Quality Act of 1987 when it can be demonstrated to the Department's satisfaction that compliance is not cost effective and the waiver will not be detrimental to the interests of the Applicant or the state. Requests for such an exemption shall only be considered from projects that may be eligible for a Categorical Exclusion as described in the SRF Procedures Manual.**

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef.3-10-89;

The following section will be placed in the procedures manual -- after rule adoption and staff develops documentation according to OAR 340-54-080.

~~ENVIRONMENTAL REVIEW~~
~~340-54-050~~

- ~~(1) General. For as long as the State of Oregon is subject to federal equivalency and Title II requirements of the Water Quality Act of 1987, an environmental review is required prior to approval of a loan for design and construction or construction when:
 - ~~(a) No environmental review has previously been prepared;~~
 - ~~(b) A significant change has occurred in project scope and possible environmental impact since a prior environmental review; or~~
 - ~~(c) A prior environmental review determination is more than five years old.~~~~
- ~~(2) Environmental Review Determinations. The Department will notify the applicant during facility planning of the type of environmental documentation which will be required. Based upon the Department's determination:
 - ~~(a) The applicant may apply for a categorical exclusion; or~~
 - ~~(b) The applicant will prepare an environmental assessment in a format specified by the Department. After the Department has reviewed and approved the environmental assessment, it will:
 - ~~(A) Prepare a Finding of No Significant Impact; or~~
 - ~~(B) Issue a Notice of Intent to Prepare an Environmental Impact Statement; require the applicant to prepare an environmental impact statement; and prepare a record of decision.~~~~~~
- ~~(3) Categorical Exclusions. The categorical exclusions may be made by the Department for projects that have been demonstrated to not have significant impacts on the quality of the human environment:
 - ~~(a) Eligibility:
 - ~~(A) If an applicant requests a categorical exclusion, the Department shall review the request and based upon project documentation submitted by the applicant, the Department shall:
 - ~~(i) Notify the applicant of categorical exclusion and publish notice of categorical exclusion in a newspaper of state-wide and community-wide circulation;~~
 - ~~(ii) Notify the applicant to prepare an environmental assessment; or~~
 - ~~(iii) Require the applicant to issue a Notice of Intent to Prepare an Environmental Impact Statement.~~~~~~~~

- ~~(B) A project is eligible for a categorical exclusion if it meets the following criteria:~~
- ~~(i) The project is directed solely toward minor rehabilitation of existing facilities, toward replacement of equipment, or toward the construction of related facilities that do not affect the degree of treatment or the capacity of the facility. Examples include infiltration and inflow correction, replacement of existing equipment and structures, and the construction of small structures on existing sites; or~~
 - ~~(ii) The project will serve less than 10,000 people and is for minor expansions or upgrading of existing water pollution control facilities.~~
- ~~(C) Categorical exclusions will not be granted for projects that entail any of the following activities:~~
- ~~(i) The construction of new collection lines;~~
 - ~~(ii) A new discharge or relocation of an existing discharge;~~
 - ~~(iii) A substantial increase in the volume or loading of pollutants;~~
 - ~~(iv) Providing capacity for a population 30 percent or greater than the existing population;~~
 - ~~(v) Known or expected impacts to cultural resources, historical and archaeological resources, threatened or endangered species, or environmentally sensitive areas; or~~
 - ~~(vi) The construction of facilities that are known or expected to not be cost-effective or to be highly controversial.~~
- ~~(b) Documentation. Applicants seeking a categorical exclusion must provide the following documentation to the Department:~~
- ~~(A) A brief, complete description of the proposed project and its costs;~~
 - ~~(B) A statement indicating the project is cost-effective and that the applicant is financially capable of constructing, operating, and maintaining the facilities; and~~
 - ~~(C) Plan map(s) of the proposed project showing:
 - ~~(i) Location of all construction areas;~~
 - ~~(ii) Planning area boundaries; and~~
 - ~~(iii) Any known environmentally sensitive areas.~~~~
 - ~~(D) Evidence that all affected governmental agencies have been contacted and their concerns addressed.~~
- ~~(e) Proceeding with Financial Assistance. Once the issued categorical exclusion becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the categorical exclusion will be revoked.~~

- ~~(4) Environmental Assessment:~~
- ~~(a) General. If a project is not eligible for a categorical exclusion, the applicant must prepare an environmental assessment;~~
- ~~(b) An environmental assessment must include:~~
- ~~(A) A description of the proposed project and why it is needed;~~
- ~~(B) The potential environmental impacts of the project as proposed;~~
- ~~(C) The alternatives to the project and their potential environmental impacts;~~
- ~~(D) A description of public participation activities conducted and issues raised; and~~
- ~~(E) Documentation of coordination with affected federal and state government agencies and tribal agencies.~~
- ~~(c) The Department will review and approve or reject the environmental assessment. If the environmental assessment is rejected, the applicant must make any revisions required by the Department. If the environmental assessment is approved, the Department will:~~
- ~~(A) Issue a Finding of No Significant Impact documenting any mitigative measures required of the applicant. The Finding of No Significant Impact will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the Finding of No Significant Impact may be submitted for consideration by the board; or~~
- ~~(B) Require the applicant to issue a Notice of Intent to Prepare an Environmental Impact Statement.~~
- ~~(d) If the Department issues a Finding of No Significant Impact:~~
- ~~(A) The Department will distribute the Finding of No Significant Impact to those parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding the provision of financial assistance will be taken by the Department for at least 30 days after the issuance of the Finding of No Significant Impact;~~
- ~~(B) The Department will reassess the project to determine whether the environmental assessment will be supplemented or whether an environmental impact statement will be required if substantive comments are received during the public comment period that challenge the Finding of No Significant Impact; and~~
- ~~(C) The Finding of No Significant Impact will become effective if no new information is received during the public comment period which would require a reassessment or if after reviewing public comments and reassessing the project, an environmental impact statement was not found to be necessary.~~

- ~~(e) Proceeding with Financial Assistance. Once the issued Finding of No Significant Impact becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Finding of No Significant Impact will be revoked.~~
- ~~(5) Environmental Impact Statement:~~
- ~~(a) General. An environmental impact statement will be required when the Department determines that any of the following conditions exist:~~
- ~~(A) The project will significantly affect the pattern and type of land use or growth and distribution of the population;~~
- ~~(B) The effects of the project's construction or operation will conflict with local or state laws or policies;~~
- ~~(C) The project may have significant adverse impacts upon:~~
- ~~(i) Wetlands;~~
- ~~(ii) Floodplains;~~
- ~~(iii) Threatened and endangered species or their habitats;~~
- ~~(iv) Sensitive environmental areas, including parklands, preserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value.~~
- ~~(D) The project will displace population or significantly alter the characteristics of existing residential areas;~~
- ~~(E) The project may directly or indirectly have significant adverse effect upon local ambient air quality, local noise levels, surface or ground water quality, fish, shellfish, wildlife or their natural habitats through induced development;~~
- ~~(F) The project is highly controversial; or~~
- ~~(G) The treated effluent will be discharged into a body of water where beneficial uses and associated special values of the receiving stream are not adequately protected by water quality standards or the effluent will not be of sufficient quality to meet these standards.~~
- ~~(b) Environmental Impact Statement Contents. At a minimum, the contents of an environmental impact statement will include:~~
- ~~(A) The purpose and need for the project;~~
- ~~(B) The environmental setting of the project and the future of the environment without the project;~~
- ~~(C) The alternatives to the project as proposed and their potential environmental impacts;~~
- ~~(D) A description of the proposed project;~~
- ~~(E) The potential environmental impact of the project as proposed including those which cannot be avoided;~~
- ~~(F) The relationship between the short-term uses of the environment and the maintenance and enhancement of long-term productivity; and~~
- ~~(G) Any irreversible and irretrievable commitments of resources to the proposed project.~~

~~(c) Procedures:~~

- ~~(A) If an environmental impact statement is required, the applicant shall publish a Notice of Intent to Prepare an Environmental Impact Statement in newspapers of state wide and community wide circulation;~~
- ~~(B) After the Notice of Intent has been published, the applicant will contact all affected local, state and federal agencies, tribes or other interested parties to determine the scope required of the document. Comments shall be requested regarding:
 - ~~(i) Significance and scope of issues to be analyzed, in depth, in the environmental impact statement;~~
 - ~~(ii) Preliminary range of alternatives to be considered;~~
 - ~~(iii) Potential cooperating agencies and the information or analyses that may be needed from them;~~
 - ~~(iv) Method for environmental impact statement preparation and the public participation strategy;~~
 - ~~(v) Consultation requirements of other environmental laws; and~~
 - ~~(vi) Relationship between the environmental impact statement and the completion of the facility plan and any necessary arrangements for coordination of preparation of both documents.~~~~
- ~~(C) The applicant shall prepare and submit the draft environmental impact statement to the Department for Department approval. The Department may require any changes necessary to comply with the requirements of this rule;~~
- ~~(D) The applicant shall submit the DEQ approved draft environmental impact statement to all affected agencies or parties for review and comment;~~
- ~~(E) Following publication of a public notice in a newspaper of community wide and state wide circulation, the applicant shall allow a 30-day comment period, and conduct a public hearing on the draft environmental impact statement;~~
- ~~(F) The applicant shall prepare and submit a final environmental impact statement (FEIS) addressing all agency and public input to the Department for Department approval. The Department may require any change necessary to comply with the requirements of this rule;~~
- ~~(G) The applicant shall provide a 30-day comment period on the DEQ approved FEIS;~~
- ~~(H) Upon completion of a FEIS, the Department will issue a Record of Decision (ROD) documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures. The Department will allow a 30-day comment period for the ROD;~~
- ~~(I) Material incorporated into an environmental impact statement by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons.~~

- ~~(d) Proceeding with Financial Assistance. Once the issued Record of Decision becomes effective, financial assistance may be awarded; however, if the Department later determines the project or environmental conditions have changed significantly, further environmental review may be required and the Record of Decision will be revoked;~~
- ~~(e) Environmental Assessment and Environmental Impact Statement Costs. The cost of preparing an environment assessment and an environmental impact statement must be paid by the applicant. At the request of the applicant, costs for preparation of an environmental assessment or an environmental impact statement may be included as eligible project costs for a SRF loan for facility planning, or construction.~~
- ~~(6) Previous Environmental Reviews. If a federal environmental review for the project has been conducted, the Department may, at its discretion, adopt all or part of the federal agency's documentation.~~
- ~~(7) Validity of Environmental Review. Environmental determinations under this section are valid for five years. If a financial assistance application is received for a project with an environmental determination which is more than five years old, or if conditions or project scope have changed significantly since the last determination, the Department will re-evaluate the project, environmental conditions, and public comments and will either:~~
- ~~(a) Reaffirm the earlier decision;~~
- ~~(b) Require supplemental information to the earlier Environmental Impact Statement, Environmental Assessment, or Request for Categorical Exclusion. Based upon a review of the updated document, the Department will issue and distribute a revised notice of categorical exclusion, Finding of No Significant Impact, or Record of Decision; or~~
- ~~(c) Require a revision to the earlier Environmental Impact Statement, Environmental Assessment, or Request for Categorical Exclusion. If a revision is required, the applicant must repeat all requirements outlined in this section.~~
- ~~(8) Appeal. An affected party may appeal a notice of categorical exclusion, a Finding of No Significant Impact, or a Record of Decision pursuant to procedures pursuant to the Oregon Administrative Procedures Act, ORS 183.484.~~

~~Stat. Auth.: ORS Ch. 468.423—468.440~~

~~Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89; DEQ 30-1990, f. & cert. ef. 8-1-90; DEQ 1-1993, f. & cert. ef. 1-22-93]~~

LOAN APPROVAL AND REVIEW CRITERIA 340-54-055

- (1) Loan Approval. SRF loan approval takes place ~~{when,}~~ after Departmental ~~{review}~~ **approval** of all final SRF loan ~~{application}~~ **documents**. ~~The,~~ a loan agreement ~~{is}~~ **shall be** signed by a legally authorized representative of the ~~{borrower}~~ **Applicant** and the Director ~~{or his designated representative}~~.

||| By definition in statute, Director includes the Director's representative.

- (2) Loan Review Criteria. In order to get **loan approval** ~~{of a final SRF loan application}~~, the **following** criteria ~~{listed below}~~ must be met ~~{. In addition, the Department may establish other loan criteria as appropriate, including but not limited to an opinion of bond counsel}~~:

||| The above text was moved to (2)(e) below.

- (a) The ~~{applicant}~~ **Applicant** must submit a completed final loan application including all information **and approvals** required under OAR 340-54-035 ~~{or 340-54-040 whichever is applicable}~~.
- (b) There must be available SRF funds to finance the loan ~~{}~~.
- (c) The project must be eligible for funds under this chapter ~~{}~~.
- (d) The ~~{applicant}~~ **Applicant** must demonstrate to the ~~{Director's}~~ **Department's** satisfaction its ability to repay a loan and, where applicable, its ability to ensure ongoing operation and maintenance ~~{(including replacement)}~~ of the proposed water pollution control facility. In addition, for revenue secured loans described under OAR 340-54-065(2), the Department may require the following criteria to be met:
- (A) ~~{Where applicable, the}~~ **The** existing water pollution control facilities are free from operational and maintenance problems which ~~{would}~~ **could** materially impede the proposed system's function or the ~~{public agency}~~ **Applicant's** ability to repay the loan from user fees ~~{as demonstrated by the opinion of a registered engineer or other expert acceptable to the Department}~~.

||| The following duplicates 340-54-065(2)(b)

- ~~{(B) Historical and projected system rates and charges, when considered with any consistently supplied external support, must be sufficient to fully fund operation, maintenance, and replacement costs, any existing indebtedness and the debt service expense of the proposed borrowing.}~~

|||
The following may be discussed, requested, negotiated during the financial review. It does not need to be in rule.

- ~~[(C) To the extent that projected system income is materially greater than historical system income, the basis for the projected increase must be reasonable and documented as to source;~~
- ~~[(D) The public agency's income and budget data must be computationally accurate and must include three years' historical financial statements, the current budget and one years' projected financial statements of consolidated sewer system revenues, expenses, assets and liabilities;~~
- ~~[(E) The budget of the project including proposed capital costs, site work costs, engineering costs, administrative costs and any other costs which will be supported by the proposed revenue secured loan must be reflected in the public agency's data;~~
- ~~[(F) Audits during the last three years are free from adverse opinions or disclosures which cast significant doubt on the borrower's ability to repay the Revenue Secured Loan in a timely manner;]~~
- ~~[(G)](B) The ~~{proposed borrowing's integrity }~~**Borrower's revenue stream** is not at risk from undue dependence upon a limited portion of the system's customer base and a pattern of delinquency on the part of that portion of the customer base~~[-]~~.~~
- ~~[(H)](C) The ~~{public agency }~~**Borrower** must have the ability to bring effective sanctions to bear on non~~[-]~~paying customers~~[- and]~~.~~
- ~~[(I) The opinion of the public agency's legal counsel or a certificate from the public agency which states that no litigation exists or has been threatened which would cast doubt on the enforceability of the borrower's obligations under the loan.]~~
- (e) In addition, as necessary to meet the requirements of ORS 468.425, the Department may establish other loan criteria and require other documentation as appropriate, including but not limited to an opinion of legal counsel that the loan agreement is enforceable under the Borrower's legal structure.**

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;

LOAN AGREEMENT AND CONDITIONS 340-54-060

~~{The loan agreement shall contain conditions including, but not limited to, the following, where applicable to the type of project being financed and at the determination of the Department.}~~

Each loan agreement shall contain conditions that are applicable to the type of project being financed. Some, but not all, of the conditions follow:

- (1) Accounting~~{.}~~.
- ~~{(a)}~~ ~~Applicant shall~~ **The Borrower shall maintain all SRF project accounts as separate accounts and shall** use accounting, audit and fiscal procedures which conform to ~~{generally accepted government accounting standards;}~~ **Generally Accepted Accounting Principals and the requirements of the Government Accounting Standards Board.**
- ~~{(b)}~~(2) **Records.** Project files and records must be retained by the ~~{borrower}~~ **Borrower** for at least three (3) years after performance certification. Financial files and records must be retained until the loan is ~~{fully amortized;}~~ **repaid in full.**
- ~~{(c)}~~ ~~Project accounts must be maintained as separate accounts.}~~
- ~~{(2)}~~(3) **Wage Rates.** The Applicant shall ensure compliance with **the applicable federal or state** wage rates~~{ established under the Davis-Bacon Act}~~ **for construction projects as determined by the Department.**
- ~~{(3)}~~(4) **Operation and Maintenance Manual.** If the SRF loan is for~~{ design and}~~ construction~~{ or construction only}~~, the ~~{borrower}~~ **Borrower** shall submit a draft and final facility operation and maintenance manual **at the times and in a format specified by the Department.**~~{which meets Department approval. The draft must be submitted before the project is 50 percent (50%) complete, and the final must be submitted before the project is 90 percent (90%) complete. This requirement may be waived for projects which only involve simple gravity sewers.}~~
- ~~{(4)}~~ ~~Value Engineering. A value engineering study satisfactory to the Department must be performed for design and/or construction projects prior to commencement of construction if the total estimated project cost will exceed \$10 million.}~~

||| Value Engineering Repeats -035(2)(h)

- (5) **Plans and Specifications.** ~~{Applicant}~~ **Borrower** must submit and receive Departmental approval of project plans and specifications prior to commencement of construction, in conformance with OAR Chapter 340, Division 52.

- (6) Inspections and Progress Reports. During the construction phase ~~building~~ of the project, the ~~borrower~~ **Borrower** shall provide on-going inspections ~~in sufficient number~~ to ensure the project complies with approved plans and specifications. These inspections shall be conducted by qualified inspectors under the direction of a registered civil, mechanical or electrical engineer, whichever is appropriate. The Department or its representatives may conduct interim inspections and require progress reports sufficient to determine compliance with approved plans and specifications and with other provisions of the loan agreement.
- (7) Loan Amendments.~~[-]~~
- ~~(a)~~ Changes in the project work that are consistent with the objectives of the project and that are within the scope and funding level of the loan do not require the execution of a formal loan amendment. However, ~~if additional loan funds are needed,~~ a loan amendment shall be required~~[-]~~ **when the Borrower:**
- ~~(b)~~ (a) Receives an increase in ~~Loan amendments increasing~~ the original~~ly~~ approved loan amount ~~may be requested~~ at any time during the project. The Department may approve ~~these~~ loan ~~amendments~~ **increases** if **funds are available, and** the ~~borrower~~ **Borrower** demonstrates the legal authority to borrow and the financial capability to repay the increased loan amount~~[-]~~.
- ~~(c)~~ ~~The borrower must amend the loan agreement after bids for the project are received if the bids indicate that the project costs will be less than projected.~~
- (b) Requests a decrease in the original loan amount at any time during the project or completes the project and does not request disbursement of all the loan proceeds.** ~~Other loan amendments decreasing the loan amount must be requested no later than the date of completion of a positive performance certification when the final cost of the project is less than the total amount approved in the original loan agreement or when the total loan proceeds disbursed are less than the approved loan amount.~~
- (8) Change Orders. Upon execution, the ~~borrower~~ **Borrower** must submit ~~change~~ **Change** ~~orders~~ **Orders** to the Department **for engineering and financial review**. The Department shall ~~review~~ **approve or reject** the ~~change~~ **Change** ~~orders~~ **Orders** ~~to determine~~ **based on** the loan eligibility of the project **modifications** ~~change.~~ **and on its engineering aspects in accordance with OAR 340-54-035.**
- (9) Project Performance Certification. **The Borrower shall submit to the Department a Project Performance Certification which meets the requirements of the SRF Procedures Manual within the time frame specified by the Department.**

||| Staff and the advisory committee recommend placing the following in the procedures manual.

- ~~(a) Draft project performance standards must be submitted by the borrower and approved by the Department before the project is fifty percent (50%) complete; and~~
- ~~(b) final project performance standards must be submitted by the borrower and approved by the Department before the project is 90 percent (90%) complete;~~
- ~~(b) The borrower shall notify the Department within thirty (30) days of the actual date of initiation of operation;~~
- ~~(c) One year after initiation of operation, the borrower shall certify whether the facility meets Department approved project performance standards;~~
- ~~(d) If the project is completed, or is completed except for minor items and the facility is operable, but the borrower has not sent its notice of initiation of Operation, the Department may assign an initiation of operation date;~~
- ~~(e) The borrower shall, pursuant to a Department approved corrective action plan, correct any factor that does not meet the Department approved project performance standards. }~~
- (10) Eligible Construction Costs. Payments for construction costs shall be limited to work that complies with plans, ~~and~~ specifications, **Change Orders and Addenda** approved by the Department.
- (11) Adjustments. The Department may, at any time, review and audit requests for payment and make adjustments for eligibility, ~~but not limited to,~~ math errors, items not built or bought, ~~and~~ unacceptable construction and other discrepancies.
- (12) Contract and Bid Documents. The ~~borrower~~ **Borrower** shall submit a copy of the awarded contract and bid documents to the Department, including a tabulation of all bids received.
- (13) Audit. Federal enabling legislation and rules require an audit of each SRF loan. Borrowers may satisfy this requirement in one of the following two ways:
- (a) **The Borrower shall submit an** ~~An~~ audit consistent with ~~generally accepted accounting principals~~ Generally Accepted Accounting Principles of project expenditures ~~may be conducted by the borrower~~ within one year after ~~performance~~ Performance ~~certification~~ Certification. This audit shall be paid for by the ~~borrower~~ **Borrower** and shall be conducted by a certified auditor ~~or~~.
- (b) The Borrower ~~may~~ shall submit:
- (A) A full and complete ~~internally prepared~~ accounting of project costs incurred by the Borrower ~~,~~ which shall include ~~including base~~ documentation to support each cost element;
- (B) ~~as well as one~~ One copy of the Borrower's annual ~~municipal~~ audited financial report to the Department ~~by December 31st of~~ each year until the loan is repaid. ~~Outstanding Loan Amount is repaid with interest as provided herein.~~ Audit compliance with OMB A-128 is required if federal funds are disbursed as loan proceeds.
- (14) Operation and Maintenance. The ~~borrower~~ **Borrower** shall provide the

- necessary resources for adequate operation~~[and]~~, maintenance~~[(including)]~~ and replacement~~[]~~ of the facility and shall retain sufficient operating personnel to operate the facility.
- (15) Default Remedies. Upon default by a ~~{borrower}~~ **Borrower**, the Department shall have the following rights to:
- (a) ~~{to pursue}~~ **Pursue** any remedy available at law or in equity~~[and may]~~.
- (b) **Appoint**~~[appoint]~~ a receiver at the expense of the ~~{public agency}~~ **Borrower** to operate the ~~{utility}~~ **facility** which produces pledged revenues~~[and]~~.
- (c) **Set**~~[set]~~ and collect utility rates and charges~~[and]~~.
- (d) ~~{The Department may also withhold}~~ **Withhold** any amounts otherwise due to the ~~{public agency}~~ **Borrower** from the State of Oregon and direct that such funds be applied to the debt service **and fees** due on the SRF loan~~[and deposited in the fund]~~. If the Department finds that the loan to the ~~{public agency}~~ **Borrower** is otherwise adequately secured, the Department may waive this right to withhold state shared revenue.~~[in the loan agreement or other loan documentation.]~~
- (16) Release. The ~~{borrower}~~ **Borrower** shall release and discharge the Department, its officers, agents~~[,]~~ and employees from all liabilities, obligations~~[,]~~ and claims arising out of the project work or under the loan, subject only to exceptions previously contractually arrived at and specified in writing between the Department and the ~~{borrower}~~ **Borrower**.
- (17) Effect of Approval or Certification of Documents. Review and approval of facilities plans~~[,]~~, design drawings and specifications, or **any** other documents by or for the Department does not relieve the ~~{borrower}~~ **Borrower** of its responsibility to properly plan, design, build and effectively operate and maintain the treatment works as required by law, regulations, permits and good management practices. The Department is not responsible for any project costs or any losses or damages resulting from defects in the plans, design drawings and specifications, or other subagreement documents. **The Department is not responsible for verifying cost-effectiveness, cost comparisons or adherence to state procurement regulations.**
- (18) Reservation of Rights:
- (a) Nothing in this rule prohibits a ~~{borrower}~~ **Borrower** from requiring more assurances, guarantees,~~[or]~~ indemnity or other contractual requirements from any party performing project work; and
- (b) Nothing in the rule affects the Department's right to take remedial action, including, but not limited to, administrative enforcement action and actions for breach of contract against a ~~{borrower}~~ **Borrower** that fails to carry out its obligations under this chapter.
- (19) Other provisions. SRF loan~~[s]~~ **agreements** shall contain such other provisions as the ~~{Director}~~ **Department** may reasonably require to meet the goals of the Clean Water Act and ORS 468.423 to 468.440.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;

LOAN TERMS AND INTEREST RATES 340-54-065

||| The following text has nothing to do with this section. The substantive portion was moved to "Purpose" 340-54-005.

~~[As required by ORS 468.440, the following loan terms and interest rates are established in order to provide loans to projects which enhance or protect water quality; to provide loans to public agencies capable of repaying the loan; to establish an interest rate below market rate so that the loans will be affordable; to provide loans to all sizes of communities which need to finance projects; to provide loans for the types of projects described in these rules which address water pollution control problems; and to provide loans to all public agencies, including both those which can and those which cannot borrow elsewhere.]~~ **As required by ORS 468.440, the following loan terms and interest rates are established.**

- (1) Types of Loans. An SRF loan must be one of the following types of loans:
 - (a) ~~[The loan must be a]~~**A** general obligation bond~~[,]~~ or other full faith and credit obligation of the ~~[borrower]~~**Borrower**, which is supported by the ~~[public agency's]~~**Borrower's** unlimited ad valorem taxing power~~[,]~~.
 - (b) ~~[The loan must be a]~~**A** bond or other obligation of the ~~[public agency]~~**Borrower** which is not subject to appropriation~~[,]~~ and which has been rated ~~[investment grade]~~**Investment Grade** by Moody's Investor Services, Standard and Poor's Corporation~~[,]~~ or another national rating service acceptable to the ~~[Director]~~**Department.**~~[,]~~
 - (c) ~~[The loan must be a]~~**A** Revenue Secured Loan which complies with section (2) of this rule~~[,]~~.
 - (d) ~~[The loan must be an]~~**An** Alternative Loan which complies with section (3) of this rule~~[, or]~~.
 - (e) ~~[The loan must be a]~~**A** Discretionary Loan which complies with section ~~[(5)]~~**(4)** of this rule.
- (2) Revenue Secured Loans. These loans shall:
 - (a) Be **represented by a properly executed loan agreement, bonds,** ~~loan agreements,~~ or other unconditional obligations to pay from specified revenues which are pledged~~[to pay]~~ to the ~~[borrower]~~**Borrower**; the obligation to pay may not be subject to the appropriation of funds~~[,]~~.
 - (b) Contain a rate covenant which requires the ~~[borrower]~~**Borrower** to impose and collect ~~[each year]~~ revenues which are sufficient to pay:
 - (A) **All** ~~[all]~~ expenses of operation, ~~[and]~~ **and replacement** ~~[(including replacement)]~~ of the **wastewater facility system.** ~~[facilities which~~

~~are financed with the loan and the facilities which produce the revenues,}~~

(B) ~~All~~~~all~~ debt service.

(C) ~~All~~~~and~~ other financial obligations (such as contributions to reserve accounts) imposed in connection with prior lien obligations~~[- plus]~~.

(D) ~~An~~~~an~~ amount equal to the **coverage requirements of the loan. This requirement is the** product of the coverage factor ~~[shown in subsection (d) of this section]~~ times the debt service due in that year on the SRF loan. ~~[The coverage factor selected from subsection (d) of this section].~~ **The coverage factor used** shall correspond to the **coverage factor and** reserve percentage **set selected by the Borrower from subsection (d) of this section.** ~~[for the SRF loan. If the public agency may incur, or has outstanding, prior lien obligations which, in the judgment of the Department determines, are inadequately secured or otherwise may adversely affect the ability of the public agency to pay the SRF loan, the Department may require that the public agency agree in its rate covenant to impose and collect additional revenues to provide coverage on such prior lien obligations, in amounts determined by the Department,]~~

(E) Amounts required to provide coverage on prior lien obligations or new lien obligations the Borrower may incur and which the Department may determine are inadequately secured or otherwise may adversely affect the ability of the Borrower to repay the SRF loan.

(c) Contain a reserve covenant requiring the ~~[public agency]~~**Borrower** to maintain ~~[in each year that the SRF loan is outstanding,]~~a pledged reserve which is dedicated to the payment of the SRF loan and which meets the following requirements:

(A) Loan reserves must be maintained in an amount which is at least equal to the product of the reserve percentage shown in subsection (d) of this section times the average annual debt service during the repayment period~~[-]~~ based on the repayment schedule in the loan agreement **or as revised.** The reserve percentage selected from subsection (d) of this section shall correspond to the coverage factor selected for the SRF loan~~[-]~~.

(B) Loan reserves may be funded with cash of the ~~[public agency]~~**Borrower** ~~[other than SRF loan proceeds]~~, a letter of credit, repayment guaranty~~[-]~~ or other third party commitment to advance funds which is satisfactory to the Department. If~~[- it is determined by]~~ the Department **determines** that funding of the reserve as described above imposes an undue hardship on the ~~[public agency]~~**Borrower**, ~~[- and an Alternative Loan as described in section (3) of this rule is not feasible, then]~~ the Department may allow reserves to be funded with SRF loan proceeds.

- (d) Comply with the one of the following sets of coverage factors and reserve percentages:

	Coverage Factor (Net Income to Debt Service)		Reserve Percentage of Average Annual Debt Service
Option 1:	1.05:1	and	100%
Option 2:	1.15:1	and	75%
Option 3:	1.25:1	and	50%
Option 4:	1.35:1	and	25%

- (e) Contain a covenant to review rates periodically~~[-]~~ and to adjust rates, if necessary, so that estimated revenues in subsequent years will be sufficient to comply with ~~the~~ this rate covenant~~[-]~~.
- (f) Contain a covenant that~~[-]~~ if revenues fail to achieve the level required by the rate covenant, the ~~public agency~~ Borrower ~~will~~ shall promptly adjust rates and charges to assure future compliance with the rate covenant. However, failure to adjust rates shall not constitute a default if the ~~public agency~~ Borrower transfers unencumbered resources in an amount equal to the revenue deficiency to the utility system which produces the revenues~~[-]~~.
- ~~(g) Follow the payment schedule in the loan agreement;~~
- ~~(h)~~ (g) Contain a covenant that~~[-]~~ if the reserve account is depleted for any reason~~[-]~~ the ~~public agency~~ Borrower ~~will~~ shall take prompt action to restore the reserve to the required minimum amount~~[-]~~.
- ~~(i)~~ (h) Contain a covenant restricting additional debt appropriate to the financial condition of the ~~borrower.~~ Borrower.
- ~~(j)~~ (i) Contain a covenant that the ~~borrower will~~ Borrower shall not sell, transfer or encumber any financial or fixed asset of the utility system which produces the pledged revenues~~[-]~~ if the ~~public agency~~ Borrower is in violation of any SRF loan covenant~~[-]~~ or if such sale, transfer or encumbrance ~~would~~ may cause a violation of any SRF loan covenant.
- (3) Alternative Loans. Alternative Loans may be authorized for reasonable alternative methods of financing if the ~~public agency~~ Borrower demonstrates to the satisfaction of the ~~Director~~ Department that:
- (a) It ~~would~~ may be unduly burdensome or costly to the ~~public agency~~ Borrower to borrow money from the SRF through general obligation bonds, revenue bonds~~[-]~~ or a revenue-secured loan, as described in subsections (1)(a), (b)~~[-]~~ or (c) of this rule~~[-]~~ ~~and~~
- (b) The Alternative Loan has a credit quality which is substantially equal to, or better than, the credit quality of a Revenue Secured Loan to that ~~public agency~~ Borrower.

~~[(4)]~~ In determining whether an Alternative Loan meets the requirement[s of subsection (3)(b) of this rule the Director], **the Department** may consult with ~~the Department's~~ **a** financial advisor[,] and may charge the ~~public agency~~ **Applicant** ~~applying for an Alternative Loan~~ the reasonable costs of such consultation.

~~[(5)]~~(4) Discretionary Loan. A Discretionary Loan shall be made only to a ~~small community~~ **Small Community** which, in the judgment of the ~~Director~~ **Department**, cannot practicably comply with the requirements of subsections (1)(a), (b), (c)[,] or (d) of this rule. Discretionary Loans shall comply with section ~~[(6)]~~(5) of this rule[,] and otherwise be on terms approved by the ~~Director.~~ **Department. No new Discretionary Loans may be made at any time that the** ~~The~~ total principal amount of Discretionary Loans **outstanding** ~~made in any fiscal year shall not~~ exceeds five percent of the **total assets of the Fund** ~~money available to be loaned from the SRF in that fiscal year~~.

||| The above text has a slight change of focus to the entire fund rather than the cap grant or the state match. The old rule could result in noncompliance simply as a function of time and loan-payoffs.

~~[(6)]~~(5) Interest Rates:

- ~~[(a)]~~ Facility Planning Loans. ~~Loans to finance wastewater treatment facility planning will be made at an interest rate of two percent per year, inclusive of the servicing fee described in subsection (8)(b) of this rule;.~~
- ~~[(b)]~~ Discretionary Loans. ~~Loans funded under the discretionary loan provisions of section (6) of this rule may be made at an interest rate of two percent per year, inclusive of the servicing fee described in subsection (8)(b) of this rule.~~
- ~~[(c)]~~ All other SRF Loans will be made at a fixed rate of interest equal to two thirds of the weekly average state and local government bond interest rate prevailing for the last week of the immediately preceding quarter. ~~The source of this rate will be the Bond Buyer Index, general obligation, 20 years to maturity, mixed quality as reported in the "Federal Reserve Statistical Release, H.15".]~~

||| Through extensive review, the committee recommended that direct and leveraged loans have the same interest rate and that both facility planning loans and discretionary loans should continue to have a lower rate regardless of leveraging.

- (a) **Base Rate. The interest rate for direct loans shall be based upon the average state and local government bond interest rate for the last reporting date of the preceding quarter. This will be the "Base Rate" used in computing the interest rates on all direct loans for the quarter. This Base Rate will be the "State and local bonds" entry reported in "Federal Statistical Release, H.15." This entry is quoted by the Federal Reserve from the "Bond Buyer Index" for**

general obligation bonds (20 years to maturity, mixed quality).

- (b) Facility Planning Loans.** The interest rate for Facility Planning Loans shall be equal to one half of the Base Rate.
- (c) Discretionary Loans.** The interest rate for Discretionary Loans funded under subsection (4) of this rule shall be a fixed rate equal to one half of the Base Rate.
- (d) All Other Direct Loans.** Except as provided in subsection (12) of this rule, all other SRF Loans shall be made at a fixed interest rate equal to the greater of:
- (i) two thirds of the Base Rate, or
 - (ii) the Base Rate minus 200 basis points.
- (e) Bond proceeds which are matching funds for Federal capitalization grants** may be used to fund direct loans at the interest rates listed in this section. This subsection will not be affected by any change in the source of repayment for matching bonds.

~~[(7)]~~**(6)** Interest Accrual and Compounding Periods. Interest accrual begins at the time of each loan disbursement from the SRF to the Borrower. ~~[Compounding of interest will be done at least annually and/or as frequently as the repayment periods.]~~ Interest begins compounding on the first payment due date and thereafter compounds on each payment due date.

~~[(8)]~~**(7)** Loan Fees. The Borrower shall~~[borrowers receiving benefits from the SRF program will]~~ pay the necessary and reasonable costs of administering the Fund through the following two fees:

- (a) Loan Processing Fee.** A one time fee of one and one half percent of the loan amount ~~[borrowed will]~~ shall be charged on each loan. ~~[This fee may be included in the amount of the SRF loan and repaid over the term of the loan. It is due and payable to the Department at the time of the first disbursement of each loan.]~~
- (b) Loan Servicing Fee.** An annual fee of one half of one percent of the unpaid balance ~~[will]~~ shall be charged on each loan during the repayment period. This fee is due and payable in addition to the scheduled payment.

~~[(9)]~~**(8)** Review of interest rates and fees. The interest rates on SRF loans described in section ~~[(6) (a), (b), and (c)]~~**(5)** of this rule ~~[; and fees described in subsections (8)(7)(a) and (b) of this rule]~~ shall be effective for all loan agreements signed after December 31, ~~[1992]~~**1994**. Thereafter, interest rates and fees may be adjusted by the EQC, if necessary, to assure compliance with ORS 468.440.

~~[(10)]~~**(9)** Commencement of Loan Repayment~~[;]~~.

~~[(a)]~~ Principal and interest repayments on loans ~~[shall begin within one year after the date of project completion as estimated in the loan agreement;]~~

~~[(b)]~~ ~~In the event that the actual project completion date is prior to the estimated project completion date in the loan agreement, the loan repayment~~ must begin within one year ~~[after the]~~ of the date of Initiation of Operations. ~~[actual completion date.]~~

~~{(11)}~~(10) **Loan Term.** All loans must be fully repaid within 20 years of the ~~{project completion}~~ **date of Initiation of Operations.** Generally, the loan repayment term ~~{will match}~~ **shall be no longer than** the useful life of the assets financed ~~{or}~~ **and will be determined by** what the ~~{borrower}~~ **Borrower** can afford. ~~{For}~~ **All** facility planning loans ~~{, this is}~~ **will have a repayment period of five years or less.** Pre~~{-}~~payments will be allowed at any time without penalty **on all SRF loans except as provided for in subsection (12)(b)(E) of this rule.**

~~{(12)}~~(11) **Minor Variations in Loan Terms.** The Department may permit ~~{insubstantial}~~ **minor** variations in the financial terms of loans described in this section~~{,}~~ in order to facilitate administration and repayment of loans.

(12) Leveraged Loans. The Department

(a) May increase the size of the fund by selling state bonds to be repaid and secured by SRF loan repayments, reserves and reserve interest earnings if recommended by a steering committee representative of SRF Borrowers meeting at least annually.

(b) Fund loans with bond proceeds as a part of a leveraged loan program when done in compliance with following constraints.

(A) Selling bonds to leverage the SRF program will increase the Department's ability to provide loan assistance to help public agencies comply with the Department's mandates.

(B) Interest rates on leveraged loans shall be less than the interest rate paid by the state on bonds sold to fund the leveraged loans. Rates shall be fixed at no more than the greater of:

(i) two thirds of the bond interest rate, or

(ii) the bond interest rate minus 200 basis points.

(C) Loan fees for leveraged loans will not exceed what would be charged for direct loans of the same size and repayment period.

(D) Costs of bond issuance and related transaction costs shall be paid out of bond proceeds to the extent permitted by law.

(E) Notwithstanding other provisions of this rule, the Department may make changes to the terms and conditions of leveraged SRF loans to make them desirable to market bonds. However, to the maximum extent practicable, the terms and conditions will be the same as for loans made on a direct basis.

(F) Specific details regarding the Department's leveraged SRF loan program will be provided in the Leveraged Loan Section of the SRF Procedures Manual.

Stat. Auth.: ORS Ch. 468

Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;

~~[SPECIAL RESERVES
340-54-070]~~

||| The concept of the following text was a duplication of 340-54-025 (4)(b)(B).

~~[(1) Facility Planning Reserve. Each fiscal year, ten percent (10%) of the total available SRF will be set aside for loans for facility planning. However, if preliminary applications for facility planning representing ten percent (10%) of the available SRF are not approved, these funds may be allocated to other projects.]~~

||| The concept of the following text was a duplication of 340-54-025 (4)(b)(C).

~~[(2) Small Community Reserve:~~

- ~~(a) Each fiscal year, fifteen percent (15%) of the total available SRF will be set aside for loans to small communities. However, if preliminary applications from small communities representing fifteen percent (15%) of the available SRF are not received, these funds may be allocated to other public agencies;~~
- ~~(b) In order to be eligible for small communities reserve funds, the small community must receive a SRF Project Priority List ranking with at least thirty (30) Enforcement Water Quality Violation points (see OAR 340-54-025(4)(a)).~~

~~Stat. Auth.: ORS Ch. 468~~

~~Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;]~~

~~[LOAN LIMITATIONS—
340-54-075]~~

||| The following concept was duplicated in 340-54-025 (4)(a).

~~[(1)—Maximum Loan Amount. In any fiscal year, no public agency on the SRF Project Priority List may receive more than fifteen percent (15%) of the total available SRF. However, if the SRF funds are not otherwise allocated, a public agency may apply for more than fifteen percent (15%) of the available SRF, not to exceed the funds available in the SRF.]~~

||| The following concept was duplicated in 340-54-025 (1)(b)(C).

~~[(2)—Minimum Loan Amount. No SRF loan shall be approved if the total amount of the SRF loan is less than \$20,000.]~~

~~[Stat. Auth.: ORS Ch. 468~~

~~Hist.: DEQ 2-1989, f. & cert. ef. 3-10-89;]~~

**SRF Procedures Manual
340-54-080**

NEW SECTION. The committee was very sensitive to state stringency and uncomfortable with DEQ developing procedures that are given authority in rule without public input. The new proposed manual will initially contain the rule language to prevent an absence of documentation.

The State Revolving Fund (SRF) Procedures Manual shall be developed as a supplement to the SRF Loan Program. All documents in the SRF Procedures Manual shall

- (1) Be guidance documents except those given authority by state or federal requirements.**
- (2) Be no more stringent than federal or state requirements without a compelling reason to be more stringent.**
- (3) Go through a formal review process to:**
 - (a) Involve a document review committee which shall include representation from eligible SRF Applicants.**
 - (b) Provide an appropriate review period as determined by the Department.**
- (4) Be developed with consideration for the importance of coordinating SRF Procedures with those of other funding and regulatory agencies.**

**ATTACHMENT B
Process Documentation**

Chance to Comment

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

**Proposed Amendments to Water Pollution
Control Revolving Fund Program Rules**

Date Issued:	August 3, 1994
Public Hearings:	September 7, 1994
Comments Due:	September 13, 1994

**WHO IS
AFFECTED:**

Any state agency, incorporated city, county sanitary authority, service district, sanitary sewer district, metropolitan service district, or other district authorized or required to construct water pollution control facilities.

**WHAT IS
PROPOSED:**

The State Revolving Fund (SRF) was created by Congress through the Clean Water Act of 1987. It took the U.S. Environmental Protection Agency (EPA) out of the business of directly financing wastewater treatment projects and designated each state as the administrator and the entity to establish a perpetual revolving fund. In Oregon, the Department of Environmental Quality is the administrator of the Water Pollution Control Revolving Fund (commonly called the State Revolving Fund) which receives five out of every six dollars through EPA grants, and the sixth dollar is state match.

The SRF Loan Program offers low cost loans for the planning, design and construction of water pollution control facilities, and for estuary management plans. Division 54 of the Oregon Administrative Rules encompass program operation, loan eligibility and project selection.

The proposed rule changes ensure that the SRF continues to be an effective, efficient and equitable tool for protecting the quality of Oregon's waters.



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.

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Chance to Comment (Continued)

WHAT ARE THE HIGHLIGHTS:

Proposed revisions respond to complaints that the method used to select projects to receive low cost SRF loans favors large communities, does not reward communities that are working hard to correct water quality problems and that it does not consider community or project affordability.

The Advisory Committee reaffirmed that the primary goal of the fund is to correct water quality problems regardless of the size of the community. However, the difficulties encountered by communities that are under multiple environmental mandates and the affordability of a project that corrects water quality problems are important to consider during project selection. This is exemplified in the proposed rule used to prioritize projects to receive available SRF loans by:

- Reassigning points given to projects for addressing Receiving Waterbody Sensitivity (50 points maximum); and to projects that respond to Enforcement Activities and Water Quality Violations (30 points maximum).
- Adding an Affordability category to address community and project affordability (20 points maximum).
- Leaving the Population category unchanged (12 points maximum).

The proposed Division 54 rule was also reorganized and edited to simplify the rule and improve readability. Detail more appropriate for the SRF Procedures Manual was removed from rule. The Attorney General's guidance on rulemaking is reflected in the proposal and the reviews of the rule meets the Periodic Review Requirements.

The dollar demand for low cost SRF loans has been five times that of available funds. The proposed rule incorporates legislation (passed during the 1993 session amending ORS 468.423 to 468.440) that enables the DEQ to increase the volume of low cost loans that can be made to communities for wastewater treatment projects each year by selling General Obligation bonds which will "leverage" the State Revolving Fund. The legislative change allows money in the State Revolving Fund to be used to repay any bond issues sold to leverage the fund.

Chance to Comment (Continued)

**HOW TO
COMMENT:**

Public Hearings to provide information and receive public comment are scheduled as follows:

Date: September 7, 1994
Time: 1:00 p.m.
Place: Room 3A
Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390

Written comments must be received by 5:00 p.m. on September 13, 1994 at the following address:

Department of Environmental Quality
Water Quality Division:WF
811 SW Sixth Avenue
Portland, Oregon, 97204-1390

The Proposed Rule is available for review between 8:00 a.m. and 5:00 p.m., Monday through Friday at the above address. A copy may be obtained from the Department by calling the Water Quality Division at (503) 229-6878 or calling Oregon toll free 1-800-452-4011. Persons with hearing impairment can receive help by calling DEQ's TDD number at (503) 229-6993.

**WHAT IS THE
NEXT STEP:**

The Department will evaluate comments received and will make a recommendation to the Environmental Quality Commission. Interested parties can request to be notified of the date the Commission will consider the matter by writing to the Department at the above address.

**ACCESSIBILITY
OF
INFORMATION**

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

Notice of Proposed Rulemaking Hearing

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality

Water Quality

OAD Chapter 340

DATE: TIME: LOCATION:

9/7/94 1:00 Room 3A

HEARINGS OFFICER(s): Martin Loring

STATUTORY AUTHORITY: HB 2070, 1993 Legislature; ORS 468.427; ORS 468.440; ORS 468.433 (5)

ADOPT:

AMEND: OAR 340 Division 54

REPEAL:

- This hearing notice is the initial notice given for this rulemaking action.
- This hearing was requested by interested persons after a previous rulemaking notice.
- Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY:

The demand for SRF loans exceeds existing funds by five to one. According to a 1992 study by EPA, Oregon's current municipal sewer needs total \$1.4 billion. The proposed amendments place into rule (OAR Division 54) legislation passed during the 1993 session which enables DEQ to increase the volume of low cost loans that can be made to communities for sewer construction projects each year by "leveraging" the State Revolving Fund. It allows money in the fund to be used to repay the proceeds of state general obligation bonds advanced to the fund to finance sewer projects.

Each year the Department receives complaints that the way projects are scored for prioritization is inequitable. The proposed amendments reassigns the weight given to projects that address Receiving Waterbody Sensitivity, and Enforcement Activities and Water Quality Violations in response to this criticism. They also include the following new categories: Exemplary Facility Operations, Commitment to Water Quality Enhancement, Special Programs, and Affordability. The Population category was unchanged.

There were complaints from program staff, loan applicants and borrowers that the rules were fragmented and difficult to read. Division 54 was reorganized and edited to simplify the rule and improve readability. Detail more appropriate for a guidance manual was transferred into the SRF Procedures Manual that is currently being developed. The Attorney General's guidance on rulemaking was considered and a number of editorial changes were made. The review of the rule met Periodic Review Requirements.

Attachment B, Page 1

Notice of Proposed Rulemaking Hearing (Continued)

LAST DATE FOR COMMENT: September 13, 1994

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

AGENCY RULES COORDINATOR: Chris Rich, (503) 229-6775

AGENCY CONTACT FOR THIS PROPOSAL: Margaret C. Breedlove (503) 229-6878
ADDRESS: Water Quality Division
811 SW Sixth Avenue
Portland, Oregon 97204

TELEPHONE: (503) 229-6878
or Toll Free 1-800-452-4011

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.

Margaret C. Breedlove
Signature

July 16, 1994
Date

Attachment B, Page 2

Rulemaking Statement

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Amendments to Water Pollution Control Revolving Fund Program Rules

Rulemaking Statements

Pursuant to ORS 183.335(7), this statement provides information about the Environmental Quality Commission's intended action to adopt a rule.

1. Legal Authority

The State Revolving Fund (SRF) Loan Program was created by Congress through the Clean Water Act of 1987 (Public Law 100-4.) States were designated as the entity to receive EPA grants with which to create a permanent source of financing for water pollution control projects.

ORS Chapter 468.020 is the rulemaking authority of the Environmental Quality Commission. ORS 468.427 establishes the Water Pollution Control Revolving Fund (State Revolving Fund) and ORS 468.440 authorizes the Commission to adopt rules implementing the program to loan amounts in the State Revolving Fund to public agencies. ORS Chapter 468.433 (5) establishes the Department of Environmental Quality as the administrator of the State Revolving Fund Loan Program.

2. Need for the Rule

NEED: The demand for SRF loans exceeds existing funds by five to one. According to a 1992 study by EPA, Oregon's current municipal sewer needs total \$1.4 billion.

This action will incorporate legislation passed during the 1993 session which amended ORS 468.423 to 468.440 into Division 54 of the Oregon Administrative Rules. It enables DEQ to increase the volume of low cost loans that can be made to communities for sewer construction projects each year by "leveraging" the State Revolving Fund. It provides a means to minimize the interest rate charged to local governments. It allows money in the fund to be used to repay the proceeds of state general obligation bonds advanced to finance sewer projects. While protecting the state's credit, it allows the SRF program to become self sufficient (without any

Attachment C, Page 1

Rulemaking Statement (Continued)

support from the general fund) after federal funds provided to pay administrative expenses have been exhausted.

NEED: Each year the Department receives complaints that the way projects are scored for prioritization is inequitable.

This action reassigns the weight given to projects that address Receiving Waterbody Sensitivity; and Enforcement Activities and Water Quality Violations. It includes the following new categories: Exemplary Facility Operations, Commitment to Water Quality Enhancement, Special Programs, and Affordability. The Population category was unchanged.

NEED: There have been complaints from program staff, loan applicants and borrowers that the rules are fragmented and difficult to read.

Division 54 was edited and reorganized to simplify the rule and improve readability. Detail more appropriate for a guidance manual was eliminated. Suggested changes have been prepared to follow the Attorney General's guidance on rulemaking and meet the Periodic Review Requirements.

3. Principal Documents Relied Upon in this Rulemaking

Title VI of the Clean Water Act - State Water Pollution Control Revolving Funds, EPA's Initial Guidance for State Revolving Funds and Title VI - Questions and Answers, and the 40 CFR Part 35 -State Revolving Fund Program Implementation Regulations - Subpart K--State Water Pollution Control Revolving Funds were the principal sources of published information. The documents are available for review at the Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204.

4. Advisory Committee Involvement

Division 54 rule went through three internal reviews and one topic review on project scoring prior to convening the Advisory Committee. There will be four to six Advisory Committee meetings beginning on July 20 and ending August 19, 1994 when their formal recommendation is due.

The Advisory Committee was selected from interested parties from around the state. The thirteen members represent large and small communities; special districts and tribal governments; ground and surface water perspectives; point and nonpoint source perspectives; and special need areas (e.g. shell fish producing estuaries, wild and scenic rivers, water quality limited streams, outstanding resource waters, and communities participating in the Department's Environmental Partners for Oregon Communities initiative.)

Attachment C, Page 2.

Fiscal and Economic Impact Statement

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal for

Proposed Amendments to Water Pollution Control Revolving Fund Program Rules

Fiscal and Economic Impact Statement

Introduction

The proposed rule amendment will make it possible to increase the State Revolving Fund (SRF) monies available to fund loans for wastewater pollution control facilities. The SRF Loan Program will continue to offer low cost loans that fund affordable sewer system construction for communities. The infusion of low-cost loans to expand and improve facilities will support economic development.

General Public

The general public may have lower sewer rates through low interest financing of sewer construction.

Small Business

The overall impact of the rule should be beneficial to small business. As users of municipal sewer services, they may have lower sewer rates through the use of low interest monies by the municipality. Small business may be involved in development of wastewater pollution control facilities and the improved facilities will support economic development within the community.

Large Business

Large business may also experience lower sewer rates through the use of low interest monies by the municipality. They may be involved in the development of the facilities. Large business will benefit from the increased economic development opportunities that are available with wastewater facility expansion or improvement.

Local Governments

Local governments will have lower long-term debt service costs with low interest rate loans and they will be able to offer lower sewer rates to the users. There will be economic

Attachment D, Page 1

Fiscal and Economic Impact Statement (Continued)

benefits of increased development made possible through affordable sewer system construction.

State Agencies

DEQ - An increase in the volume and complexity of loans is expected to impose greater accounting and monitoring duties. The Department has sufficient staff resources to absorb the extra workload.

Debt service will increase if the Department issues bonds at twice (or other ratios) the amount of the Federal Capitalization Grants used as security for bonds (for example, selling \$27 million based upon the 1994 grant of \$13.7 million.) Since loan repayments and interest earnings on the security account will be used for debt service on the bonds, there will be no additional costs to the Department or the borrowers.

Attachment D, Page 2

Land Use Evaluation Statement

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for

Proposed Amendments to Water Pollution Control Revolving Fund Program Rules

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The demand for SRF loans far exceeds existing funds. According to a 1992 study by EPA, Oregon's current municipal sewer needs total \$1.4 billion.

The primary need for this action is to incorporate legislation passed during the 1993 session which amended ORS 468.423 to 468.440 into Division 54 of the Oregon Administrative Rules. The legislation enables DEQ to increase the volume of low cost loans that can be made to communities for sewer construction projects each year by "leveraging" the State Revolving Fund. It provides a means to minimize the interest rate charged to local governments. It allows money in the fund to be used to repay the proceeds of state general obligation bonds advanced to finance sewer projects. While protecting the state's credit, it allows the SRF program to become self sufficient (without any support from the general fund) after federal funds provided to pay administrative expenses have been exhausted.

Each year the Department receives complaints that the current rules do not allow equitable project selection for available SRF loans. The rules are being changed to make them more equitable.

Division 54 was edited and reorganized to simplify the rule and improve readability. Detail more appropriate for a guidance manual was eliminated. Proposed amendments have been prepared to follow the Attorney General's guidance on rulemaking.

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

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

Attachment E, Page 1

Land Use Evaluation Statement (Continued)

The rules govern the administration of the State Revolving Fund Loan Program. Approval for loans to a municipal corporation is defined as a "program affecting land use" in the DEQ State Agency Coordination Program, OAR 340-18-030 (5) (c).

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

Yes No (if no, explain):

The proposed rule amendments make changes to a program affecting land use. SRF loans reduce the costs for local governments building sewage treatment works pursuant to Statewide Goal Number 11 - Public Facilities and Services. The way in which projects are selected to receive available loan funds will be affected by the proposed amendments. The terms and conditions under which those approvals are made are also affected.

Land use compatibility for this program is assured by requiring each applicant for financial assistance to provide a land use compatibility statement from each affected local government for the project prior to loan approval. The requirement will continue under the amended rule. The amendments do not constitute a program affecting land use.

The increased volume of loans made available through "leveraging" may increase the volume of activity in local jurisdictions filing land use compatibility statements. However, it will not affect how these statements are handled.

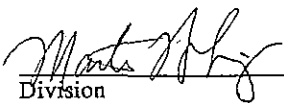
- c. If no, apply the following criteria to the proposed rules.

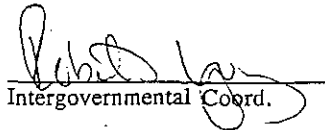
Not applicable.

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. The SRF program is subject to existing land use compliance and compatibility procedures.


Division


Intergovernmental Coord.

7/12/94
Date

Attachment E, Page 2

Stringency

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

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

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

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

Yes, Title VI of the Clean Water Act - State Water Pollution Control Revolving Funds, EPA's Initial Guidance for State Revolving Funds and Title VI - Questions and Answers, and the 40 CFR Part 35 -State Revolving Fund Program Implementation Regulations - Subpart K--State Water Pollution Control Revolving Funds.

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

Federal requirements are performance based.

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?*

This question is not directly applicable to the SRF.

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?*

The rule has been clarified. However, this question is not applicable to the SRF.

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

This question is not applicable.

Attachment F, Page 1

Stringency (Continued)

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

Yes.

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

The intent of the proposed rule is to provide loans at interest rates lower than the market can offer for the planning, design and construction of water pollution control facilities in a more equitable manner than the existing rule.

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

The proposed changes to the state rules are not more stringent than the federal requirements.

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?*

The proposed rule is within the procedural, reporting or monitoring requirements of the applicable federal requirements.

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

Not applicable other than the fact that other states leverage their SRF and legislation passed during the 1993 session enables DEQ to leverage Oregon's SRF.

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

Leveraging the SRF will allow more communities to borrow low cost funds to correct water quality problems.

Attachment F, Page 2

Rule Implementation

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Amendments to Water Pollution Control Revolving Fund Program Rules

Rule Implementation Plan

Summary of the Proposed Rule

The State Revolving Fund (SRF) Loan Program offers low cost loans to communities for the planning, design and construction of water pollution control facilities, and for estuary management plans. Division 54 of the Oregon Administrative Rules provides guidance for program operation, loan eligibility and project selection. These rules have been rewritten to ensure that the SRF continues to be an effective, efficient and equitable tool for protecting the quality of Oregon's waters.

The proposed revisions incorporate legislation passed during the 1993 session which amended ORS 468.423 to 468.440, enabling the DEQ to increase the volume of low cost loans that can be made to communities for sewer construction projects each year by selling General Obligation bonds which will "leverage" the State Revolving Fund. The resulting increase in loan funds will address the increasing demand for low cost loans for Oregon's sewer needs while continuing to minimize the interest rate charged to local governments. The legislative change allows money in the State Revolving Fund to be used to repay these bond issues.

Other rule revisions respond to complaints that the method used to score projects is inequitable. These revisions reassign the weight of the points given to projects for addressing Receiving Waterbody Sensitivity, and Enforcement Activities and Water Quality Violations. It adds the following new categories: Exemplary Facility Operations, Commitment to Water Quality Enhancement, Special Programs, and Affordability. The Population category was unchanged.

Division 54 was also reorganized and edited to simplify the rule and improve readability. Detail more appropriate for a guidance manual was eliminated. The Attorney General's guidance on rulemaking is reflected in the changes to Division 54 rules. The review of these rules meets the Periodic Review Requirements.

Rule Implementation (Continued)

Proposed Effective Date of the Rule

The new rules will take effect on December 1, 1994, following adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

Proposal for Notification of Affected Persons

Changes made to the Division 54 rules will be included in the annual State Revolving Fund's Preliminary Application Packet which is mailed to all incorporated cities in Oregon, special districts, tribal governments, engineering firms, other agencies and special interest groups that are on the SRF list. The next application cycle begins during December 1994.

Proposed Implementing Actions

Implementation action impacting the regulated community will be negligible. Additional questions will be on applications for funding in order to assign points to the new categories. The language of the loan agreement will change to address loans funded by bond proceeds.

For DEQ's administrative staff, loan portfolio management and bond issue activities will increase with the increased volume and size of loans. The regions will experience an increase in associated engineering and project management activities. DEQ will rely increasingly on professional services such as financial advisors and bond counsel.

Proposed Training/Assistance Actions

SRF PROCEDURES MANUAL: SRF staff is involved in writing and reviewing topics that will be placed in the SRF Procedures Manual. This documentation will continue with or without this rulemaking package because subject experts have moved to the regions or transferred to other programs. This procedural information must be captured and documented while employee expertise is still accessible. These training and procedures documents will become primary resources for training and assistance of both the regional project management staff and administrative staff.

LEVERAGING: Leveraging has the potential of increasing administrative staff time by up to fifty percent. Guidance will be provided through the SRF Procedures Manual and the corresponding loan documents and their instructions. Project Officers will assist the applicants and borrowers throughout the entire loan process. Administrative staff will be available to both the borrowers and the project officers for specialized information and assistance. Project officers will be informed on changes and implementation through the Project meetings and well as electronic memos and written documents.

ATTACHMENT C
Presiding Officer's Report

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 8, 1994

To: Environmental Quality Commission
From: Martin Loring
Subject: Presiding Officers Report for Rulemaking Hearing

Date: September 7, 1994
Time: 1:00 pm
Place: DEQ
811 S.W. Sixth Avenue
Room 3A
Portland, OR 97204

Title: Proposed Amendments to Water Pollution
Control Revolving Fund Program Rules

The rulemaking hearing on the amendments to the State Revolving Fund was convened at 1:00. A witness registration form was available and all notices were posted. No one was in attendance. No one signed up to give testimony and therefore, no oral or written testimony was presented. The hearing was closed at 2:00 pm.

ATTACHMENT D

Rule Implementation Plan

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Amendments to Water Pollution Control Revolving Fund Program Rules

Rule Implementation Plan

Summary of the Proposed Rule

The State Revolving Fund (SRF) Loan Program offers low cost loans to communities for the planning, design and construction of water pollution control facilities, and for estuary management plans. Division 54 of the Oregon Administrative Rules provides guidance for program operation, loan eligibility and project selection. These rules have been rewritten to ensure that the SRF continues to be an effective, efficient and equitable tool for protecting the quality of Oregon's waters.

The proposed revisions incorporate legislation passed during the 1993 session which amended ORS 468.423 to 468.440, enabling the DEQ to increase the volume of low cost loans that can be made to communities for sewer construction projects each year by selling General Obligation bonds which will "leverage" the State Revolving Fund. The resulting increase in loan funds will address the increasing demand for low cost loans for Oregon's sewer needs while continuing to minimize the interest rate charged to local governments. The legislative change allows money in the State Revolving Fund to be used to repay these bond issues.

Other rule revisions respond to complaints that the method used to score projects is inequitable. These revisions reassign the weight of the points given to projects for addressing Receiving Waterbody Sensitivity, and Enforcement Activities and Water Quality Violations. It adds the Affordability as a new category and limits the Population category to a maximum of 10 points.

Division 54 was also reorganized and edited to simplify the rule and improve readability. Detail more appropriate for a guidance manual was eliminated. The Attorney General's guidance on rulemaking is reflected in the changes to Division 54 rules. The review of these rules meets the Periodic Review Requirements.

Rule Implementation (Continued)

Proposed Effective Date of the Rule

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LEVERAGING: Leveraging has the potential of increasing administrative staff time by up to fifty percent. Guidance will be provided through the SRF Procedures Manual and the corresponding loan documents and their instructions. Project Officers will assist the applicants and borrowers throughout the entire loan process. Administrative staff will be available to both the borrowers and the project officers for specialized information and assistance. Project officers will be informed on changes and implementation through the Project meetings and well as electronic memos and written documents.

ATTACHMENT E
SRF Eligibility - Public Agency

Current statutes and rules limit SRF eligibility to "public agency" which does not include Indian tribes. During the Advisory Committee process, EPA informed the State that a recent Office of General Counsel opinion concludes that Indian tribes must be eligible to borrow from the State Revolving Fund. The SRF Advisory Committee strongly recommends that the SRF includes federally recognized Indian tribes as eligible borrowers. Representatives of the Department of Justice are of the opinion that the current definition does not include tribes. The easiest way to make this change would be to make a statutory change to change the definition of "public agency" for SRF program use only.

468.423 Definitions for ORS 468.423 to 468.440

As used in ORS 468.423 to 468.440: ... (5) "Public agency" means any state agency, incorporated city, county, sanitary authority, county service district, sanitary district, metropolitan service district or other special district authorized or required to construct water pollution control facilities.

468.429 Uses of revolving fund.

- (1) The Department of Environmental Quality shall use the moneys in the Water Pollution Control Revolving Fund to provide financial assistance:
- (a) To public agencies for the construction or replacement of treatment works.
 - (b) For the implementation of a management program established under section 319 of the federal Water Quality Act of 1986 relating to the management of nonpoint sources of pollution.
 - (c) For development and implementation of a conservation and management plan under section 320 of the federal Water Quality Act of 1986 relating to the national estuary program.

The Clean Water Act

SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

... (c) **PROJECTS ELIGIBLE FOR ASSISTANCE.**--The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate, or State agency for construction of publicly owned treatment works (as defined in section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and (3) for development and implementation of a conservation and management plan under section 320 of this Act. ...

40 CFR 35.3115

Eligible activities of the SRF.

...to provide loans and other authorized forms of financial assistance:

- (a) To municipalities, intermunicipal, interstate, or State agencies for the construction of publicly owned wastewater treatment works as these are defined in section 212 of the Act and that appear on the State's priority list developed pursuant to section 216 of the Act; ...

33 USC Sec. 1362
TITLE 33
CHAPTER 26
SUBCHAPTER V
Sec. 1362. Definitions
STATUTE

Except as otherwise specifically provided, when used in this chapter:

(4) The term 'municipality' means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an *Indian tribe or an authorized Indian tribal organization*, or a designated and approved management agency under section 1288 of this title.

ATTACHMENT F
Advisory Committee Members and Reports

Advisory Committee Members

Andy Anderson, Executive Vice President - Oregon Farm Bureau Federation
Rob Edmiston, Dain Bosworth, Inc.
Chris Gannon, Water and Soil - Confederated Tribes of Warm Springs
Mike Kennedy, Natural Resources Manager
Confederated Tribes of Siletz Indians
Roger Jordan, **CHAIR**, City Manager - City of Dallas
Jim Krueger, Finance Director - Bear Creek Valley Sanitary Authority
Jim Landon, City Manager - City of Toledo
Joni Low, League of Oregon Cities
Jerry W. Overgard, Mid-Willamette Valley C.O.G.
Duane Peterson, Financial Analyst
Bureau of Environmental Services - City of Portland
Donald Schut, Director of Public Works - City of McMinnville - O.A.C.W.A.
Mike Walker, Public Works Director - City of Sandy
Gordon Zimmerman, City Manager - City of Nyssa

Department Advisors

Barrett MacDougall - DEQ
Harvey Rogers - Preston Thorgrimson Shidler Gates & Ellis
David Taylor - Seattle Northwest

July 20-21, 1994

SRF Advisory Committee

Main Point Summary

Meeting Date: July 20th-21st, 1994

Committee Members Present:

Andy Anderson
Rob Edmiston
Chris Gannon
Roger Jordan
Mike Kennedy
Jim Krueger
Jim Landon
Joni Low
Jerry Overgard
Don Schut

Resource Persons Present:

Maggie Breedlove
Robin Cross
Bob Drake
Peggy Halferty
Mike Holley
Martin Loring
Cathy Phillips
Harvey Rodgers
David Taylor

Staff Tasks:

The staff was asked to prepare documents on the following subjects:

- Leveraging
- State stringency
- 3-year point comparison of all categories, including a maximum limit on the 10% facility plan reserve.

Committee Member's Tasks:

- Read the drafted rules
- Prepare comments & suggestions

Responses Welcome:

If you would like an item added to the Staff Tasks section, or if you have concerns about this summary, please let us know. Thanks, DEQ staff.

ISSUES DISCUSSED

Topic A: Demand Exceeds Need

1. Leveraging

DISCUSSION: The option of leveraging was discussed as a method to help compensate for a lack of future federal funding. Relying only on current principal, available funds from SRF could be cut in half. Leveraging would allow the DEQ to use the SRF as collateral against which to borrow. Hence, more funds would be available to communities. There were a number of issues presented.

PROS:

- A wastewater dollar spent today is worth more than a wastewater dollar spent ten years from now.
- Leveraging in the short term would increase the available dollars.

CONS:

- Leveraging would cost more to administer. To assure the perpetuity of the SRF, the DEQ would be obligated to charge a slightly higher interest rate on leveraged loans.
- Leveraged dollars come under the auspices of the Internal Revenue Service. Such rules and regulations would be more stringent than those currently imposed by EPA.

Page 1: Please contact DEQ staff with any concerns.

July 20-21, 1994 (Continued)

ACTION: Staff was requested to prepare a position paper on leveraging.

2. Implications of Measure 5

Yes, Measure 5 may change the face of Oregon's sanitary sewer system. The committee moved toward general agreement that trying to second-guess the measure was not consistent with the goals of the committee.

3. Reserves

DISCUSSION: The committee expressed concern about the ability of a single community to drain the entire 10% facility plan reserve.

SUGGESTION: Would a cap of \$500,000 prevent inequity without under-funding a facility plan?

ACTION: Staff was asked to create a document exploring how a cap would have affected past projects.

4. Loan Increases

DISCUSSION: The committee expressed concerns about the fairness of providing more money to a project without formally reapplying process. Does this allow "in-the-system" projects unfair access to SRF funds? Also, would such a policy cause projects to underestimate their costs?

CONCLUSION: The committee generally agreed that assuring project completion was an important goal. The committee was reassured by the DEQ that all projects are overseen by a project officer, and that no funding is provided for work outside the project's original scope.

5. Continuous vs. Annual Funding Cycle

SUGGESTION: The committee discussed the possible advantages of a continuous or biennial funding cycle. Such cycles might allow the DEQ to allocate funds with more efficiency and flexibility. As well, alternative loan cycles may help the DEQ coordinate with other funding

agencies.

CONCLUSION: The new rules should not prevent the DEQ from moving to an alternative loan cycle in the future.

Topic B: Scoring Fairness

Staff added and revised a number of categories in response to complaints that the scoring system ranked projects unfairly.

VOTE: The committee voted unanimously to remove categories 2, 3, & 5 as not congruent with the DEQ's goals of enhancing and enforcing water quality.

Category 1) Receiving Water Body Sensitivity

SUGGESTION: The committee confirmed that severity was a main concern, and suggested that endangered aquatic species, i.e. fish, be included in this category.

ACTION: This category was retained. Staff will add endangered aquatic species to the scoring system.

Category 2) Exemplary Facility Operations

DISCUSSION: The committee expressed concern that not all communities will have the funds and staffing necessary to qualify as exemplary. Hence, an exemplary operations category would work against the communities most in need of assistance.

ACTION: This category was removed by a unanimous vote.

Category 3) Commitment to Water Quality Enhancement

DISCUSSION: Defining and monitoring such commitment would be subjective. A lack of commitment on the part of the community may simply reflect a lack of resources.

Page 2: Please contact DEQ staff with any concerns.

July 20-21, 1994 (Continued)

ACTION: This category was removed by a unanimous vote.

Category 4) Enforcement Activities & Water Quality Violations

DISCUSSION: Despite criticism that the SRF rewards non-compliance, the committee expressed the opinion that SRF monies should accompany enforcement activities to correct violations.

ACTION: This category was retained as it appears in the drafted rules. Staff will include this category in the 3-year point comparison.

Category 5) Special Programs

DISCUSSION: Currently, special environmental programs are limited in scope. Many programs serve only a few communities each year. The programs themselves do not all deal directly with water quality issues. Hence, to reward communities for participation in special programs would be random, and out of line with SRF's objective to improve water quality.

NOTE: The issue of multiple environmental mandates was moved by the committee to category 6.

VOTE: This category was removed by a unanimous vote.

Category 6) Affordability

Affordability was added to the point system to help take into account the following:

- Economic demands on a community other than the proposed SRF project.
- Communities with a small tax-base.
- Communities already paying relatively high sewer rates.
- Communities with limited access to alternative funding sources.

SUGGESTION: Because multiple environmental mandates put a strain on a community's ability

to meet wastewater requirements, this category should possibly be included under affordability.

DISCUSSION: The committee expressed a need for SRF to make accommodations for communities with economic stresses other than wastewater compliance, i.e. over-all debt-load, or multiple environmental mandates. Some committee members expressed concerns that such accommodations would support community activities not relevant to the environment.

ACTION: Multiple environmental mandates will be considered in the point analysis as well as some indication of the community's "burden for the common good."

Category 7) Population

DISCUSSION: Members of the committee expressed concern that population would play too large a role in project eligibility when improving water quality is the issue. Because of the calculation, however, population points range roughly from 2-12 and in most cases act as a tie breaker.

ACTION: This category was retained as it appears in the drafted rules. Staff will include this category in the 3-year point comparison.

Suggested Category: Ready to Proceed Status

SUGGESTION: The committee suggested that a point category should be created for projects that are ready to proceed. This would assure that funds stay active within the community, rather than waiting for project initiation.

DISCUSSION: While a ready to proceed category might help keep funds active, it could potentially put communities in a catch-22 position. Because communities can not proceed without committed funding sources, most projects would not qualify for these points. The drafted rules already state that, "The Department can remove projects from the project priority list if the department determines that the project is not ready to

Page 3: Please contact DEQ staff with any concerns.

July 20-21, 1994 (Continued)

proceed in the preliminary application process." Such a stipulation assures that funds will not be committed years in advance.

CONCLUSION: The committee generally agreed that a new point category would not be the best way to monitor projects that are not ready to proceed.

Topic C: Rules Difficult To Use/Read

1. Do they make sense?

The staff has tried to make the rules easier to read and use, by removing unnecessary jargon, streamlining topics, and creating parallel structure.

ACTION: The committee will review the drafted rules, noting any unclear words or sentences.

2. Coordination with other programs

Where possible the drafted rules have been opened up to give the department the flexibility to coordinate with other agencies.

ACTION: The DEQ is currently working with other state and federal agencies to coordinate and streamline paperwork. This coordination will take place in procedure, rather than rule.

3. Stringency

BACKGROUND: Because the SRF was created by Congress through the Clean Water Act of 1987, the DEQ must enforce federal requirements. Points in the drafted rules that exceed federal stringency levels must be documented and justified by DEQ.

DISCUSSION: The committee was in general agreement that the drafted rules should allow as much flexibility to SRF program as possible. During the three reviews within the DEQ, staff had reviewed for stringency and had loosened constricting language where possible.

ACTION: Staff was requested to prepare a document citing where the State is more stringent than federal requirements.

Page 4: *Please contact DEQ staff with any concerns.*

August 9-10, 1994

SRF Advisory Committee Meeting

Main Point Summary

Meeting Date: August 9th-10th, 1994

Committee Members Present:

Rob Edmiston
Chris Gannon
Roger Jordan
Mike Kennedy
Jim Krueger
Joni Low
Jerry Overgard
Duane Peterson
Don Schut
Mike Walker
Gordon Zimmerman

Resource Persons Present:

Maggie Breedlove
Robin Cross
Bob Drake
Kit Farber
Peggy Halferty
Mike Hooley
Martin Loring
Cathy Phillips
Harvey Rodgers
David Taylor

Time-line:

• Friday, August 12th

Staff distributes point summary, leveraging paper, and draft rules for advisory committee review.

• Monday, August 15th

Committee members fax final comments to DEQ.

• Tuesday, August 16th, 2:00 p.m.

Conference call from DEQ Headquarters involving all available advisory committee members.

• Friday, August 19th

Deadline for recommended rules.

Responses Welcome:

If you have concerns about this summary or would like an item added or changed, please let us know. Thanks, DEQ staff.

ISSUES DISCUSSED

Topic 1: Facility Planning Reserves

After some discussion, the committee agreed that:

- a facility planning reserve was necessary to get projects 'into the pipeline.'
- funding a few facility plans completely was better than funding many plans partially.
- \$400,000 would sufficiently fund the majority of facility plans.

ACTION: A \$400,000 facility planning maximum will be added for first-round fund allocation.

Topic 3: Water Body Sensitivity

POINT A: ENDANGERED AND THREATENED WILDLIFE AND PLANTS.

The committee agreed that the Endangered and Threatened Wildlife and Plants, as defined at state and federal level, was an acceptable measure to include in the Water Body Sensitivity category.

Page 1: Please contact DEQ staff with any concerns.

August 9-10, 1994 (Continued)

ACTION: Staff will include this criteria in the Receiving Water Body Sensitivity category.

POINT B: INTERSTATE RIVERS

The committee suggested that the Snake river be included with the Columbia as both are interstate rivers.

ACTION: Staff will add the Snake river to the criteria.

POINT C: TMDLS

Concern was expressed about the use of Total Maximum Daily Loads (TMDL) as a criteria when not all streams have been assessed. Staff described the 2-per year process and the bottleneck at the Department level. In conclusion, the committee decided that TMDL, though limited, was an important tool for establishing sensitivity.

Topic 4: Population

The committee suggested that population should be used only as a tie-breaker, with a maximum of 10 points possible.

ACTION: Staff will incorporate a 10 point maximum on the existing point criteria.

Topic 5: Affordability

POINT A: CENSUS DATA

It was suggested by the committee that Portland State University (P.S.U.) was a more accurate and current source of census data than the Oregon Blue Book.

ACTION: Staff will replace the Oregon Blue Book with P.S.U. census data when calculating affordability.

POINT B: SEWER-RATES

Staff described the challenge of finding dependable sewer-rates to use in the preapplication process. Committee suggested affordability should be retained as a point

criteria category, and that public agencies should be responsible for providing rate information in the preapplication process.

ACTION: The committee voted unanimously to retain affordability as a 10 point maximum category, with 7 and 10 points given to communities whose sewer rates are 1.5% and 1.75% of median house hold income respectively.

POINT C: MULTIPLE MANDATES

The committee discussed potential strategies to help communities faced with more than one of the 36 state and federal mandates. In conclusion, because most communities are faced with multiple mandates, such a category would not be an effective tool to identify need.

Topic 6: Stringency

No areas of the Proposed Rule were identified as more stringent than federal requirements. However, due to the present state of flux of the Title II requirements of the Clean Water Act, the committee suggested moving a number of areas from rule to the Procedures Manual.

Topic 7: SRF Procedures Manual

The SRF Procedures Manual will provide detailed guidance to help public agencies meet SRF program requirements. This manual will also allow the SRF program to keep current with changing program requirements.

ACTION: The committee voted unanimously that the Department will add to rule the steps listed below when creating or revising the procedures manual:

1. Any addition or revision must go through a formal review process, involving a review committee, and providing an appropriate review period as determined by the Department.
2. No areas shall be more stringent than federal

Page 2: Please contact DEQ staff with any concerns.

August 9-10, 1994 (Continued)

or state requirements.

3. Staff will coordinate, where possible, with other funding and regulatory agencies.

Topic 9: Definitions

POINT A: ALTERNATIVE TECHNOLOGY

The committee requested clarification on the definition of "Alternative Technology." Staff explained that because communities were responsible to repay SRF loans, regardless of the success of their system, only 'proven' alternatives should be included.

POINT B: HUMAN ENVIRONMENT

The definition of "Human Environment" was called into question. No satisfactory explanation was found.

POINT C: OPERATION AND MAINTENANCE

The committee pointed out that trouble-shooting was, by nature, included in operation and maintenance.

ACTION: Staff will eliminate "trouble shooting" from the definition of "Operation and Maintenance Manual."

POINT D: PUBLIC AGENCY

There were a number of questions regarding the definition of the word "Public Agency."

- Did "public agency" include Tribes?
- How is "p.a." defined at state level?
- Should Tribes be included in the Oregon's SRF, when they have access to a 1% federal SRF set-aside?

The committee agreed that the Tribes face challenges similar other cities and special districts. EPA's position is that Tribes cannot be excluded from the SRF program. State statute uses the word "public agency" which has a specific meaning in the state of Oregon.

ACTION: The committee strongly recommended that Tribes be included in the SRF program,

with the assumption that they would follow all SRF requirements. Staff will seek Opinion of Counsel and work on changing statutes regarding SRF eligibility to include Tribes.

POINT E: SMALL COMMUNITY

The committee suggested retaining the word "public agency" in the definition of "Small Community".

ACTION: Staff will return definition to original wording.

Topic 10: Citations

The committee expressed concern about citing section 208, 303(e), 319, and 320 of the Clean Water Act in light of the current state of flux at the federal level. In conclusion, it was agreed that these particular sections were fairly stable, and should remain in the rule.

Topic 11: Uses of the Fund

The committee requested clarification as to the future of the administrative fund. If the capitalization grant dries up, how will SRF be administered? Staff described how administration is currently supported by the 4% of the capitalization grant. The 1.5% initiation fee and the .5% annual servicing fee are being saved in a separate account, and will be drawn when the 4% is gone.

Topic 12: Preliminary Application Process

POINT A: TOWNS

The committee pointed out that in (1)(a) of this section, the word "towns" was not needed.

ACTION: Staff researched this topic after the meeting and found that the official heading in the Oregon Blue Book is "Incorporated Cities and Towns." Staff will retain the word "towns."

Page 3: Please contact DEQ staff with any concerns.

August 9-10, 1994 (Continued)

POINT B: \$20,000 MINIMUM REQUEST

The committee requested clarification as to why a \$20,000 minimum request had been added. Staff explained that the minimum existed previously and was moved to this section for clarity.

POINT C: MAXIMUMS

The question of maximum loan allocation was discussed at length. The committee expressed concerns regarding the following:

- With only a \$10 million corpus, would a 15% maximum adequately fund a project?
- Would a large maximum provide assistance to large and small communities, but leave out the middle?
- Would many small loans over-tax the Department's administrative staff?

ACTION: The committee weighed these concerns, and voted unanimously to have the maximum be the greater of 15% or \$2.5 million.

Topic 13: Final Application Process

The committee discussed the replacement reserves as described in (1)(c)(A). Did such a reserve require 100% cost recovery? Staff clarified that according to the definition of "Replacement," such a reserve must only assure the replacement and installation of equipment necessary for ongoing operation during the useful life of the facility. The committee felt that while the meaning was clear in the Definitions section, it was not clear in other sections.

ACTION: The committee voted unanimously to move the description of the user charge system to the procedures manual. Staff will clarify the meaning of "replacement reserves" throughout the Proposed Rule.

Topic 14: Environmental Review

POINT A: FNSIS

The committee discussed the Finding of No Significant Impact (FNSI) process. Why should the Department duplicate a process already carried out at the public agency level? In conclusion, it was determined that while only one Environmental Assessment would be used, each agency would be responsible for publishing their own FNSI.

ACTION: The FNSI process will remain the same, but whenever possible the Department will try to coordinate with other agencies to help cut red-tape and reduce duplication. See Procedures Manual this document.

POINT B: VALUE ENGINEERING

The value engineering section is associated with the Title II requirements of the Clean Water Act. For this reason, staff recommended that value engineering requirements should be described in the Procedures Manual, rather than rule.

ACTION: The specific value engineering requirements will appear in the Procedures Manual and not in rule.

Topic 15: Loan Approval and Review Criteria

POINT A: DAVIS-BACON ACT

The committee discussed the Davis-Bacon Act. This act is also part of the Title II requirements of the Clean Water Act. Because the state has similar wage-rate requirements, however, little can change in this area.

ACTION: The committee voted unanimously to modify the existing rules, without moving the Davis-Bacon requirements to the procedures manual. The modified rules will allow for either state or federal wage-rate requirements to apply at the Department's discretion.

Page 4: Please contact DEQ staff with any concerns.

August 9-10, 1994 (Continued)

POINT B: PROJECT PERFORMANCE CRITERIA
Another remnant of the grant program, the committee discussed moving the performance criteria section to the Procedures Manual.

ACTION: The committee voted unanimously to move this section to the manual.

POINT C: DECEMBER 31ST DEADLINE
The committee suggested that the December 31st deadline to submit audited financial statements was unnecessary and should be deleted all together.

ACTION: The committee voted unanimously to delete the December 31st deadline section from the rule.

Topic 16: Leveraging

ACTION: The committee requested that staff draft new rule language to allow the option of leveraging. Please see attached.

Page 5: *Please contact DEQ staff with any concerns.*

August 16, 1994

SRF Advisory Committee Meeting

Main Point Summary

Meeting Date: August 16th, 1994

Committee Members Present:

Rob Edmiston
Roger Jordan
Jim Krueger
Joni Low
Jerry Overgard
Duane Peterson

Staff Persons Present:

Maggie Breedlove
Robin Cross
Peggy Halferty
Mike Holley
Martin Loring
Cathy Phillips

Responses Welcome:

If you have concerns about this summary, Please let us know. Thanks, DEQ staff.

ISSUES DISCUSSED

TOPIC A: CHANGES

1. "Value Engineering"
(P. 5) Definition will be moved to the procedures manual
2. "Endangered & Endangered"
(P. 10) Receiving Water Body Sensitivity category. Wording will be changed to "Endangered and Threatened."
3. "Or Refund Loans"
(P. 28 (12)(b)) Wording will be deleted.
4. "Wage Rates"
(P. 22 (3)) Wording will be stated as "wage rates relating to construction".

TOPIC B: PROCEDURES MANUAL

DISCUSSION: The committee agreed unanimously to move the following sections to the procedures manual:

- Davis-Bacon Wage Rates
- Facility Planning
- Project Performance Criteria
- User Charge System
- Value Engineering

To ensure that these sections will continue to apply after the final publication of the rules, the committee agreed unanimously to transfer these sections verbatim to the procedures manual. Such action will allow time for a comprehensive manual to be drafted and reviewed in accordance with the agreed upon review process.

ACTION: The committee agreed unanimously to shift above sections verbatim to the procedures manual.

TOPIC C: ENVIRONMENTAL REVIEW

DISCUSSION: The committee pointed out that the Environmental Review section was subject to Title II requirements, and hence, subject to change at the federal level. In the interest of keeping the Environmental Review section up to date, the committee suggested that the section be moved to the procedures manual.

ACTION: Staff will move the Environmental Review section verbatim to the procedures manual.

Page 1: Please contact DEQ staff with any concerns.

August 16, 1994 (Continued)

TOPIC D: HEALTH DEPARTMENT ORDERS

DISCUSSION: The committee suggested adding language to the 10 point Enforcement category to include applicants under Health Division orders regarding filtration.

ACTION: Staff will incorporate this suggestion into the enforcement category.

TOPIC E: DISCRETIONARY LOANS

DISCUSSION: The committee suggested that the discretionary loan interest rate be moved to one half of the "state rate" (the state and local government bond interest rate).

ACTION: Staff will incorporate this suggestion into rule.

TOPIC F: FACILITY PLANNING LOANS

DISCUSSION: The committee suggested that the facility planning loan interest rate be moved to one half of the "state rate."

ACTION: Staff will incorporate this suggestion into rule.

TOPIC G: LEVERAGED LOAN INTEREST RATES

1. Interest Rates

DISCUSSION: The committee expressed concern that an interest rate 1.5% below market rate was not attractive after adding a .5% administrative fee.

- Was there a way to assure a "net" 1.5% below market rate?
- If the rate was too low, would it cause a leveraged SRF to erode more rapidly?

The point was raised that interest rates and administrative fees must be differentiated, hence "net" is not a usable term.

ACTION: The committee agreed unanimously to use the lesser of 200 basis points or 1/3 below the "state rate" (the state and local government bond interest rate).

2. Direct v. Leveraged Loan Rate

DISCUSSION: The committee addressed the possibility of creating a tiered rate system for direct loans and leveraged loans. After some discussion, the committee suggested that both direct and leveraged loans should be charged the same rate, and that discretionary and facility planning loans should continue to have their own rate regardless of leveraging.

ACTION: Staff will develop language to incorporate this suggestion into rule.

TOPIC H: RULE SCHEDULE

DISCUSSION: Staff described future plans for the revised rule:

- EPA and the Attorney General will provide legal and regulatory comments.
- A public hearing will be held on September 7th.
- The final rule package will be presented at the October 21st EQC meeting.

Page 2: Please contact DEQ staff with any concerns.

August 16, 1994 (Continued)

Committee Members,

The following is an amendment to the August 16th Advisory Committee Topic Summary. We appreciate the clarification. Please contact us with any further comments.

Thanks, from DEQ staff.

TOPIC D: HEALTH DEPARTMENT ORDERS

DISCUSSION: The committee suggested adding language to the 10 point Enforcement category to include applicants under Health Division orders regarding violation of drinking water quality standards. The committee suggested adding language to the 10 point Enforcement category to include applicants under Health Division orders regarding filtration.

ACTION: Staff will incorporate this suggestion into the enforcement category.

TOPIC E: DISCRETIONARY LOANS

DISCUSSION: The committee suggested that the discretionary loan interest rate be moved to one half of the "state rate" (the state and local government bond interest rate).

ACTION: Staff will incorporate this suggestion into rule.

TOPIC F: FACILITY PLANNING LOANS

DISCUSSION: The committee suggested that the facility planning loan interest rate be moved to one half of the "state rate."

ACTION: Staff will incorporate this suggestion into rule.

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ACTION: Staff will develop language to incorporate this suggestion into rule.

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Page 2: Please contact DEQ staff with any concerns.

Environmental Quality Commission

- Rule Adoption Item
- Action Item
- Information Item

Agenda Item G
October 21, 1994 Meeting

Title:

Technical Corrections to Modifications of On-Site Sewage Disposal Rules

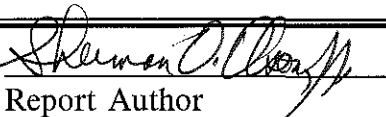
Summary:

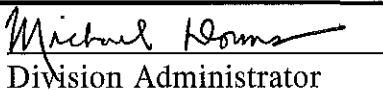
At the previous Commission meeting, on September 22nd, the Department presented a staff report requesting the adoption of amendments to the administrative rules establishing standards for the on-site sewage disposal program. You may recall, the project to update and modify these rules began with the appointment of a Technical Advisory Committee in June of 1993, to assist the Department in this effort. At the meeting last month several last minute revisions were recommended by the advisory committee and presented for consideration by the Commission. Additionally, the Commission was asked to consider several other changes to the proposed amendments during the discussion. The proposed rule package, including the Advisory Committee recommendations and the others recommended during the discussion, were adopted. Most of the changes were to become effective on April 1, 1995, while the rule establishing the Technical Advisory Committee and the rule granting the Director limited authority to consider and authorize use of innovative technologies, materials and designs are to become effective upon filing.

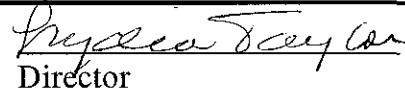
As the documents were being prepared for filing, several defects requiring correction were found. Also, we found that in another rule adoption item the Commission acted upon that day concerning revisions to the Water Quality permit fee schedule, most of the fees for domestic wastewater WPCF permit activities were removed from Division 45, with the amendments becoming effective on October 7. The two agenda items were to have been coordinated, however we have now found they were not. The WPCF activity fees contained in the on-site rules were not scheduled to become effective until April 1 of next year. Staff was instructed to correct the defects without making any substantive changes to the original amendments, but to also incorporate rule language to make the WPCF activity fees effective. The proposal before you today incorporates all the last minute additions presented and accepted at the September 22 meeting, the defects in the original package have been corrected, and the implementation date for WPCF activities has been moved up.

Department Recommendation:

The Department recommends that the Commission adopt the proposed rule amendments.


Report Author


Division Administrator


Director

October 14, 1994

MW\WC12\WC12301.5

†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 4, 1994

To: Environmental Quality Commission *J. Taylor*
From: Fred Hansen, Director *F. Hansen*
Subject: Agenda Item G, October 21, 1994, EQC Meeting

Technical Corrections to Modifications of On-Site Sewage Disposal Rules

Background

On May 10, 1994, the Director authorized the Water Quality Division to proceed to a rulemaking hearing on proposed rules which would update and modify the current on-site sewage disposal rules.

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 June 22.

Public Hearings were held as follows:

DATE:	TIME:	LOCATION:
July 22, 1994	3 pm	Portland
July 25, 1994	3 pm	Pendleton
July 26, 1994	3 pm	Bend
July 27, 1994	5 pm	Medford
July 28, 1994	3 pm	Springfield

Charles K. Ashbaker served as the Presiding Officer. The Presiding Officer's Report (Attachment C) summarizes the oral testimony presented at the hearings.

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

Memo To: Environmental Quality Commission
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Written comment was received through August 4, 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 were recommended by the Department. These modifications are summarized below and detailed in Attachment F.

At the Commission meeting on September 22, 1994, the Commission was presented a staff report (Agenda Item B, September 22, 1994 EQC Meeting) requesting adoption of proposed amendments to the on-site sewage disposal rules. On that date the Commission was also provided a supplement containing the recommendations of the Technical Advisory Committee (TAC) after their review of the proposed amendments contained within Attachment A of September 22 staff report. At that meeting the Commission listened to comments from staff and others recommending consideration of other modifications to the proposed amendments. After discussion, the Commission adopted the proposed amendments within Attachment A of that report, as modified by recommendations from staff and the TAC. The rules pertaining to the formation of the Technical Advisory Committee and the authority granted the Director to approve use of new or innovative technologies, materials and designs were to become effective upon filing. All other rule amendments would become effective on April 1, 1995, unless otherwise specified within the individual rules.

As the documents were being prepared for filing with the Secretary of State, several defects requiring correction were found in the rule package adopted by the Commission on the 22nd of September. It was also found that in another rule adoption item the Commission acted upon at the September 22 meeting (Agenda Item C, concerning revisions to Water Quality permit fees for industrial and agricultural wastewater facilities), most fees for domestic wastewater WPCF permit activities were removed from the fee schedule contained within OAR 340-45-075. Those amendments became effective on October 7, 1994 (the date the amendments were received by the Secretary of State's office) Although it was intended that those changes would be consistent with the WPCF permit rule additions to the on-site rule package, the differences in effective dates has caused some concern with respect to WPCF permit fees. Attachment A of this report incorporates all the amendments authorized previously by the Commission at the September 22 EQC meeting, corrections of the defects, and a change in the implementation date for the fee rule containing the WPCF permit fees.

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

Issue this Proposed Rulemaking Action is Intended to Address

The on-site sewage disposal rules found in OAR Chapter 340, Divisions 71 and 73 are quite out of date. In addition, they are very prescriptive and leave the Department with very little latitude and ability to utilize new technology. In addition, many of the alternative systems allowed by the rules require operation and maintenance in order to work properly. With the construction permit procedures in the rules, there is no good way for the Department to assure that the proper operation and maintenance will actually occur. Rules which affect the on-site program are scattered through several Divisions of Chapter 340. For example, surety bond requirements are found in Division 15, WPCF permitting procedures are found in Divisions 14 and 45, and certain plan review procedures are found in Division 52. Those rules pertaining to on-site disposal systems have been extracted from these other Divisions and put into Division 71, along with other on-site sewage disposal rules.

Relationship to Federal and Adjacent State Rules

Except for large on-site sewage disposal systems which the EPA has classified as Class V Wells under the Underground Injection Control Program, the federal government has no rules or permitting requirements. Therefore, Oregon is more stringent than the federal government in this program. Since this is a program over which the federal government has little regulatory authority, the proposed rule changes have no effect on current federal rules or programs. Please see Attachment F.

Authority to Address the Issue

Under both ORS 454 and 468, the Commission has authority to adopt rules for on-site sewage disposal systems. In fact, ORS 454.615 mandates that the EQC adopt on-site disposal requirements and standards by rule. ORS 454.780 requires the Commission to adopt rules regulating recirculating sand filters or variations thereof. Those rules are included in this package.

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

The Director appointed a Technical Advisory Committee (TAC) to review the on-site sewage rules and to make recommendations to the Commission for changes. The first TAC meeting was June 23, 1993. The TAC met almost monthly for twelve months. In addition, two subcommittees were formed which met independently once or twice per month during the same time period. Arno Denecke was the original TAC Chair. After his death, Gail Achterman became the TAC Chair. The committee included agency staff, county staff, on-site consultants, and an on-site system installer. The members of the TAC are listed on Attachment G.

Each of the subcommittees would bring recommendations to the full committee. The Chair would try to achieve consensus on each issue before carrying it forward into a formal recommendation.

In addition, there have been a varied number of proposals which were submitted by equipment vendors, consultants, contract counties, and members of the TAC. For some of these, consensus could not be achieved and the proposals are not being proposed as rules. Only those rules which could receive a reasonable degree of consensus are brought forward at this time.

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

A complete summary of the proposed changes to the on-site sewage disposal rules is attached as Attachment F. In short, there were many "housekeeping" changes proposed. In addition, there are many substantive issues proposed. Some of the substantive changes are as follows:

- (1) The rules expand the list of facilities which will require a renewable Water Pollution Control Facilities (WPCF) permit.
- (2) The rules establish the use of an on-going Technical Review Committee to assist the Department in evaluating new technology and program direction.
- (3) The rules give the Department more flexibility in waiving site evaluations and pre-cover inspections.

- (4) In order to have all applicable rules in one Division, portions of Divisions 14, 15, 45, and 52 have been extracted and put in Division 71.
- (5) Specific rules for construction of recirculating filters have been added as required by ORS 454.780.
- (6) The specifications for sand filters have been changed to make it possible to use sands which are more readily available.
- (7) All persons involved in the installation of on-site sewage disposal systems will be required to demonstrate their knowledge of on-site rules by passing an examination. This will be required every 5 years.
- (8) A mechanism has been established for approval of materials alternative to standard aggregate for disposal trenches.
- (9) The septic tank specifications found in Division 73 have been upgraded to require risers and effluent filters. Also larger tanks will be required for larger homes.

Summary of Significant Public Comment and Changes Proposed in Response

Several commented on the proposal to require a larger septic tank for homes with more than three bedrooms. The Department has reconsidered that proposal and has abandoned that proposal.

Several commented on the proposal to require effluent filters on septic tanks. The Department has re-evaluated that proposal and has eliminated the requirement for effluent filter for single family residences. Only commercial facilities will be required to have the effluent filters.

Several commented on the requirement to install risers from the septic tank to the surface of the ground. Some were for it and some were against it. The Department has retained the requirement in the rules. However, the size of the riser was changed to accommodate the design of some existing tanks.

Many commented on the requirement for on-site sewage disposal licensees to pass an examination prior to getting licensed. Most were in favor of the proposal. However, they requested that mandatory attendance at a training session would be more appropriate than the examination. The Department has added to the rules the option of training session attendance as an alternative to the examination.

Some commented on the added number of facilities which would require WPCF permits. They were concerned about the long and expensive permitting process. The Department is also concerned and intends to issue several "general" permits for these facilities in order to reduce the permitting time and cost. The implementation date for most of the has been postponed in order for the Department to have time to issue those general permits.

Several objected to the water tightness test required of septic tanks after installation. Because of the importance of septic tank integrity, the water tightness test will remain in the rule. However, where there are site limitations which would preclude a test, the Agent may waive the requirement.

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

The on-site sewage disposal program is an on-going program implemented by the Department and its agents (local Governments). Those persons involved in the program will be informed of the changes. Installers will have until July 1, 1996, to pass the test or attend a department approved class in order to become licensed at that time. Most of the rule changes will not become effective until April 1, 1995, in order for the general permits to be issued and design changes to be implemented.

It will be necessary to re-negotiate agreements with the contract counties. Some, if not all, will act as our agents in distributing the general permit so that the program can carry on without delay. The Department will also schedule a training program to travel throughout the state to train DEQ staff, contract county staff, and those installing on-site sewage disposal systems in the implementation of the rules.

The privatization proposal (71-120(4)) allows the Department to enter into agreements with private contractors to do technical work that would be subject to review by the agent (Department (DEQ) or local government). The Department of Justice advises that DEQ cannot transfer discretionary actions to private contractors unless subject to government review and approval. Staff concludes that the technical work by private contractors could include such items as field reports, construction plans, and precover

inspections. Other technical activities may be allowed. However, all private contractors' activities that could result in a discretionary action, would then be subject to government review for a final decision. For example, the Agent must be responsible for the issuing of a site evaluation report that will approve or deny the use of on-site sewage disposal, although a private contractor's technical site description can be utilized by the Agent in reaching the decision. This would follow also for the issuance or denial of permits, and issuance or denial of a Satisfactory Completion Notice. Any other activities that may result in an approval or denial or approval with conditions, must be kept with the Agent.

The proposal (71-130(2)) would give the Department greater latitude in approving new technologies or materials. However, according to the Department of Justice, this is a tool that cannot be used on a broad basis. Specifically, the proposed rule cannot be utilized to allow the Director to change standards or to set new standards outside of the rulemaking process.

The above proposals allow increased flexibility in these rules. Flexibility has been addressed in other sections as noted below. This list is not meant to be all inclusive;

71-160 allows the Agent to waive an evaluation report for a repair or alteration permit application. This same section also allows the use of a septic tank to be used as a temporary holding tank if the entire system cannot be completed due to weather.

71-170 allows the Agent to waive a precover inspection for any system after following specific criteria. The present rules allow this waiver only for standard systems.

71-175 has increased the validity of a Certificate of Satisfactory Completion from one year to five years. This change may allow connection to a system without obtaining an Authorization Notice for an additional 4 years from the present rule. This time period has also been reflected in the Authorization rule, (71-205).

71-210 will allow some alterations to be approved where a septic tank may not meet present setback requirements. The present rule requires a variance application, hearing and approval to allow this minor setback change.

71-290 has added site criteria for allowing a sand filter system on slopes up to 45 percent. The present rule prohibits installation of a sand filter system on slopes over 30 percent.

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71-290 has added a graveless disposal method. This may allow remote sites to be developed at a lower cost since gravel would not have to be transported long distances.

71-400(6) has been modified to allow a permit to be issued east of the Cascades with less restrictive standards for properties of 10 acres or larger. The present rule requires a minimum of 20 acres.

71-400(7) is a new section that will allow sites east of the Cascades and meeting specific criteria, to have the site evaluation waived. This section will also allow for a precover inspection waiver on these sites.

New copies of the rules will be printed and sent to those persons implementing the program.

Recommendation for Commission Action

It is recommended that the Commission adopt the rules/rule amendments regarding the on-site sewage disposal program as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule (Amendments) Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Public Notice of Hearing (Chance to Comment)
 - 3. Rulemaking Statements (Statement of Need)
 - 4. Fiscal and Economic Impact Statement
 - 5. Land Use Evaluation Statement
 - 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
- I. (Other Attachments as appropriate)

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Reference Documents (available upon request)

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

Approved:

Section:

Thomas J. Lucas

Division:

Michael Brown

Report Prepared By: Kent Ashbaker

Revisions to the Report Prepared by Sherman Olson

Phone: 229-6443

Date Prepared: October 12, 1994

CKA:SOO:crw
MW\WC12\WC12302.5
14 Oct 94

**PROPOSED AMENDMENTS TO
OAR CHAPTER 340, DIVISION 14**

NOTE:

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

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

EXCEPTIONS

340-14-007

The procedures prescribed in this Division do not apply to the issuance, denial, modification and revocation of the following permits: National Pollutant Discharge Elimination System (NPDES) permits issued pursuant to the Federal Water Pollution Control Act Amendments of 1972 and acts amendatory thereof or supplemental thereto, as prescribed by OAR Chapter 340, Division 45; Resource Conservation and Recovery Act (RCRA) permits as prescribed by OAR Chapter 340, Division 106; ***On-Site Sewage Disposal Permits as prescribed by OAR Chapter 340, Division 71***; and the Underground Storage Tank (UST) permits as prescribed by OAR Chapter 340, Division 150; and federal operating permits issued pursuant to the Federal Clean Air Act amendments of 1990 as prescribed by OAR Chapter 340, Division 28.

IMPLEMENTATION DATE

340-14-055

These rules become effective April 1, 1995. Until these rules become effective, existing rules remain in effect. Nothing in this section is intended to prevent the Department from taking any action necessary to prepare for implementing the new rule.

**PROPOSED AMENDMENTS TO
OAR CHAPTER 340, DIVISION 45**

NOTE:

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

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

DEFINITIONS

340-45-010

As used in these rules unless otherwise required by context.

- (1) "Commission" means the Environmental Quality Commission.
- (2) "Department" means Department of Environmental Quality.
- (3) "Director" means the Director of the Department of Environmental Quality.
- (4) "Discharge or Disposal" means the placement of wastes into public waters, on land or otherwise into the environment in a manner that does or may tend to affect the quality of public waters.
- (5) "Disposal System" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells and other systems but excludes on-site sewage disposal systems regulated through the requirements of OAR 340-71-160, ***340-71-162***, and ORS 454.655, and systems which recirculate without discharge.
- (6) "Federal Act" means Public Law 92-500, known as the Federal Water Pollution Control Act Amendments of 1972 and acts amendatory thereof or supplemental thereto.
- (7) "General Permit" means a permit issued to a category of qualifying sources pursuant to OAR 340-45-033, in lieu of individual permits

being issued to each source.

- (8) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources.
- (9) "NPDES Permit" means a waste discharge permit issued in accordance with requirements and procedures of the National Pollutant Discharge Elimination System authorized by the Federal Act and of OAR 340-45-005 through 340-45-065.
- (10) "Navigable Waters" means all navigable waters of the United States and their tributaries; interstate waters; intrastate lakes, rivers, and streams which are used by interstate travelers for recreation or other purposes or from which fish or shellfish are taken and sold in interstate commerce or which are utilized for industrial purposes by industries in interstate commerce.
- (11) "Person" means the United States and agencies thereof, any state, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate, or any other legal entity whatever.
- (12) "Point Source" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- (13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
- (14) "Pretreatment" means the waste treatment which might take place prior to discharging to a sewerage system including, but not limited to, pH adjustment, oil and grease removal, screening, and detoxification.
- (15) "Process Wastewater" means wastewater contaminated by industrial processes but not including non-contact cooling water or storm runoff.
- (16) "Public Waters" or "Waters of the State" include lakes, bays, ponds,

impounding reservoirs, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland, or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters) which are wholly or partially within or bordering the state or within its jurisdiction.

- (17) "Regional Administrator" means the Regional Administrator of Region X of the U.S. Environmental Protection Agency.
- (18) "Septage" means the liquid and solid material pumped from a septic tank, holding tank, cesspool, or similar domestic sewage treatment system.
- (19) "Septage Alkaline Stabilization Facility" means a facility which actively mixes alkaline material with raw septage to increase and maintain pH at 12 in the resultant mixture for sufficient time to achieve chemical stabilization.
- (20) "Sewage" means the water-carried human or animal waste from residences, building, industrial establishments, or other places, together with such groundwater infiltration and surface water as may be present. The mixture of sewage as above defined with wastes or industrial wastes, as defined in sections (8) and (23) of this rule, shall also be considered "sewage" within the meaning of these rules.
- (21) "Sewerage System" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
- (22) "State" means the State of Oregon.
- (23) "Toxic Waste" means any waste which will cause or can reasonably be expected to cause a hazard to fish or other aquatic life or to human or animal life in the environment.
- (24) "Treatment" or "Waste Treatment" means the alteration of the quality of wastewaters by physical, chemical, or biological means or a combination thereof such that the tendency of said wastes to cause any degradation in water quality or other environmental conditions is reduced.

- (25) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.
- (26) "WPCF Permit" means a Water Pollution Control Facilities permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued by the Department in accordance with the procedures of OAR 340-14-005 through 340-14-050 or OAR 340-71-162.

PROCEDURES FOR OBTAINING WPCF PERMITS

340-45-025

Except for the procedures for application for and issuance of NPDES permits on point sources to navigable waters of the United States, and on-site sewage disposal permits issued pursuant to OAR Chapter 340 Division 71, submission and processing of applications for WPCF permits and issuance, renewal, denial, transfer, modification, and suspension or revocation of WPCF permits shall be in accordance with the procedures set forth in OAR 340-14-005 through 340-14-050.

PERMIT FEES

340-45-070

- (1) ~~[Beginning July 1, 1976, a]~~ All persons required to have a Water Pollution Control Facilities Permit or NPDES Waste Discharge Permit shall be subject to a three-part fee consisting of a uniform non-refundable filing fee, an application processing fee, and an annual compliance determination fee which are obtained from OAR 340-45-075. The amount equal to the filing fee, application processing fee, and the first year's annual compliance determination fee shall be submitted as a required part of any application for a new NPDES or WPCF permit. The amount equal to the filing fee and application processing fee, if applicable, shall be submitted as a required part of any application for renewal or modification of a NPDES or WPCF permit.
- (2) The annual compliance determination fee, as listed in OAR 340-45-075(4), must be paid for each year a disposal system is in operation or during which a discharge to public waters occurs. The fee period shall correspond with the state's fiscal year (July 1 through June 30) and

shall be paid annually during the month of July. Any annual compliance determination fee submitted as part of an application for a new NPDES or WPCF permit shall apply to the fiscal year the permitted facility is put into operation. For the first year's operation, the full fee shall apply if the facility is placed into operation on or before May 1. Any new facility placed into operation after May 1 shall not owe a compliance determination fee until the following July. The Director may alter the due date for the annual compliance determination fee upon receipt of a justifiable request from a permittee. The Commission may reduce or suspend the annual compliance determination fee in the event of a proven hardship.

- (3) Modifications of existing, unexpired permits which are instituted by the Department due to changing conditions or standards, receipts of additional information or any other reason pursuant to applicable statutes and do not require refiling or review of an application or plans and specifications shall not require submission of the filing fee or the application processing fee.
- (4) Upon the Department accepting an application for filing, the filing fee shall be non-refundable.
- (5) The application processing fee may be refunded in whole or in part when submitted with an application if either of the following conditions exist:
 - (a) The Department determines that no permit will be required;
 - (b) The Department determines that the wrong application has been filed.
- (6) All fees shall be made payable to the Department of Environmental Quality.
- (7) The fee schedule for on-site sewage disposal systems is found in OAR Chapter 340, Division 71.**

IMPLEMENTATION DATE

340-45-090

OAR 340-45-070 becomes effective on October 7, 1994. All other rule modifications become effective April 1, 1995. Until these rules become effective, existing rules remain in effect. Nothing in this Section is intended to prevent the Department from taking any action necessary to prepare for implementing the new rules.

PROPOSED AMENDMENTS TO

OAR 340, DIVISION 52

NOTE:

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

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

PURPOSE

340-52-005

The purpose of these rules is to prescribe requirements and procedures to obtain approval of plans and specifications as required by ORS **468B.055** ~~**468.742**~~ for the construction, installation or modification of disposal systems, treatment works and sewerage systems.

DEFINITIONS

340-52-010

As used in these rules unless otherwise required by context:

- (1) "Common Sewer" is a collecting sewer, and a part of the sewerage system which either initially or ultimately will serve two or more tax lots, parcels, or ownerships which may or may not be owned or controlled by a municipality either initially or ultimately. Exception: It does not include for purposes of these rules common sewers within a Unit Ownership (Condominium) Development described in ORS **100.005 to 100.990** ~~**91.500 to 91.671 and 91.990**~~.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Disposal ~~Sf~~system" means a system for disposing of wastes, either by surface or underground methods, and includes municipal sewerage systems, domestic sewerage systems except on-site sewage disposal systems **authorized to be constructed by a construction-installation permit issued pursuant to OAR Chapter 340 Division 71** ~~**of 5,000 gallons per day or less**~~, industrial and agricultural waste systems, treatment works, disposal wells and other systems. (ORS **468B.005(1)** ~~**468.700(1)**~~).
- (4) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste

substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resources. (ORS 468B.005(2) ~~[468.700(2)]~~).

- (5) "Municipality" means any county, city, special service district or other governmental entity having authority to dispose of or treat or collect sewage, industrial wastes or other wastes, or any combination of two or more of the foregoing acting jointly. (ORS 454.010(3)).
- (6) "Permit" means a National Pollutant Discharge Elimination System (NPDES) permit or a Water Pollution Control Facilities (WPCF) permit as defined in OAR 340-45-010.
- (7) "Person" means the United States and any agencies thereof, any individual, public or private corporation, political subdivision, governmental agency, municipality, copartnership, association, firm, trust, estate, or any other legal entity whatever.
- (8) "Pretreatment ~~S/s~~System" means a system for giving partial treatment to industrial wastes prior to being discharged to a domestic sewerage system for further treatment and ultimate disposal.
- (9) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface water as may be present. The admixture with sewage of wastes or industrial wastes shall also be considered "sewage". (ORS 468B.005(4) ~~[468.700(4)]~~).
- (10) "Sewerage System" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal. (ORS 468B.005(5) ~~[468.700(5)]~~). Generally limited to "common sewers".
- (11) "Treatment Works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes, including pretreatment systems.
- (12) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any waters of the state. (ORS 468B.005(7) ~~[468.700(7)]~~).

RESPONSIBILITY OF TREATMENT WORKS OWNERS, DESIGNS ENGINEERS AND DEVELOPERS AFTER APPROVAL OF PLANS FOR (DOMESTIC) SEWAGE PROJECTS

340-52-040

- (1) Construction of all projects must be in accordance with the project plans and specifications approved by the Department. No substantial change in or deviation from such plans and specifications shall be made without the prior written approval of the Department, which shall make the final determination whether or not a change or deviation is in fact substantial.
- (2) The owner of the sewerage system (generally a municipality) as recipient of any construction work on its system has a vested responsibility to review and approve project plans prior to the start of construction. Department approval of plans under these rules does not preclude the right and responsibility of review and approval by the owner. The owner may adopt more stringent construction standards and impose special conditions for sewer use, service connection, and related activities. Department approval of plans in such cases is contingent upon similar approval by the owner. Submittal of plans to the Department through the owner and prior approval of plans by the owner is encouraged.
- (3) Inspection and certification of proper construction shall be governed by the following provisions:
 - (a) The construction of all sewerage projects shall be under the supervision of and shall be thoroughly inspected by the design engineer or his authorized representative, unless relieved under ~~IOAR 340-52-035~~ **subsection (3)(b) of this rule**. At the completion of the project, he shall certify in writing to the owner and the Department that such construction was inspected by him and found to be in accordance with the plans and specifications, including any changes therein approved by the Department. Nothing in the foregoing exempts an owner from monitoring the project for conformance to requirements and performing supplementary inspections or prevents an owner's qualified staff from assuming responsibility for inspection and certification;
 - (b) If the design engineer is to have no further involvement or have limited involvement with the project after obtaining Department approval of plans, he must so notify the Department, the owner, and the developer upon submittal of plans or immediately upon being disassociated or limited in control over materials or workmanship within the project. (Nothing precludes either the owner or the developer from giving such notice if this is more appropriate.) Thereupon, if the project is to continue on to construction, the owner shall assume necessary responsibility for satisfactory construction of

the project in accordance with the approved plans. He shall employ or apply such construction engineering/inspection services as appropriate for the project. The owner shall thereupon certify in accordance with subsection (a) of this section. No project shall proceed to construction without adequate and capable construction engineering/inspection services. (This assumption of construction engineering/inspection services responsibility by the owner does not necessarily relieve the design engineer of design responsibility);

- (c) Sewerage system integrity and water-tightness is the system owner's ultimate responsibility. He shall monitor all private sewer construction and control all common sewer construction in the sewerage system to the extent necessary to this end.
- (4) An appropriate final operation and maintenance manual, approved by the Department shall be prepared and submitted to the owner by the design engineer for all treatment works, disposal systems, and list stations prior to start up of such facilities.

**PROPOSED AMENDMENTS TO
OAR CHAPTER 340, DIVISION 71**

NOTE:

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

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

[Ed. Note: All tables, ***[diagrams]*** and appendices referred to in the text of Division 71 may be found in numerical order following the rest of these rules.]

INDIVIDUAL ON-SITE SYSTEMS

340-71-100 DEFINITIONS.

As used in OAR 340, Divisions 71, 72, and 73, unless otherwise specified:

- (1) **"Absorption Facility"** means a system of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration. ~~[(See Diagrams 1 through 7 and 14 through 17).]~~
- (2) **"Active Sand Dune"** means wind drifted ridges and intervening valleys, pockets, and swales of sand adjacent to the beach. The sand is grayish-brown (color value of four (4) or more), with little or no horizon, color, or textured differences. Active dunes are either bare of vegetation or lack sufficient vegetation to prevent blowing of sand.
- (3) **"Aerobic Sewage Treatment Facility"** means a sewage treatment plant which incorporates a means of introducing air and oxygen into the sewage so as to provide aerobic biochemical stabilization during a detention period. ***Aerobic sewage treatment facilities may include anaerobic processes as part of the treatment system. Mechanical Oxidation Sewage Treatment Facility means an aerobic treatment facility.***

- ~~(4)~~ **"Aerobic System" means an alternative system consisting of a septic tank or other treatment facility, an aerobic sewage treatment facility and an absorption facility, designed to provide a level of treatment before disposal.**
- ~~{4}~~ (5) "Agent" means the Director or that person's authorized representative.
- ~~{5}~~ (6) **"Alteration" means expansion and/or change in location of an existing system, or any part thereof.**
- ~~{6}~~ (7) "Alternative System" means any Commission approved on-site sewage disposal system **identified within this division, for use ~~used~~** in lieu of the standard subsurface system.
- (8) **"Approved Material" means construction items that have been reviewed and accepted for use by the Department.**
- (9) **"Approved Criteria" means methods of design or construction that have been reviewed by the Technical Review Committee (TRC) and accepted for use by the Department.**
- (10) **"ASTM" means American Society of Testing Materials.**
- ~~{7}~~ (11) "Authorization Notice" means a written document issued by the Agent which establishes that an existing on-site sewage disposal system appears adequate to serve the purpose for which a particular application is made.
- ~~{8}~~ (12) "Authorized Representative" means the staff of the Department of Environmental Quality or staff of the local governmental unit performing duties for and under agreement with the Department of Environmental Quality.
- ~~{9}~~ (13) "Automatic Siphon" means a hydraulic device designed to rapidly discharge the contents of a dosing tank between predetermined water or sewage levels.
- ~~{10}~~ (14) "Bedroom" means any room within a dwelling which is accepted as such by the State of Oregon Department of Commerce building codes representative or the local authorized building official having jurisdiction.
- (15) **"Biochemical Oxygen Demand (BOD)" means a measure of the decomposable organic matter in wastewater. It is used as an indication of wastewater strength. For the purpose of these rules, all references to BOD shall be for the five day BOD.**

- ~~[(11)]~~ (16) "Black Waste" means human body wastes including feces, urine, other extraneous substances of body origin and toilet paper.
- ~~[(12)]~~ ~~"Building Sewer" means that part of the system of drainage piping which conveys sewage into a septic tank, cesspool or other treatment facility that begins five feet (5) outside the building or structure within which the sewage originates. (See Diagrams 1, 2, 3, and 16).]~~
- (17) "Capping Fill System" means an alternative system where the disposal trench effective sidewall is installed a minimum of twelve (12) inches into the natural soil below a soil cap of specified depth and texture.
- ~~[(13)]~~ (18) "Cesspool" means a lined pit which receives raw sewage, allows separation of solids and liquids, retains the solids and allows liquids to seep into the surrounding soil through perforations in the lining. ~~[(See Diagram 16).]~~
- ~~[(14)]~~ (19) "Chemical Recirculating Toilet Facility" means a toilet facility wherein black wastes are deposited and carried from the bowl by a combination of liquid waste and water which has been chemically treated and filtered.
- ~~[(15)]~~ (20) "Chemical Toilet Facility" means a non-flushing, non-recirculating toilet facility wherein black wastes are deposited directly into a chamber containing a solution of water and chemical.
- ~~[(16)]~~ (21) "Clayey Soil" means mineral soil that is over forty (40) percent clay that shrinks and develops wide cracks when dry and swells and shears when wet forming slickensides and wedge-shaped structure. Clayey soil is very hard or extremely hard when dry, very firm when moist, and very sticky and very plastic when wet.
- ~~[(17)]~~ (22) "Claypan" means a dense, compact clay layer in the subsoil. It has a much higher clay content than the overlying soil horizon from which it is separated by an abrupt boundary. Claypans are hard when dry and very sticky and very plastic when wet. They impede movement of water and air and growth of plant roots.
- ~~[(18)]~~ (23) "Combustion Toilet Facility" means a toilet facility wherein black wastes are deposited directly into a combination chamber for incineration.
- ~~[(19)]~~ (24) "Commercial Facility" means any structure or building, or any portion thereof, other than a single-family dwelling.
- ~~[(20)]~~ (25) "Commission" means the Environmental Quality Commission.

- ~~[(21)]~~ (26) "Community System" means an on-site system which will serve more than one (1) lot or parcel or more than one (1) condominium unit or more than one (1) unit of a planned unit development.
- ~~[(22)]~~ (27) "Completed Application" means one in which the application form is completed in full, is signed by the owner or that person's authorized representative, **and** is accompanied by all required exhibits and required fee.
- ~~[(23)]~~ (28) "Conditions Associated With Saturation" means:
- (a) Reddish brown or brown soil horizons with gray (chromas of two (2) or less) and red or yellowish red mottles; or
 - (b) Gray soil horizons, or gray soil horizons with red, yellowish red, or brown mottles; or
 - (c) Dark colored highly organic soil horizons; or
 - (d) Soil profiles with concentrations of soluble salt at or near the ground surface.
- ~~[(24)]~~ (29) "Confining Layer" means a layer associated with an aquifer that because of its low permeability does not allow water to move through it perceptibly under head differences occurring in the groundwater system.
- ~~[(25)]~~ (30) "Construction" includes installation of a new system or part thereof, or the alteration, repair or extension of an existing system. **The grading, excavating, and earth-moving work connected with installation, alteration, or repair of a system, or part thereof, is considered a part of system construction.**
- ~~[(26)]~~ (31) "Conventional Sand Filter" means a filter with two (2) feet or more of medium sand designed to **chemically [filter]** and biologically **process [treat]** septic tank or other treatment unit effluent from a pressure distribution system **operated on an intermittent basis. [at an application rate not to exceed one and twenty-three hundredths (1.23) gallons per square foot sand surface area per day applied at a dose not to exceed twenty (20) percent of the projected daily sewage flow per cycle.]**
- ~~[(27)]~~ (32) "Curtain Drain" means a groundwater interceptor **that is installed as a trench with a minimum width of twelve (12) inches and extending into the layer that limits effective soil depth. It has a perforated pipe installed along the bottom of, and the length of the trench and has a minimum of twelve (12) inches of drain media over the drainline and filter fabric placed over the drain media. The curtain drain must meet**

the setbacks from septic tanks and disposal areas as required in Table 1.

- ~~[(28)]~~ (33) "Cut-Manmade" means a land surface resulting from mechanical land shaping operations where the modified slope is greater than fifty (50) percent, and the depth of cut exceeds thirty (30) inches.
- ~~[(29)]~~ (34) "Department" means the Department of Environmental Quality.
- (35) **"Design Criteria" means the criteria used in designing on-site sewage disposal systems including, but not necessarily limited to, dimensions, geometry, type of materials, size of drain media or filter media, disposal field sizing, depth, grade or slope, hydraulic loading rate or any other factor relevant to the successful operation of the system. It does not include disposal area siting criteria.**
- ~~[(30)]~~ (36) "Director" means the Director of the Department of Environmental Quality.
- ~~[(31)]~~ (37) "Disposal Area" means the entire area used for underground dispersion of the liquid portion of sewage including the area designated for the future replacement system. It may consist of a seepage pit or of a disposal field or of a combination of the two. It may also consist of a cesspool, seepage bed, bottomless sand filter, or evapotranspiration-absorption system.
- ~~[(32)]~~ (38) "Disposal Field" means a system of disposal trenches or a seepage trench or system of seepage trenches.
- ~~[(33)]~~ (39) "Disposal Trench" means a ditch or a trench **installed into natural soil, permeable saprolite or diggable bedrock,** with vertical sides and substantially flat bottom with a minimum of twelve (12) inches of clean, coarse **drain media [filter material] or other material that is used in these rules** into which a single distribution pipe has been laid, the trench then being backfilled with a minimum of six (6) inches of soil. ~~[(See Diagram 12).]~~
- ~~[(34)]~~ (40) "Distribution Box" means a watertight structure which receives septic tank or other treatment facility effluent and distributes it concurrently into two (2) or more header pipes leading to the disposal area. (See OAR 340-73-035).
- ~~[(35)]~~ (41) "Distribution Pipe" means an open-jointed or perforated pipe used in the dispersion of septic tank or other treatment facility effluent into disposal trenches, seepage trenches, or seepage beds. ~~[(See Diagrams 1 through 7 and 11).]~~

- ~~[(36)]~~ (42) "Distribution Unit" means a distribution box, dosing tank, diversion valve or box, header pipe, or other means of transmitting septic tank or other treatment unit effluent from the effluent sewer to the distribution pipes. ~~[(See Diagrams 1 through 7 and 11).]~~
- ~~[(37)]~~ (43) "Diversion Valve" means a watertight structure which receives septic tank or other treatment facility effluent through one (1) inlet, distributes it to two (2) outlets, only one (1) of which is utilized at a given time (See ~~[Diagram 11 and]~~ OAR 340-73-045).
- ~~[(38)]~~ (44) "Dosing Tank" means a watertight receptacle placed after a septic tank or other treatment facility equipped with an automatic siphon or pump. ~~[designed to discharge treated effluent at a rate not to exceed twenty (20) percent of the projected daily sewage flow.]~~
- ~~[(39)]~~ (45) "Dosing Septic Tank" means a unitized device performing functions of both a septic tank and a dosing tank.
- (46) **"Drainfield" means a Disposal Field.**
- (47) **"Drain Media" means clean washed gravel, clean crushed rock, or other media approved by the Director's Designee, for the purpose of distributing effluent. When gravel or crushed rock is used it shall have a minimum size of three quarters (3/4) inches and a maximum size of two and one-half (2-1/2) inches. The material shall be durable and inert so that it will maintain its integrity and not collapse or disintegrate with time and shall not be detrimental to the performance of the system.**
- ~~[(40)]~~ (48) "Dwelling" means any structure or building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including, but not limited to: houses, houseboats, boathouses, mobile homes, travel trailers, hotels, motels, and apartments.
- ~~[(41)]~~ (49) "Effective Seepage Area" means the sidewall area within a disposal trench or a seepage trench from the bottom of the trench to a level two (2) inches above the distribution pipes, or the sidewall area of any cesspool, seepage pit, unsealed earth pit privy, or gray water waste disposal sump seepage chamber; or the bottom area of a pressurized soil absorption facility installed in soil as defined in section ~~[(114)]~~ (139) this rule. ~~[(See Diagrams 12, 14, 15, 16, and 17).]~~
- ~~[(42)]~~ (50) "Effective Soil Depth" means the depth of soil material above a layer that impedes movement of water, air, and growth of plant roots. Layers that differ from overlying soil material enough to limit effective soil depth are hardpans, claypans, fragipans, compacted soil, bedrock, saprolite, and clayey soil.

- ~~(51)~~ **"Effluent Filter" means an effluent treatment device installed on the outlet of a septic tank which is designed to prevent the passage of suspended matter larger than one-eighth inch in size.**
- ~~((43))~~ **(52)** "Effluent Lift Pump" means a pump used to lift septic tank or other treatment facility effluent to a higher elevation. (See OAR 340-73-055).
- ~~((44))~~ **(53)** "Effluent Sewer" means that part of the system of drainage piping that conveys partially treated sewage from a septic tank or other treatment facility into a distribution unit or an absorption facility. (See ~~[Diagrams 1 through 7, 11, and 17, and]~~ OAR 340-73-060).
- ~~((45))~~ **(54)** "Emergency Repair" means repair of a failing system where immediate action is necessary to relieve a situation in which sewage is backing up into a dwelling or building, or repair of a broken pressure sewer pipe. **It does not include the construction of new or additional absorption facilities, but would allow use of the septic tank as a temporary holding tank until such time as new or additional absorption facilities could be constructed pursuant to an issued permit.**
- (55)** **"Equal Distribution" means the distribution of effluent to a set of disposal trenches in which each trench receives effluent in equivalent or proportional volumes.**
- ~~((46))~~ **(56)** "Escarpment" means any naturally occurring slope greater than fifty (50) percent which extends vertically six (6) feet or more as measured from toe to top, and which is characterized by a long cliff or steep slope which separates two (2) or more comparatively level or gently sloping surfaces, and may intercept one (1) or more layers that limit effective soil depth. ~~[(See Diagrams 18 and 19).]~~
- ~~((47))~~ **(57)** "Evapotranspiration-Absorption (ETA) System" means an alternative system consisting of a septic tank or other treatment facility, effluent sewer and a disposal bed or disposal trenches, designed to distribute effluent for evaporation, transpiration by plants, and by absorption into the underlying soil. ~~[(See Diagrams 6 and 7).]~~
- ~~((48))~~ **(58)** "Existing On-Site Sewage Disposal System" means any installed on-site sewage disposal system constructed in conformance with the rules, laws and local ordinances in effect at the time of construction, or which would have conformed substantially with system design provided for in Commission, State Board of Health or State Health Division rules.
- ~~((49))~~ **(59)** "Existing System" means "Existing On-Site Sewage Disposal System."

- ~~[(50)]~~ (60) "Failing System" means any system which discharges untreated or incompletely treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters.
- ~~[(51)]~~ (61) "Family Member" means any one (1) of two (2) or more persons related by blood or ~~[marriage.]~~ legally.
- ~~[(52)]~~ (62) "Filter Fabric" means a woven or spun-bonded sheet material used to impede or prevent the movement of sand, silt and clay into drain media ~~[filter material]~~. A specification for filter fabric is found in OAR 340-73-041.
- ~~[(53)]~~ ~~*"Filter Material" means clean, washed gravel ranging from three quarters (3/4) to two and one half (2 1/2) inches in size, or clean crushed rock ranging in size from one and one half (1 1/2) to two and one half (2 1/2) inches. (See Diagrams 6, 7, 9, 12, 14, 15, 16, and 17.)*~~
- ~~[(54)]~~ (63) "Five-Day Biochemical Oxygen Demand (BOD₅)" means the quantity of oxygen used in the biochemical oxidation of organic matter in five days at twenty (20) degrees centigrade under specified conditions and reported as milligrams per liter (mg/L).
- ~~[(55)]~~ (64) "Fragipan" means a loamy subsurface horizon with high bulk density relative to the horizon above, seemingly cemented when dry, and weakly to moderately brittle when moist. Fragipans are mottled and low in organic matter. They impede movement of water, air, and growth of plant roots.
- (65) *"General Permit" means a permit issued to a category of qualifying sources pursuant to OAR 340-45-033, in lieu of individual permits being issued to each source.*
- ~~[(56)]~~ (66) "Governmental Unit" means the state or any county, municipality, or political subdivision, or any agency thereof.
- ~~[(57)]~~ (67) "Grade" means the rate of fall or drop in inches per foot or percentage of fall of a pipe.
- ~~[(58)]~~ (68) "Gray Water" means household sewage other than "black wastes", such as bath water, kitchen waste water and laundry wastes.
- (69) *"Gray Water Waste Disposal Sump" means a receptacle or series of receptacles designed to receive hand-carried gray water for disposal into the soil.*

- ~~(59)~~ (70) **"Grease and Oils" means a component of sewage typically originating from food stuffs, consisting of compounds of alcohol or glycerol with fatty acids.**
- ~~(60)~~ (71) **"Groundwater Interceptor"** means any natural or artificial groundwater or surface water drainage system including agricultural drain tile, cut banks, and ditches which intercept and divert groundwater or surface water from the area of the absorption facility. ~~[[See Diagram 13].]~~
- ~~(61)~~ (72) **"Hardpan"** means a hardened layer in soil caused by cementation of soil particles with either silica, calcium carbonate, magnesium carbonate, or iron and/or organic matter. The hardness does not change appreciably with changes in moisture content. Hardpans impede movement of water and air and growth of plant roots.
- ~~(62)~~ (73) **"Header Pipe"** means a tight jointed part of the sewage drainage conduit which receives septic tank effluent from the distribution box, or drop box, or effluent sewer and conveys it to the disposal area. ~~[[See Diagrams 1 through 5, 7, 11, and 17].]~~
- ~~(63)~~ (74) **"Headwall"** means a steep slope at the head or upper end of a land slump block or unstable landform. ~~[[See Diagrams 22 and 23].]~~
- ~~(64)~~ (75) **"Holding Tank"** means a watertight receptacle designed to receive and store sewage to facilitate disposal at another location.
- (76) **"Holding Tank System" means an alternative system consisting the combination of a holding tank, service riser and level indicator (alarm), designed to receive and store sewage for intermittent removal for disposal at another location.**
- (77) **"Hydrasplitter" means a hydraulic device to proportion flow under pressure by the use of one or more orifices. Also may be referred to as a Hydrosplitter.**
- ~~(65)~~ (78) **"Incinerator Toilet Facility"** means "Combustion Toilet Facility".
- ~~(66)~~ (79) **"Individual System"** means a system that is not a community system.
- ~~(67)~~ (80) **"Individual Water Supply"** means a source of water and a distribution system which serves a residence or user for the purpose of supplying water for drinking, culinary, or household uses and which is not a public water supply system.
- ~~(68)~~ (81) **"Industrial Waste"** means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of

industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.

- ~~((68))~~ (82) **"Intermittent Sand Filter" means a conventional sand filter.**
- ~~((69))~~ (83) "Intermittent Stream" means any surface public water or groundwater interceptor that continuously flows water for a period of greater than two months in any one year, but not continuously for that year.
- ~~((70))~~ (84) "Invert" is the lowest portion of the internal cross section of a pipe or fitting. ~~[[See Diagram 12].]~~
- ~~((71))~~ (85) "Large System" means any on-site system with a projected daily sewage flow greater than two thousand five hundred (2,500) gallons.
- ~~((72))~~ (86) "Lateral Pipe" means "Distribution Pipe".
- ~~((73))~~ (87) "Mechanical ~~[Oxidation]~~ Sewage Treatment Facility" means an aerobic sewage treatment facility.
- ~~((74))~~ (88) "Medium Sand" means a mixture of sand with 100 percent passing the 3/8 inch sieve, ~~95 [90]~~ percent to 100 percent passing the No. 4 sieve, ~~80 [62]~~ percent to 100 percent passing the No. ~~8 [10]~~ sieve, 45 percent to ~~85 [82]~~ percent passing the No. 16 sieve, ~~15 [25]~~ percent to ~~60 [55]~~ percent passing the No. 30 sieve, ~~3 [5]~~ percent to ~~15 [20]~~ percent passing the No. 50 sieve, ~~[10 percent or less passing the No. 60 sieve,]~~ and 4 percent or less passing the No. 100 sieve.
- ~~((75))~~ (89) "Nonwater-Carried Waste Disposal Facility" means any toilet facility which has no direct water connection, including pit privies, vault privies and portable toilets.
- ~~((76))~~ (90) "Occupant" means any person living or sleeping in a dwelling.
- ~~((76))~~ (91) "On-Site Sewage Disposal System" means any existing or proposed on-site sewage disposal system including, but not limited to a standard subsurface, alternative, experimental or non-water carried sewage disposal system, installed or proposed to be installed on land of the owner of the system or on other land as to which the owner of the system has the legal right to install the system. **This does not include systems that are designed to treat and dispose of Industrial Waste as defined in OAR Chapter 340, Division 45.**
- (92) **"Operating Permit" means a WPCF permit issued pursuant to these rules.**

- ~~[(77)]~~ (93) "Owner" means any person who alone, or jointly, or severally with others:
- (a) Has legal title to any single lot, dwelling, dwelling unit, or commercial facility; or
 - (b) Has care, charge, or control of any real property as agent, executor, executrix, administrator, administratrix, trustee, commercial lessee, or guardian of the estate of the holder of legal title; or
 - (c) Is the contract purchaser of real property.

NOTE: Each such person as described in subsections (b) and (c) of this ~~rule~~ **section**, thus representing the legal title holder, is bound to comply with the provisions of these rules as if he were the legal title holder.

~~[(78)]~~ (94) "**Permanent Groundwater Table**" means the upper surface of a saturated zone that exists year-round. The thickness of the saturated zone, and, as a result, the elevation of the permanent groundwater table may fluctuate as much as twenty (20) feet or more annually; but the saturated zone and associated permanent groundwater table will be present at some depth beneath land surface throughout the year.

~~[(79)]~~ (95) "**Permit**" means the written document issued and signed by the Agent which authorizes the permittee to install a system or any part thereof, which may also require operation and maintenance of the system.

~~[(80)]~~ (96) "**Person**" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

~~[(81)]~~ (97) "**Pollution**" or "**Water Pollution**" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

- ~~(98)~~ **"Portable Toilet" means any self contained chemical toilet facility that is housed within a portable toilet shelter and includes but is not limited to construction type chemical toilets.**
- ~~((82))~~ ~~(99)~~ "Portable Toilet Shelter" means any readily relocatable structure built to house a toilet facility.
- ~~((83))~~ ~~(100)~~ "Pressure Distribution Lateral" means piping and fittings in pressure distribution systems which distribute septic tank or other treatment unit effluent to drain media ~~[filter material]~~ through small diameter orifices. ~~[[See Diagrams 8, 9, and 12].]~~
- ~~((84))~~ ~~(101)~~ "Pressure Distribution Manifold" means piping and fittings in a pressure distribution system which supply effluent from pressure transport piping to pressure distribution laterals. ~~[[See Diagrams 8 and 9].]~~
- ~~((85))~~ ~~(102)~~ "Pressure Distribution System" means any system designed to uniformly distribute septic tank or other treatment unit effluent under pressure in an absorption facility or sand filter. ~~[[See Diagrams 8 and 9].]~~
- ~~((86))~~ ~~(103)~~ "Pressure Transport Piping" means piping which conveys sewage effluent from a septic tank or other treatment or distribution unit ~~[effluent to a pressure distribution manifold]~~ by means of a pump or siphon. ~~[[See Diagrams 8 and 9].]~~
- ~~(104)~~ **"Pretreatment" means the wastewater treatment which takes place prior to discharging to any component of an on-site sewage treatment and disposal system, including but not limited to, pH adjustment, oil and grease removal, BOD₅ and TSS reduction, screening and detoxification.**
- ~~((87))~~ ~~(105)~~ "Prior Approval" means a written approval for on-site sewage disposal, for a specific lot, issued prior to January 1, 1974.
- ~~((88))~~ ~~(106)~~ "Prior Construction Permit" means a subsurface sewage disposal system construction permit issued prior to January 1, 1974, by a county that had an ordinance requiring construction permits for subsurface sewage disposal systems.
- ~~((89))~~ ~~(107)~~ "Privy" means a structure used for disposal of human waste without the aid of water. It consists of a shelter built above a pit or vault in the ground into which human waste falls.
- ~~(108)~~ **"Projected Daily Sewage Flow" means the peak quantity of sewage a facility is forecast to produce on a daily basis upon which system sizing and design is based. It may be referred to as design flow. The**

Projected Daily Sewage Flow allows for a safety margin and reserve capacity for the system during periods of heavy use.

- ~~##90##~~ **(109)** "Public Health Hazard" means a condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.
- ~~##91##~~ **(110)** "Public Waters" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.
- (111)** **"Recirculating Gravel Filter (RGF)" means a type of gravel filter wastewater treatment system which utilizes an effluent recycle system where a portion of the filtered effluent is mixed with septic tank effluent in a recirculation/dilution tank and redistributed to the filter, in conformance with these rules.**
- (112)** **"Recirculating Gravel Filter System" means a Recirculating Gravel Filter and a absorption facility used to treat and dispose of sewage.**
- ~~##92##~~ **(113)** "Redundant Disposal Field System" means a system in which two complete disposal systems are installed, the disposal trenches of each system alternate with each other and only one system operates at a given time. ~~##(See Diagram 11).##~~
- ~~##93##~~ **(114)** "Repair" means installation of all portions of a system necessary to eliminate a public health hazard or pollution of public waters created by a failing system. Major repair is defined as the replacement of the soil absorption system. Minor repair is defined as the replacement of a septic tank, broken pipe, or any part of the on-site sewage disposal system except the soil absorption system.
- (115)** **"Residential Strength Wastewater" means the primary sewage effluent from a septic tank which does not exceed the following parameters: Biochemical Oxygen Demand (BOD) of 300 mg/L; Total Suspended Solids (TSS) of 150 mg/L; Total Kjeldahl Nitrogen (TKN) of 150 mg/L; and Oil & Grease of 25 mg/L. Other contaminants may also be present in the wastewater, however, they shall not exceed the concentrations**

or quantities normally found in residential sewage. Effluent parameters are to be measured using approved Standard Method or EPA procedures.

- ~~(116)~~ **"Sand Filter Media"** means a medium sand or other approved material used in a conventional sand filter. The media shall be durable and inert so that it will maintain its integrity and not collapse or disintegrate with time and shall not be detrimental to the performance of the system.
- ~~(94)~~ ~~(117)~~ **"Sand Filter Surface Area"** means the area of the level plane section in the medium sand horizon of a conventional sand filter located two (2) feet below the bottom of the drain media ~~filter material~~ containing the pressurized distribution piping.
- ~~(95)~~ ~~(118)~~ **"Sand Filter System"** means the combination of septic tank or other treatment unit, dosing system with effluent pump and controls, or dosing siphon, piping and fittings, sand filter, and absorption facility used to treat and dispose of sewage.
- ~~(96)~~ ~~(119)~~ **"Sanitary Drainage System"** means that part of the system of drainage piping that conveys untreated sewage from a building or structure to a septic tank or other treatment facility, service lateral at the curb or in the street or alley, or other disposal terminal holding human or domestic sewage. The sanitary drainage system consists of a building drain or building sewer. ~~See Diagrams 1, 2, 3, and 16.~~
- ~~(97)~~ ~~(120)~~ **"Saprolite"** means weathered material underlying the soil that grades from soft thoroughly decomposed rock to rock that has been weathered sufficiently so that it can be broken in the hands or cut with a knife. It does not include hard bedrock or hard fractured bedrock. It has rock structure instead of soil structure.
- ~~(98)~~ ~~(121)~~ **"Saturated Zone"** means a three (3) dimensional layer, lens, or other section of the subsurface in which all open spaces including joints, fractures, interstitial voids, pores, etc. are filled with groundwater. The thickness and extent of a saturated zone may vary seasonally or periodically in response to changes in the rate or amount of groundwater recharge or discharge. ~~See Diagram 20.~~
- ~~(99)~~ ~~(122)~~ **"Scum"** means a mass of sewage solids floating at the surface of sewage which is buoyed up by entrained gas, grease, or other substances.
- ~~(100)~~ ~~(123)~~ **"Seepage Area"** means "Effective Seepage Area".
- ~~(101)~~ ~~(124)~~ **"Seepage Bed"** means an absorption system having disposal trenches wider than three (3) feet.

- ~~{102}~~ (125) "Seepage Pit" means a "cesspool" which has a treatment facility such as a septic tank ahead of it. ~~{See Diagram 17.}~~
- ~~{103}~~ (126) "Seepage Trench System" means a system with disposal trenches with more than six (6) inches of drain media ~~{filter material}~~ below the distribution pipe.
- ~~{104}~~ (127) "Self-Contained Nonwater-Carried Waste Disposal Facility" includes, but is not limited to, vault privies, chemical toilets, combustion toilets, recirculating toilets, and portable toilets, in which all waste is contained in a watertight receptacle.
- (128) "Septage" means the domestic liquid and solid sewage pumped from septic tanks, cesspools, holding tanks, vault toilets, chemical toilets or other similar domestic sewage treatment components or systems and other sewage sludge not derived at sewage treatment plants.
- ~~{105}~~ (129) "Septic Tank" means a watertight receptacle which receives sewage from a sanitary drainage system, is designed to separate solids from liquids, digest organic matter during a period of detention, and allow the liquids to discharge to a second treatment unit or to a soil absorption facility. (See OAR 340-73-025 and 340-73-030).
- ~~{106}~~ (130) "Septic Tank Effluent" means partially treated sewage which is discharged from a septic tank.
- (131) "Serial Distribution" means the distribution of effluent to a set of disposal trenches constructed at different elevations in which one (1) trench at a time receives effluent in consecutive order beginning with the uppermost trench, by means of a Drop Box, a serial overflow or other approved distribution unit. The effluent in an individual trench must reach a level of two (2) inches above the distribution pipe before effluent is distributed to the next lower trench.
- ~~{107}~~ (132) "Sewage" means water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such groundwater infiltration, surface waters, or industrial waste as may be present.
- ~~{108}~~ (133) "Sewage Disposal Service" means:
- (a) The construction of on-site sewage disposal systems (including the placement of portable toilets), or any part thereof; or
 - (b) The pumping out or cleaning of on-site sewage disposal systems (including portable toilets), or any part thereof; or

- (c) The disposal of material derived from the pumping out or cleaning of on-site sewage disposal systems (including portable toilets); or
- (d) Grading, excavating, and earth-moving work connected with the operations described in subsection (a) of this section, ~~except streets, highways, dams, airports or other heavy construction projects and except earth-moving work performed under the supervision of a builder or contractor in connection with and at the time of the construction of a building or structure, or~~

~~[(e) The construction of drain and sewage lines from five (5) feet outside a building or structure to the service lateral at the curb or in the street or alley or other disposal terminal holding human or domestic sewage.]~~

~~[(109)]~~ (134) "Sewage Stabilization Pond" means a pond designed to receive the raw sewage flow from a dwelling or other building and retain that flow for treatment without discharge.

~~[(110)]~~ (135) "Slope" means the rate of fall or drop in feet per one hundred (100) feet of the ground surface. It is expressed as percent of grade.

~~[(111)]~~ (136) "Soil Permeability Rating" refers to that quality of the soil that enables it to transmit water or air, as outlined in the United States Department of Agriculture Handbook, Number 18, entitled Soil Survey Manual.

~~[(112)]~~ (137) "Soil Separate" means the size of soil particles according to Table 7.

~~[(113)]~~ (138) "Soil Texture" means the amount of each soil separate in a soil mixture. Field methods for judging the texture of a soil consist of forming a cast of soil, both dry and moist, in the hand and pressing a ball of moist soil between thumb and finger.

(a) The major textural classifications are defined as follows. (See Table 6):

(A) **Sand:** Individual grains can be seen and felt readily. Squeezed in the hand when dry, this soil will fall apart when the pressure is released. Squeezed when moist, it will form a cast that will hold its shape when the pressure is released, but will crumble when touched;

(B) Loamy Sand: Consists primarily of sand, but has enough silt and clay to make it somewhat cohesive. The individual sand grains can readily be seen and felt. Squeezed when dry, the soil will form a cast which will readily fall apart, but

if squeezed when moist, a cast can be formed that will withstand careful handling without breaking;

- ~~HC~~ (C) **Sandy ~~HL~~Loam:** Consists largely of sand, but has enough silt and clay present to give it a small amount of stability. Individual sand grains can be readily seen and felt. Squeezed in the hand when dry, this soil will readily fall apart when the pressure is released. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand;
- ~~HC~~ (D) **Loam:** Consists of an even mixture of the different sizes of sand and of silt and clay. It is easily crumbled when dry and has a slightly gritty, yet fairly smooth feel. It is slightly plastic. Squeezed in the hand when dry, it will form a cast that will withstand careful handling. The cast formed of moist soil can be handled freely without breaking;
- ~~HD~~ (E) **Silt ~~HL~~Loam:** Consists of a moderate amount of fine grades of sand, a small amount of clay, and a large quantity of silt particles. Lumps in a dry, undisturbed state appear quite cloddy, but they can be pulverized readily; the soil then feels soft and floury. When wet, silt loam runs together in puddles. Either dry or moist, casts can be handled freely without breaking. When a ball of moist soil is passing between thumb and finger, it will not press out into a smooth, unbroken ribbon, but will have a broken appearance;
- ~~HE~~ (F) **Clay ~~HL~~Loam:** Consists of an even mixture of sand, silt, and clay, which breaks into clods or lumps when dry. When a ball of moist soil is pressed between the thumb and finger, it will form a thin ribbon that will readily break, barely sustaining its own weight. The moist soil is plastic and will form a cast that will withstand considerable handling;
- ~~HF~~ (G) **Silty ~~fe~~Clay ~~HL~~Loam:** Consists of a moderate amount of clay, a large amount of silt, and a small amount of sand. It breaks into moderately hard clods or lumps when dry. When moist, a thin ribbon or one-eighth (1/8) inch wire can be formed between thumb and finger that will sustain its weight and will withstand gentle movement;
- ~~HG~~ (H) **Silty ~~fe~~Clay:** Consists of even amounts of silt and clay and very small amounts of sand. It breaks into hard clods or

lumps when dry. When moist, a thin ribbon or one-eighth (1/8) inch or less sized wire formed between thumb and finger will withstand considerable movement and deformation;

~~##~~ (I) **Clay:** Consists of large amounts of clay and moderate to small amounts of sand. It breaks into very hard clods or lumps when dry. When moist, a thin, long ribbon or one-sixteenth (1/16) inch wire can be molded with ease. Fingerprints will show on the soil, and a dull to bright polish is made on the soil by a shovel.

(b) These and other soil textural characteristics are also defined as shown in the United States Department of Agriculture Textural Classification Chart which is hereby adopted as part of these rules. This textural classification chart is based on the Standard Pipette Analysis as defined in the United States Department of Agriculture, Soil Conservation Service Soil Survey Investigations Report No. 1. (See Table 6).

~~(114)~~ (139) **"Soil With Rapid or Very Rapid Permeability"** means:

- (a) Soil which contains thirty-five (35) percent or more of coarse fragments two (2) millimeters in diameter or larger by volume with interstitial soil of sandy loam texture or coarser as defined in subsection ~~(113)~~ (138)(a) of this rule and as classified in Soil Textural Classification Chart, Table 6; or
- (b) Coarse textured soil (loamy sand or sand as defined in section (138) ~~(113)~~) of this rule and as classified in Soil Textural Classification Chart, Table 6); or
- (c) Stones, cobbles, gravel, and rock fragments with too little soil material to fill interstices larger than one (1) millimeter in diameter.

(140) **"Split Waste Method" means a procedure where "black waste" sewage and "gray water" sewage from the same dwelling or building are disposed of by separate systems.**

~~(115)~~ (141) **"Stabilized Dune"** means a sand dune that is similar to an active dune except vegetative growth is dense enough to prevent blowing of sand. The surface horizon is either covered by a mat of decomposed and partially decomposed leaves, needles, roots, twigs, moss, etc., or to a depth of at least six (6) inches contains roots and has a color value of three (3) or less.

~~[(116)]~~ (142) "Standard Subsurface System" means an on-site sewage disposal system consisting of a septic tank, distribution unit and absorption facility constructed in accordance with OAR 340-71-220 ~~[(2)]~~, using six (6) inches of drain media ~~[(filter material)]~~ below the distribution pipe, and maintaining not less than eight (8) feet of undisturbed earth between disposal trenches.

(143) "Steep Slope System" means a seepage trench system installed on slopes greater than thirty (30) percent and less than or equal to forty-five (45) percent, pursuant to these rules.

~~[(117)]~~ "Strength of Wastewater" means the concentration of pollutants in wastewater as measured by BOD₅ and TSS.

~~[(118)]~~ (144) "Subsurface Sewage Disposal" means the physical, chemical or bacteriological breakdown and aerobic treatment of sewage in the unsaturated zone of the soil above any temporarily perched groundwater body.

~~[(119)]~~ (145) "Subsurface Disposal System" means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption facility. ~~[(See Diagrams 1, through 6, 11, 16, and 17).]~~

(146) "Surface Waters" means public waters, but excludes underground waters and wells.

~~[(120)]~~ (147) "System" means "On-Site Sewage Disposal System".

~~[(121)]~~ (148) "Temporary Groundwater Table" means the upper surface of a saturated zone that exists only on a seasonal or periodic basis. Like a permanent groundwater table, the elevation of a temporary groundwater table may fluctuate. However, a temporary groundwater table and associated saturated zone will dissipate (dry up) for a period of time each year.

~~[(122)]~~ (149) "Test Pit" means an open pit dug to sufficient size and depth to permit thorough examination of the soil to evaluate its suitability for subsurface sewage disposal.

(150) "Tile Dewatering System" means an alternative system in which the absorption facility is encompassed with field collection drainage tile, the purpose of which is to reduce and control a groundwater table to create a zone of aeration below the bottom of the absorption facility.

~~[(123)]~~ (151) "Toilet Facility" means a fixture housed within a toilet room or shelter for the purpose of receiving black waste.

- ~~(124)~~ (152) **"Total Kjeldahl Nitrogen (TKN)" means the combination of ammonia and organic nitrogen but does not include nitrate and nitrite nitrogen.**
- ~~(124)~~ (153) "Total Suspended Solids" (TSS) means solids in sewage that can be removed readily by standard filtering procedures in a laboratory and reported as milligrams per liter (mg/L).
- (154) **"Treatment" means the alteration of the quality of wastewaters by physical, chemical or biological means or combination thereof such that tendency of said wastes to cause degradation in water quality, risk to public health or degradation of environmental conditions is reduced.**
- (155) **"Underdrain Media" means that material placed under the sand filter media in a sand filter. It shall be clean, washed pea gravel with 100 percent passing the 1/2 inch sieve, 18 to 100 percent passing the 1/4 inch sieve, 5 to 75 percent passing the No. 4 sieve, 24 percent or less passing the No. 10 sieve, 2 percent or less passing the No. 16 sieve, and 1 percent or less passing the No. 100 sieve.**
- ~~(125)~~ (156) "Unstable Landforms" means areas showing evidence of mass downslope movement such as debris flow, landslides, rockfall, and hummock hill slopes with undrained depressions upslope. Unstable landforms may exhibit slip surfaces roughly parallel to the hillside; landslide scars and curving debris ridges; fences, trees, and telephone poles which appear tilted; or tree trunks which bend uniformly as they enter the ground. Active sand dunes are unstable landforms. ~~[[See Diagrams 21, 22, and 23].]~~
- (157) **"Vertisols" means a mineral soil characterized by a high content of swelling-type clays which in dry seasons, causes the soils to develop deep wide cracks.**
- ~~(126)~~ "Water Pollution" means "Pollution."
- (158) **"WPCF Permit" means a Water Pollution Control Facilities Permit which has been issued pursuant to OAR Chapter 340, Division 14 and OAR 340-71-162.**
- (159) **"Wastewater" means Sewage.**
- ~~(127)~~ (160) "Zone of Aeration" means the unsaturated zone that occurs below the ground surface and above the point at which the upper limit of the water table exists. ~~[[See Diagram 20].]~~

340-71-110 PURPOSE.

These rules, adopted pursuant to ORS 454.625 *and ORS 468.020*, prescribe the requirements for the construction, alteration, repair, operation, and maintenance of on-site sewage disposal systems. Their purpose is to restore and maintain the quality of public waters and to protect the public health and general welfare of the people of the State of Oregon.

340-71-115 TECHNICAL REVIEW COMMITTEE.

The Director shall form an on-site sewage disposal Technical Review Committee (TRC) to assist the Department in implementing the on-site sewage program.

- (1) Purpose. The purpose of the TRC shall be:**
 - (a) To advise and assist the Department in implementing the on-site sewage program, including rule implementation problems and the need for changes in the program and rules;**
 - (b) To review and advise the Department on the use of new or innovative technologies, materials or designs that maintain or advance protection of the quality of public waters of the State and the public health and general welfare. The TRC may utilize performance standards and criteria as appropriate to evaluate the efficiency and safety of new technologies, materials or designs.**
- (2) Committee Composition and Term. The TRC shall consist of nine (9) persons who shall be appointed by and serve at the pleasure of the Director. They shall be appointed for three (3) year staggered terms. The TRC may include on-site sewage disposal experts from local government, DEQ, equipment manufacturers, consultants, installers and pumpers, and other appropriate persons or groups.**
- (3) Meeting Frequency. The TRC shall meet as necessary, but at least two times per year. The Department shall reimburse members for reasonable expenses in accordance with Department policy.**
- (4) Chair. The Chair of the TRC shall be appointed by the Director for a term determined by the Director.**
- (5) Staffing. The Department shall provide the necessary technical, engineering and clerical staff and services in order for the TRC to fulfill its responsibilities in a timely, professional, informed and responsible manner.**

340-71-120 JURISDICTION AND POLICY.

- (1) ~~*[Prior to July 1, 1981, unless otherwise required within these rules, county agreements with the Department under ORS 454.725 shall be renegotiated to provide for county responsibility for] Oregon Revised Statutes (ORS) 454.725 authorizes the Department to enter into agreements with local governmental units for those units to perform the duties of the Department and become the Department's Agent in the permitting of on-site sewage disposal systems, including*~~ receiving and processing applications, issuing permits and performing required inspections for all on-site systems. The Department shall assume those responsibilities in nonagreement counties. The division of responsibilities ~~*[, by projected daily sewage flow,]*~~ is set forth as follows:

- (a) Systems *conforming with the treatment and disposal criteria described in this division, and which are not required to have a WPCF Permit [of twenty five hundred (2,500) gallons or less]* shall have site evaluations, plan reviews, permits and inspections conducted or processed by the Agent, unless otherwise ~~*[required]*~~ *allowed* within ~~*[these rules]*~~ *this division; [Plan review may be done by the Department at Agent's request.]*
- (b) ~~*[Systems of twenty five hundred and one (2501) gallons to five thousand (5000) gallons shall have site evaluations, plan review, permits and inspections conducted or processed by the Department. Site evaluations, permit issuance and inspections may be delegated to the Agent.] All systems required to have a WPCF Permit shall be regulated by the Department. OAR 340-71-130(15) and (16) describe those systems which must be constructed and operated by WPCF Permit. The WPCF permitting process is described in OAR 340-71-162. The Department may issue General Permits for some of the categories requiring WPCF Permits. The Department may, through intergovernmental agreements, delegate to the Agent site evaluations, construction inspections, receipt of registration applications and distribution of the Department's General Permit, and periodic compliance inspections. Although the Agent may solicit voluntary compliance with the Department's General Permit, ultimate enforcement responsibility shall remain with the Department. The agreement shall establish a level of compensation to be paid for the services provided.]*~~
- ~~*[(c) Systems of five thousand and one (5001) gallons or larger shall have site evaluations, plan review, permits and inspection conducted or processed by the Department. The permit shall be a*~~

~~*Water Pollution Control Facilities (WPCF) permit. For systems of this size, periodic inspections may be delegated to the Agent.*~~

- (2) Each and every owner of real property is jointly and severally responsible for:
- (a) Disposing of sewage on that property in conformance with the rules of the Department; ~~[this division;]~~ and
 - (b) Connecting all plumbing fixtures on that property, from which sewage is or may be discharged, to a sewerage facility or on-site sewage disposal system approved by the Department; and
 - (c) Maintaining, repairing, and/or replacing the system as necessary to assure proper operation of the system.
- (3) Agreement counties may, by ordinance, adopt requirements for operation and maintenance of systems within that county. Such requirements must be approved by the Director.
- ~~[(4) The Commission may, by rule impose operation and maintenance requirements on specified types and/or sizes of systems.]~~
- (4) The Department may, on its own or through agreements with local governments, conduct a pilot program (not to exceed two (2) years), utilizing private contractors. To the extent consistent with ORS Chapter 454, and other applicable statutes, the pilot program may allow private contractors to perform the technical review necessary for the issuance of on-site sewage disposal installation permits, Certificates of Satisfactory Completion or other related on-site activities. In all instances, the private contractors technical review shall be submitted to the Agent for the Agent's review and acceptance or denial. The private contractors must comply with state registration acts which may require registration for people performing these activities. The Department or Agent may consider the enforcement history and criminal record of a person proposing to enter into an agreement under this Section. At the end of the pilot program the Department shall report to the Commission with its findings and recommendations. After the Departments report, the Commission may extend the pilot program for any duration, but shall provide for periodic review of the program.

340-71-130 GENERAL STANDARDS, PROHIBITIONS, AND REQUIREMENTS.

- (1) Public Waters or Public Health Hazards. If, in the judgment of the Agent, proposed operation of a system would cause pollution of public waters or create a public health hazard, system installation or use shall not be authorized. *If, in the judgement of the Agent, the minimum standards contained in these rules do not afford adequate protection of public waters or public health, the requirements shall be more stringent. This may include, but is not limited to, increasing setbacks, increasing drainfield sizing and, or utilizing an Alternative System. If the Agent imposes requirements more stringent than the minimum, the Agent shall provide the applicant with a written statement of the specific reasons why the requirements are necessary.*
- (2) **Approved Disposal Required.** All sewage shall be treated and disposed of in a manner approved by the Department. *After review by the Technical Review Committee and by the Department, the Director may approve use of new or innovative technologies, materials, or designs that differ from those specified within this division and OAR Chapter 340, Division 73, if such technologies, materials, or designs provide equivalent or better protection of the public health and safety and waters of the State and meet the purposes of this division and OAR Chapter 340, Division 73, including the purposes stated in OAR 340-71-110. The Department may determine that the appropriate method of approving Alternative Systems is by rule amendment.*
- (3) **Discharge of Sewage Prohibited.** Discharge of untreated or partially treated sewage or septic tank effluent directly or indirectly onto the ground surface or into public waters constitutes a public health hazard and is prohibited.
- (4) **Discharges Prohibited.** No cooling water, air conditioning water, water softener brine, groundwater, oil, hazardous materials, ~~for~~ *roof drainage, or other aqueous or non-aqueous substances which are, in the judgement of the Department, detrimental to the performance of the system or to groundwater,* shall be discharged into any system.
- (5) **Increased Flows Prohibited.** Except where specifically allowed within this division, no person shall connect a dwelling or commercial facility to a system if the total projected sewage flow would be greater than that allowed under the original system construction permit.
- (6) **System Capacity.** Each system shall have adequate capacity to properly treat and dispose of the maximum projected daily sewage flow. The quantity of sewage shall be determined from **Table 2** or other information the Agent determines to be valid that may show different flows.

- (7) **Material Standards.** All materials used in on-site systems shall comply with standards set forth in these rules.
- (8) **Encumbrances.** A permit to install a new system can be issued only if each site has received an approved site evaluation (OAR 340-71-150) and is free of encumbrances (i.e., easements, deed restrictions, etc.) which could prevent the installation or operation of the system from being in conformance with the rules of this division.
- (9) **Future Connection to Sewerage System.** In areas where a district has been formed to provide sewerage facilities, placement of house plumbing to facilitate connection to the sewerage system shall be encouraged.
- (10) **Plumbing Fixtures Shall be Connected.** All plumbing fixtures in dwellings and commercial facilities from which sewage is or may be discharged, shall be connected to, and shall discharge into an approved area-wide sewerage system, or an approved on-site system which is not failing.
- (11) **Property Line Crossed.**
- (a) A recorded utility easement and covenant against conflicting uses, on a form approved by the Department, is required whenever a system crosses a property line separating properties under different ownership. The easement must accommodate that part of the system, including setbacks, which lies beyond the property line, and must allow entry to install, maintain and repair the system;
 - (b) Whenever an on-site system is located on one lot or parcel and the facility it serves is on another lot or parcel under the same ownership, the owner shall execute and record in the county land title records, on a form approved by the Department, an easement and a covenant in favor of the State of Oregon:
 - (A) Allowing its officers, agents, employees and representatives to enter and inspect, including by excavation, that portion of the system, including setbacks, on the other lot or parcel; and
 - (B) Agreeing not to put that portion of the other lot or parcel to a conflicting use; and
 - (C) Agreeing that upon severance of the lots or parcels, to grant or reserve and record a utility easement, in a form

approved by the Department, in favor of the owner of the lot or parcel served by the system.

(12) **Disposal and Replacement Area.** Except as provided in specific rules, **the disposal area, including installed system and replacement area shall [be kept vacant, free of vehicular traffic, and soil modification] not be subject to activity that would, in the opinion of the Agent, adversely affect the soil or the functioning of the system. This may include, but is not limited to, vehicular traffic, covering the area with asphalt or concrete, filling, cutting, or other soil modification.**

(13) **Operation and Maintenance.** All systems shall be operated and maintained so as not to create a public health hazard or cause water pollution. **Those facilities specified in sections (15) or (16) of this rule as requiring a WPCF permit shall have operation and maintenance requirements established in the permit.**

~~(14)~~ **Construction.** **The Department or Agent may limit the time period a system can be constructed due to soil conditions, weather, groundwater, or other conditions which could affect the reliability of the system.**

~~{(14)}~~ (15) **Operating Permit Requirements.** **[Systems with a projected daily sewage flow greater than five thousand (5,000) gallons] The following systems shall be constructed and operated under a renewable [Water Pollution Control Facilities] WPCF permit[-], issued pursuant to OAR 340-71-162:**

(a) Any system with a projected daily sewage flow greater than 2,500 gallons;

(b) A system of any size, if the sewage produced is greater than residential strength waste water;

(c) Holding tanks;

NOTE: This requirement does not apply to septic tanks used as temporary holding tanks pursuant to OAR 340-71-160(11).

(d) A system, which includes a conventional sand filter as part of the treatment process, that serves a commercial facility;

(e) A system which includes an aerobic treatment facility as part of the treatment process if:

(A) The system serves a commercial facility; or

(B) The system does not meet the requirements of OAR 340-71-220 and 340-71-345.

(f) Recirculating Gravel Filters (RGFs);

(g) Other systems that are not described in this division, that do not discharge to surface public waters.

(16) WPCF Permits for Existing Facilities. Owners of existing systems, other than owners of holding tanks, which these rules otherwise require to be constructed and operated under a WPCF permit, are not required to apply for a WPCF permit until such time as a system repair, correction, alteration, or expansion is necessary. All owners of existing holding tanks which require a WPCF permit under this rule shall make application for a WPCF permit within twelve (12) months of the effective date of these rules.

(17) Perpetual Surety Bond Requirements. Pursuant to Oregon Revised Statutes (ORS) 454.425 and OAR Chapter 340, Division 15, a perpetual surety bond, or approved alternate security, in the amount of \$1.00 per gallon per day installed sewage disposal capacity, shall be filed with the Department by any person proposing to construct or operate facilities for the collection, treatment, or disposal of sewage with a design capacity of 5,000 gallons per day or more.

(a) Exemptions From the Surety Bond Requirements:

(A) Systems serving only food handling establishments, travel trailer accommodations, tourist and travelers facilities, or other development operated by a public entity or under license issued by the State Health Division. (Systems which serve both licensed facilities and unlicensed facilities require a surety bond if the portion requiring a Health Division license has a design capacity of 5,000 gallons per day or more);

(B) Systems owned and operated by a state or federal agency, city, county service district, sanitary authority, sanitary district, or other public body;

(C) Systems serving the sewerage needs of industrial or commercial operations where there are no permanent residences.

(b) Alternate Security: The approved forms of alternate security are specified in OAR 340-15-020.

- (18) Fees for WPCF Permits. The fees required to be filed with WPCF permit applications and to be paid annually for WPCF permit compliance determination are outlined in OAR 340-71-140(6).
- (19) Variances for WPCF Permits. The variance procedures established in this division do not apply to systems permitted by WPCF Permit.
- (20) Engineering Plan Review. Pursuant to ORS 468B.055, unless specifically exempted by rule, all plans and specifications for the construction, installation or modification of disposal systems, shall be submitted to the Department for its approval or denial pursuant to rules of the Commission. The design criteria and rules governing the plan review are as follows:
- (a) For on-site systems which do not require a WPCF permit, the rules and design criteria for construction are found in this division. Construction standards for certain manufactured items are found in OAR Chapter 340, Division 73;
- (b) For on-site systems which require a WPCF permit, the criteria in this division shall be used. However, the Department may allow variations of the criteria and/or technologies, when the applicant or Department has adequate documentation of successful operation of that technology or design. The burden of proof for demonstrating new processes, treatment systems, and technologies that the Department is unfamiliar with, lies with the system designer. The Department shall review all plans and specifications for WPCF permits pursuant to procedures and requirements outlined in OAR Chapter 340, Division 52.
- (21) Manufacturer's Specifications. All materials and equipment, including but not limited to tanks, pipe, fittings, solvents, pumps, controls, valves, etc. shall be installed, constructed, operated, and maintained in accordance with manufacturer's minimum specifications.
- (22) Sewer and Water Lines. Effluent sewer and water line piping which is constructed of materials which are approved for use within a building, as defined by the current Oregon State Plumbing Specialty Code, may be run in the same trench. Where the effluent sewer pipe is of material not approved for use in a building, it shall not be run or laid in the same trench as water pipe unless both of the following conditions are met:
- (a) The bottom of the water pipe at all points shall be set at least 12 inches above the top of the sewer pipe;

(b) The water pipe shall be placed on a solid shelf excavated at one side of the common trench with a minimum clear horizontal distance of at least 12 inches from the sewer pipe.

~~115~~ **(23) Septage Disposal.** No person shall dispose of sewage, ~~or~~ septage (septic tank pumpings), **or sewage contaminated materials** in any location not authorized by the Department under applicable laws and rules for such disposal.

(24) Groundwater Levels. All groundwater levels shall be predicted using "Conditions Associated With Saturation" as defined in OAR 340-71-100. If conditions associated with saturation do not occur in soil with rapid or very rapid permeability, predictions of the highest level of the water table shall be based on past recorded observations of the Agent. If such observations have not been made, or are inconclusive, the application shall be denied until observations can be made. Groundwater level determinations shall be made during the period of the year in which high groundwater normally occurs in that area.

340-71-140 FEES – GENERAL.

(1) Except as provided in section (5) of this rule, the following non-refundable fees are required to accompany applications for site evaluations, permits, licenses and services provided by the Department.

ON-SITE SEWAGE DISPOSAL SYSTEMS	MAXIMUM FEE
(a) New Site Evaluation:	
(A) Single Family Dwelling:	
(i) First Lot	\$ 380;
(ii) Each Additional Lot Evaluated During Initial Visit	\$ 205;
(B) Commercial Facility System:	
(i) For First One Thousand (1,000) Gallons Projected Daily Sewage Flow	\$ 380;
(ii) For systems with projected sewage flows greater than one thousand (1,000) gallons but not more than 5,000 gallons, the site evaluation application fee shall	

be \$380 plus an additional \$100 for each 500 gallons or part thereof above 1,000 gallons.

- (C) Site Evaluation Report Review \$ 335;
- (D) Fees for site evaluation applications made to an agreement county shall be in accordance with that county's fee schedule;
- (E) Each fee paid for a site evaluation report entitles the applicant to as many site inspections on a single parcel or lot as are necessary to determine site suitability for a single system. The applicant may request additional site inspections within ninety (90) days of the initial site evaluation, at no extra cost;
- (F) Separate fees shall be required if site inspections are to determine site suitability for more than one (1) system on a single parcel of land.

(b) Construction-Installation Permit:

(A) For First One Thousand (1,000) Gallons Projected Daily Sewage Flow:

- (i) Standard On-Site System \$ 565;
- (ii) Alternative System:
 - (I) Aerobic System \$ 565;
 - (II) Capping Fill \$ 860;
 - (III) Cesspool \$ 565;
 - (IV) Disposal Trenches in Sapolite \$ 565;
 - (V) Evapotranspiration-Absorption \$ 565;
 - (VI) Gray Water Waste Disposal Sump. \$ 240;
 - ~~(VII) Holding Tank \$ 565~~
 - ~~(VIII)~~ (VII) Pressure Distribution. \$ 860;
 - ~~(IX)~~ (VIII) Redundant \$ 565;
 - ~~(X)~~ (IX) Sand Filter \$1,100;
 - ~~(XI)~~ (X) Seepage Pit \$ 565;
 - ~~(XII)~~ (XI) Seepage Trench. \$ 565;
 - ~~(XIII)~~ (XII) Steep Slope \$ 565;
 - ~~(XIV)~~ (XIII) Tile Dewatering \$ 860;

(iii) At the discretion of the Agent, the permittee may be assessed a reinspection fee, not to exceed \$200, when a precover inspection correction notice requires correction of improper construction and, at a subsequent inspection, the Agent finds system construction deficiencies have not been corrected. The Agent may elect not to make further precover inspections until the reinspection fee is paid;

(iv) With the exceptions of sand filter and pressure distribution systems, a \$25 fee may be added to all permits that specify the use of a pump or dosing siphon.

(B) For systems with projected daily sewage flows greater than one thousand (1,000) gallons, the Construction-Installation permit fee shall be equal to the fee required in paragraph (1)(b)(A) of this rule plus \$50 for each five hundred (500) gallons or part thereof above one thousand (1,000) gallons;

NOTE: Fees for construction permits for systems with projected daily sewage flows greater than two thousand five hundred (2,500) ~~five thousand (5,000)~~ gallons shall be in accordance with the fee schedule for WPCF permits.

(C) Commercial Facility System, Plan Review:

(i) For a system with a projected daily sewage flow of less than six hundred (600) gallons, the cost of plan review is included in the permit application fee;

(ii) For a system with a projected daily sewage flow of six hundred (600) gallons, but not more than one thousand (1,000) gallons
projected daily sewage flow \$ 200;

(iii) For a system with a projected sewage flow greater than 1,000 gallons, the plan review fee shall be \$200, plus an additional \$25 for each five hundred (500) gallons or part thereof above one thousand (1,000) gallons, to a maximum sewage flow limit of two thousand five hundred (2,500) ~~five thousand (5,000)~~ gallons per day;

~~[(iv) Plan review for systems with projected sewage flows greater than five thousand (5,000) gallons per day shall be pursuant to OAR 340, Division 52.]~~

(D) Permit Renewal:

- (i) If Field Visit Required. \$ 290;
- (ii) No Field Visit Required \$ 85;

NOTE: Renewal of a permit may be granted to the original permittee if an application for permit renewal is filed prior to the original permit expiration date. Refer to OAR 340-71-160(10).

(E) Alteration Permit. \$ 555;

(F) Repair Permit:

(i) Single Family Dwelling:

- (I) Major. \$ 310;
- (II) Minor \$ 150;

(ii) Commercial Facility:

- (I) Major — The appropriate fees identified in paragraphs (1)(b)(A), (B), and (C) of this rule apply;
- (II) Minor. \$ 280.

(G) Permit Denial Review \$ 335.

(c) Authorization Notice:

- (A) If Field Visit Required. \$ 350;
- (B) No Field Visit Required. \$ 90;
- (C) Authorization Notice Denial Review \$ 335;

(d) Annual Evaluation of Alternative System
(Where Required) \$ 280;

~~[(e) Annual Evaluation of Large System (2501~~

~~to 5000 GPD) \$ 280~~

~~(f)~~ (e) ~~[Annual]~~ Evaluation of Temporary or Hardship
Mobile Home \$ 280;

~~(g)~~ (f) Variance to On-Site System Rules \$ 225;

NOTE: The variance application fee may be waived if the applicant meets the requirements of OAR 340-71-415(5).

~~(h)~~ (g) Rural Area Variance to Standard Subsurface Rules:

(A) Site Evaluation \$ 380;

NOTE: In the event there is on file a site evaluation report for that parcel that is less than ninety (90) days old, the site evaluation fee shall be waived.

(B) Construction-Installation Permit — The appropriate fee identified in subsection (1)(b) of this rule applies.

~~(i)~~ (h) Sewage Disposal Service:

(A) New Business License \$ 300;

(B) Renewal of Existing and Valid Business License \$ 200;

(C) Transfer of or Amendments to License \$ 150;

(D) Reinstatement of Suspended License . . . \$ 175;

(E) Pumper Truck Inspection, First Vehicle:

(i) Each Inspection \$ 100;

(ii) Each Additional Vehicle, Each Inspection \$ 50;

~~(j)~~ (i) Experimental Systems: Permit \$5,000;

~~(k)~~ (j) Existing System Evaluation Report \$ 350.

NOTE: The fee shall not be charged for an evaluation report

on any proposed repair, alteration or extension of an existing system.

- (2) **Contract County Fee Schedules.** Pursuant to ORS 454.745(4), fee schedules which exceed the maximum fees in ORS 454.745(1) and section (1) of this rule shall be established by rule.
- (3) **Contract County Fee Schedules, General:**
 - (a) Each county having an agreement with the Department under ORS 454.725 shall adopt a fee schedule for services rendered and permits to be issued. The county fee schedule shall not include the Department's surcharge fee identified in section 4 of this rule;
 - (b) A copy of the fee schedule and any subsequent amendments to the schedule shall be forwarded to the Department;
 - (c) Fees shall not:
 - (A) Exceed actual costs for efficiently conducted services;
 - (B) Exceed the maximum fee established in section (1) of this rule, unless approved by the Commission pursuant to ORS 454.745(4).
- (4) **Surcharge.** In order to offset a portion of the administrative and program oversight costs of the statewide on-site sewage disposal program, a surcharge of \$35 for each site evaluated, for each construction installation permit and all other activities for which an application is submitted, shall be levied by the Department and by each Agreement County. Proceeds from surcharges collected by the Department and Agreement Counties shall be accounted for separately. Each Agreement County shall forward the proceeds to the Department as negotiated in the memorandum of agreement (contract) between the county and the Department.
- (5) **Refunds.** The Agent may refund *all or a portion of* a fee accompanying an application if the applicant withdraws the application before the Agent has done any field work or other substantial review of the application.
- (6) **Fees for WPCF Permits. The following fee schedule shall apply to WPCF Permits for on-site sewage disposal systems issued pursuant to OAR 340-71-162:**
 - (a) **Application filing fee (all categories) \$ 50;**

(b) Permit processing fees for sewage lagoons and other on-site disposal systems over 1,200 gpd:

(A) New Applications \$2,000;

(B) Permit Renewals (including request for effluent limit modifications) \$1,000;

(C) Permit Renewal (without request for effluent limit modifications) \$ 500;

(D) Permit modification (involving increase in effluent limits) \$1,000;

(E) Permit modification (not involving an increase in effluent limits) \$ 500;

(c) Permit processing fees for on-site systems of 1,200 gpd or less:

(A) New Applications \$ 400;

(B) Permit Renewals (involving request for effluent limit modifications) \$ 200;

(C) Permit Renewals (without request for effluent limit modifications) \$ 100;

(D) Permit Modifications (involving increase in effluent limitations) \$ 150;

(E) Permit Modifications (not involving an increase in effluent limits) \$ 100;

(d) Registration fee for General Permits \$ 150;

(e) Site Evaluation Fee:

(A) Facilities with design flow of 5,000 gpd or less same as section (1)(a) of this rule;

(B) Facilities with design flow greater than 5,000 gpd \$1,200;

(f) Site Evaluation Confirmation Fee \$ 350;

NOTE: A Site Evaluation Confirmation Fee is required if the site evaluation is performed by a qualified consultant but, through the site evaluation review process, a site visit is still required by the Department or Agent.

(g) Plan Review Fee:

(A) Commercial Facilities with design flows less than 5,000 gpd . . . same as paragraph (1)(b)(C) of this rule;

(B) Commercial Facilities with design flows of 5,000 gpd or more. \$ 500;

(C) Non-commercial Facilities. \$ 100;

NOTE: A plan review fee is required when engineered plans must be reviewed for a facility which requires a WPCF permit.

(h) Annual Compliance Determination Fee:

(A) On-site sewage lagoon with no discharge \$ 600;

(B) On-site subsurface systems with individual WPCF Permit or general permit:

(i) Standard or alternative subsurface system not listed below, with design flow of 20,000 gpd or more \$ 500;

(ii) Standard or alternative subsurface system not listed below with design flow less than 20,000 gpd \$ 250;

(iii) Aerobic systems, 1,500 gpd or more \$ 500;

(iv) Aerobic systems, less than 1,500 . \$ 250;

(v) Recirculating Gravel Filter, 1,500 gpd or more \$ 500;

(vi) Recirculating Gravel Filter, less than 1,500 gpd \$ 250;

(vii) Sand Filter, 1,500 gpd or more. . . \$ 500;

(viii) Sand Filter, less than 1,500 gpd. . \$ 250;

(ix) Holding tanks \$ 200.

NOTE: The annual compliance determination fee (ACDF) is due July of each year. For permits which are issued between July 1 and September 31, the full fee is due before the permit will be issued. For permits issued after September 31, the ACDF will be prorated by calendar quarter.

340-71-150 SITE EVALUATION PROCEDURES.

- (1) A site evaluation is the first step in the process of obtaining a construction permit for an on-site system. Except as otherwise allowed in these rules, any person who wishes to install a new on-site sewage system shall first obtain a site evaluation report.
- (2) Applications for site evaluations shall be made to the Agent, on forms approved by the Department. Each application must be completed in full, signed by the owner or ~~his~~ legally authorized representative, and be accompanied by all required exhibits and appropriate fee. Incomplete applications shall be returned to the applicant to be completed. Unless other procedures approved by the Department are provided within a contract county, applicants shall provide at least two (2) test pits with dimensions **and configuration as directed by the Agent, which are [of at least two (2) feet wide by four (4) feet long by five (5) feet deep, and]** located approximately seventy-five (75) feet apart and within the area of the proposed system, **including the repair/replacement area.**
- (3) Site Evaluation Report:
 - (a) The Agent shall evaluate the site of the proposed system, shall consider all system options, and shall provide a report of such evaluation;
 - (b) The site evaluation report shall be on a form approved by the Department;
 - (c) The report shall contain, at a minimum, a site diagram and observations of the following site characteristics, if present:
 - (A) Parcel size;

- (B) Slope — in disposal field and replacement areas (percent and direction);
- (C) Surface streams — springs — other bodies of water;
- (D) Existing and proposed wells;
- (E) Escarpments;
- (F) Cuts and fills;
- (G) Unstable landforms;
- (H) Soil profiles — determined from test pits provided by applicant;
- (I) Water table levels;
- (J) Useable area for initial and replacement disposal areas;
- (K) Encumbrances (applicant list on application);
- (L) Sewerage availability;
- (M) Other observations as appropriate.

- (d) Site evaluation reports for subdivisions or other land divisions shall be based upon an evaluation of each lot;
- (e) Specific conditions or limitations imposed on an approved site shall be listed on the evaluation report;
- (f) An ***Agent*** approved site evaluation report assures that the property owner will receive a permit to construct a system on that property provided procedures and conditions for permit issuance found in OAR 340-71-160 are met.

(4) Approval or Denial:

- (a) In order to obtain a favorable site evaluation report the following conditions shall be met:
 - (A) All criteria for approval of a specific type or types of system, as outlined in OAR 340, Division 71 shall be met;

- (B) Each lot or parcel must have sufficient usable area available to accommodate an initial and replacement system. The usable area may be located within the lot or parcel, or within the bounds of another lot or parcel if secured pursuant to OAR 340-71-130(11). Sites may be approved where the initial and replacement systems would be of different types, e.g., a standard subsurface system as the initial system and an alternative system as the replacement system. The site evaluation report shall indicate the type of the initial and type of replacement system for which the site is approved.

EXCEPTION: A replacement area is not required in areas under control of a legal entity such as a city, county, or sanitary district, provided the legal entity gives a written commitment that sewerage service will be provided within five (5) years.

- (b) A site evaluation shall be denied where the conditions identified in subsection (4)(a) of this rule are not met;
- (c) Technical rule changes shall not invalidate a favorable site evaluation, but may require use of a different kind of system.
- (5) **Site Evaluation Report Review.** A site evaluation report issued by the Agent shall be reviewed at the request of the applicant. The application for review shall be submitted to the Department in writing, within thirty (30) days of the site evaluation report issue date, and be accompanied by the review fee. The review shall be conducted and a report prepared by the Department.

340-71-155 EXISTING SYSTEM EVALUATION REPORT.

- (1) Any person, upon application, may request an evaluation report on an existing on-site sewage disposal system. The application shall be on a form provided by the Agent and approved by the Department.
- (2) The application is complete only when the form, on its face, is completed in full, signed by the owner or the owner's legally authorized representative, and is accompanied by all necessary exhibits including the fee. A fee shall not be charged for an evaluation report on any proposed repair, alteration or extension of an existing system **for which a permit application has been made pursuant to OAR 340-71-160.**
- (3) The Agent shall:

- (a) Examine the records, if available, on the existing system; and
- (b) Conduct a field evaluation of the existing system; and
- (c) Issue a report of findings to the applicant.

340-71-160 PERMIT APPLICATION PROCEDURES — GENERAL REQUIREMENTS.

- (1) No person shall cause or allow construction, alteration, or repair of a system, or any part thereof, without first applying for and obtaining a permit.

EXCEPTION: Emergency repairs as set forth in OAR 340-71-215.

- (2) Applications for permits shall be made on forms ~~provided by the Agent and~~ approved by the Department.
- (3) An application is complete only when the form, on its face, is completed in full, is signed by the owner or the owner's legally authorized representative, and is accompanied by all required exhibits and fee. Except as otherwise allowed in ~~OAR 340-71-400(6)~~ this division, the exhibits shall include:
 - (a) Favorable ~~Site~~ ~~Evaluation~~ ~~Report~~. At the Agent's discretion, the requirement for an evaluation report may be waived when the application is for a repair permit or an alteration permit;
 - (b) A ~~Favorable~~ land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission acknowledged comprehensive plan or complies with the statewide planning goals;
 - (c) Plans and specifications for the on-site system proposed for installation within the area identified by the Agent or in the favorable site evaluation report. The Agent shall determine and request the minimum level of detail necessary to insure proper system construction;
 - (d) Any other information the Agent finds is necessary to complete the permit application.
- (4) The application form shall be received by the Agent only when the form is complete, as detailed in section (3) of this rule.

(5) Upon receipt of a completed application the Agent shall deny the permit if:

- (a) The application contains false information;
- (b) The application was wrongfully received by the Agent;
- (c) The proposed system would not comply with these rules;
- (d) The proposed system, if constructed, would violate a Commission moratorium as described in OAR 340-71-460;
- (e) The proposed system location is encumbered as described in OAR 340-71-130(8);
- (f) A sewerage system which can serve the proposed sewage flow is both legally and physically available, as described ***below*** in ***paragraphs (A) and (B) of this subsection***:

(A) **Physical Availability.** A sewerage system shall be deemed physically available if its nearest connection point from the property to be served is:

- (i) For a single family dwelling, or other establishment with a maximum projected daily sewage flow of not more than four hundred fifty (450) gallons, within three hundred (300) feet;
- (ii) For a proposed subdivision or group of two (2) to five (5) single family dwellings, or equivalent projected daily sewage flow, not further than two hundred (200) feet multiplied by the number of dwellings or dwelling equivalents;
- (iii) For proposed subdivisions or other developments with more than five (5) single family dwellings, or equivalents, the Agent shall make a case-by-case determination of sewerage availability.

EXCEPTION: A sewerage system shall not be considered available if topographic or man-made features make connection physically impractical.

(B) **Legal Availability.** A sewerage system shall be deemed legally available if the system is not under a Department connection permit moratorium, and the sewerage system owner is willing or obligated to provide sewer service.

- (6) A permit shall be issued only to a person licensed under ORS 454.695, or to the owner or easement holder of the land on which the system is to be installed.
- (7) No person shall construct, alter or repair a system, or any part thereof, unless that person is licensed under ORS 454.695, or is the permittee.
- (8) The Agent shall either issue or deny the permit within twenty (20) days after receipt of the completed application.

EXCEPTION: If weather conditions or distance and unavailability of transportation prevent the Agent from acting to either issue or deny the permit within twenty (20) days, the applicant shall be notified in writing. The notification shall state the reason for delay. The Agent shall either issue or deny the permit within sixty (60) days after the mailing date of such notification.

- (9) A permit issued pursuant to these rules shall be effective for one (1) year from the date of issuance for construction of the system. The construction-installation permit is not transferable. Once a system is installed pursuant to the permit, and a Certificate of Satisfactory Completion has been issued for the installation, conditions imposed as requirements for permit issuance shall continue in force as long as the system is in use.
- (10) Renewal of a permit may be granted to the original permittee if an application for permit renewal is filed prior to the original permit expiration date. Application for permit renewal shall conform to the requirements of sections (2) and (4) of this rule. The permit shall be issued or denied consistent with sections (5), (6), (8), and (9) of this rule.
- (11) ***If a permit has been issued pursuant to these rules but existing soil moisture conditions preclude the construction of the soil absorption system, the septic tank may be installed and used as a temporary holding tank upon approval of the Agent. Before the Agent will approve such use, the permittee shall demonstrate that the outlet of the tank has been sealed with a water tight seal and that the permittee or owner has entered into a pumping contract for the tank. The maximum length of time a septic tank can be used as a temporary holding tank is 12 months.***

340-71-162 PERMIT APPLICATION PROCEDURES – WPCF PERMITS

- (1) Any person wishing to obtain a new, modified, or renewal WPCF permit shall submit a written application on forms provided by the Department. Applications must be submitted at least 60 days before a permit is needed. All application forms must be completed in full, signed by the applicant or the applicant's legally authorized representative, and accompanied by the specified number of copies of all required exhibits. The name of the applicant must be the legal name of the owner of the facilities, the owner's agent, or the lessee responsible for the operation and maintenance. Some of the required exhibits, but not necessarily all of them, which must accompany the application are:**
- (a) A land use compatibility statement from the local land use planning agency indicating that the site is approved for the activity for which the applicant is applying (if the activity is approved only upon condition of a conditional use permit, a copy of the issued conditional use permit shall be one of exhibits);**
- (b) A copy of a favorable site evaluation report indicating that the site is approved for the type and quantity of wastes to be disposed;**
- (c) Evidence that the permit processing fees and the first year's annual compliance determination fee have been paid to the Department or Agent, as directed;**
- (d) A site diagram meeting the requirements of OAR 340-71-160(3)(c).**
- (2) Applications which are obviously incomplete, unsigned, or which do not contain the required exhibits will not be accepted by the Department for filing and may be returned for completion.**
- (3) Within 15 days after filing, the Department will preliminarily review the application to determine the adequacy of the information submitted:**
- (a) If the Department determines that additional information is needed, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered withdrawn if the applicant fails to submit the requested information within 90 days of the request;**
- (b) If, in the opinion of the Department, additional measures are necessary to gather facts regarding the application, the Department will notify the applicant that said measures will be instituted, and the timetable and procedures to be followed. The**

application will not be considered complete for processing until the necessary additional fact finding measures are completed. When the Department determines the information in the application is adequate, the applicant shall be notified in writing that the application is complete for processing.

- (4) Following determination that the application is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of all applicable statutes and rules of the Commission.
- (5) Draft Permit Review. If the Department makes a preliminary determination to issue a permit, a permit will be drafted and sent to the applicant for review. The applicant will have up to 14 calendar days to comment on the draft permit.
- (6) Public Participation. For on-site disposal systems with a design flow of 5,000 gallons per day or greater, a public notice of the pending Department action shall be distributed to the interested public. If in the public interest, at the discretion of the Department, a public notice may be distributed regarding pending Department actions on other on-site disposal systems requiring WPCF permits. If a public notice is distributed, it shall be for a period of at least 30 days. If, during the public notice period, the Department receives written requests from ten persons, or from an organization representing at least 10 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.
- (7) Final Department Action. Within 45 days after closing of the public comment period, the Department shall take final action on the permit application. In making its final determination, the Department shall consider the comments received and any other information obtained which may be pertinent to the application being considered.
- (8) Applicant's Appeal Rights. If the applicant is dissatisfied with the conditions or limitations of the permit, the applicant may request a hearing before the Commission or its authorized representative. Such a request for hearing shall be made in writing to the Director within 20 days of the date of mailing of the notification of final permit action. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.
- (9) Permit Term. A permit issued pursuant to this rule shall be for a period not to exceed 5 years. The expiration date shall be recorded on each permit issued. At least 90 days prior to the expiration of the permit, a

permit renewal application, on forms provided by the Department, shall be filed with the Department to obtain renewal of the permit.

- (10) For systems which are proposed to be or which are operating under a WPCF permit, no person shall construct, alter or repair the absorption facility, or any part thereof, unless that person is licensed under ORS 454.695, or is the permittee.
- (11) No person shall connect to or use any system authorized by a WPCF permit, unless the system has been inspected and certified as per OAR Chapter 340, Division 52, and that certification has been received and accepted by the Department.
- (12) Renewal of a Permit. The procedures for issuance of a permit shall apply to renewal of a permit. If a completed application for renewal of a permit is filed with the Department in a timely manner prior to expiration date of the permit, the permit shall not be deemed to expire until final action has been taken on the renewal application to issue or deny a permit.
- (13) Permit Modification. In the event it becomes necessary for the Department to institute modification of a permit due to changing conditions or standards, receipt of additional information or any other reason pursuant to applicable statutes, the Department shall notify the permittee by registered or certified mail of its intent. Such notification shall include the proposed modification and reasons for modification. The modification shall become effective 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative. 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 OAR Chapter 340, Division 11.
- (14) Permit Suspension or Revocation. In the event it becomes necessary for the Department to suspend or revoke a permit due to non-compliance, unapproved changes in operation, false information submitted in the application, failure to pay fees, or to maintain the required surety bond or equivalent security, the Department will notify the permittee by registered or certified mail of its intent. Such notification shall include the reasons for the suspension or revocation. The suspension or revocation shall become effective 20 days from the date of mailing of such notice unless within that time the permittee requests a hearing before the Commission or its authorized representative or resolves the issue which would cause the permit to be suspended. Any request for a hearing shall be in writing to the Director and shall state the grounds for the request. Any hearing held shall be conducted pursuant to OAR Chapter 340, Division 11.

(15) **Transfer of a WPCF Permit.** No WPCF permit shall be transferred to a third party without prior written approval from the Department. Such approval may be granted by the Department where the transferee acquires a property interest in the permitted activity and agrees in writing to fully comply with all the terms and conditions of the WPCF permit and the rules of the Commission.

(16) **General Permits.**

(a) **The Department may issue general permits for certain categories of on-site sewage disposal systems where an individual WPCF permit is not necessary in order to adequately protect public health and the environment. Prior to issuing the general permit, the Department shall follow the same public notice procedures found in section (6) of this rule. In order to be covered by a general permit issued by the Department, a person shall:**

(A) **Submit a registration application on a form provided by the Department or Agent, along with the necessary attachments, including but not limited to favorable site evaluation and land use compatibility statement;**

(B) **Demonstrate that the on-site disposal facility fits into the category of sources covered by the general permit;**

(C) **Submit applicable fees.**

(b) **Any person covered by a general permit may request to be covered by an individual WPCF, in lieu of the general permit, upon submission of the required application and fees;**

(c) **The Department may revoke a general permit as it applies to any person's on-site sewage disposal system and require such person to apply for and obtain an individual WPCF permit, if:**

(A) **The covered source or activity is a significant contributor of pollution or creates other environmental problems;**

(B) **The permittee is not in compliance with the terms and conditions of the general permit; or**

(C) **Conditions or standards have changed so that the source or activity no longer qualifies for a general permit.**

(d) **The Department's Agent may distribute and receive registration applications for general permits for on-site sewage disposal systems and may distribute general permits, if the procedure is**

established in an agreement between the Department and the Agent.

(17) Rules Which Do Not Apply to WPCF Applicants or Permittees.

- (a) Because the permit review, issuance, and appeal procedures for WPCF permits are different from those of other on-site permits regulated by these rules, the following portions within this division do not apply to WPCF applicants or permittees: OAR 340-71-155; 340-71-160(6), (8), (9), and (10); 340-71-165(1); 340-71-170; 340-71-175; 340-71-185; 340-71-195; 340-71-200; 340-71-205; 340-71-210; 340-71-215(1), (2), (3); 340-71-270; 340-71-275(4)(c)(A); 340-71-295(1); 340-71-305; 340-71-320; 340-71-325; 340-71-330; 340-71-345; 340-71-360(2)(b)(B); 340-71-410; 340-71-415; 340-71-420; 340-71-425; 340-71-430; 340-71-435; 340-71-440; and 340-71-445;
- (b) Permit applicants and permittees are not subject to any WPCF permit-related fees other than those specifically contained within OAR 340-71-140;
- (c) The following portions of OAR Chapter 340, Division 73, do not apply to WPCF applicants or permittees: OAR 340-73-030(1); 340-73-065; 340-73-070; and 340-73-075.

340-71-165 PERMIT DENIAL REVIEW.

- (1) A permit denied by the Agent shall be reviewed at the request of the applicant. The application for review shall be submitted to the Department in writing, within thirty (30) days of the permit denial notice from the Agent, and be accompanied by the denial review fee. The denial review shall be conducted and a report prepared by the Department.
- (2) Permit denials for systems proposed to serve a commercial facility, intended to be used in a commercial activity, trade, occupation or profession, ***and all systems covered by WPCF permit***, may be appealed through the contested case hearing procedure set forth in ORS 183 and OAR Chapter 340, Division 11.
- (3) If the Agent intends to deny a permit for a parcel of ten (10) acres or larger in size, the Agent shall:
- (a) Provide the applicant with a Notice of Intent to Deny;

- (b) Specify reasons for the intended denial; and
- (c) Offer a contested case hearing in accordance with ORS 183 and OAR Chapter 340, Division 11.

340-71-170 PRE-COVER INSPECTIONS.

- (1) When construction, alteration or repair of a system for which a permit has been issued is complete, except for backfill (cover), or as required by permit, the system installer shall notify the Agent. The Agent shall inspect the installation to determine if it complies with the rules of the Commission, unless the inspection is waived by the Agent in accordance with section (2) of this rule or in accordance with the provisions of OAR 340-71-400(6).
- (2) The Agent may, at *the Agent's [his-own]* election, waive the pre-cover inspection for a system proposed to serve a single family dwelling or for a system of similar flow and waste strength, provided:
 - (a) The system was [installation is a standard subsurface system] installed by a sewage disposal service licensed pursuant to ORS 454.695; and
 - (b) The inspecting jurisdiction and the Department have developed an impartial method of identifying those installers who have a history of proper installations without excessive numbers of corrections; and
 - (c) Inspections waived are for installations made by installers identified as having a good history of proper installation; and
 - ~~[(d) A list of installers whose inspections may be waived is available to the public and the Department; and]~~
 - ~~[(e)]~~ (d) A representative number of each installer's systems has been inspected, regardless of installation history; and
 - ~~[(f) After system completion the installer certifies in writing that the system complies with the rules of the Commission, and provides the Agent with a detailed as-built plan (drawn to scale) of the installation.]~~
 - (e) The Agent may require the installer to submit to the Agent photographs of those portions of the construction where the inspection is waived.

- (3) *The system installer shall submit the following information to the Agent at the time construction of the system is complete: ~~Pre-cover inspection details shall be recorded on a form approved by the Department.~~*
- (a) A detailed and accurate as-built plan of the constructed system; and*
- (b) A list of all materials used in the construction of the system; and*
- (c) A written certification (on a form acceptable to the Department) that the construction was in accordance with the permit and rules of the Commission.*

340-71-175 CERTIFICATE OF SATISFACTORY COMPLETION.

- (1) The Agent shall issue a Certificate of Satisfactory Completion~~if~~ if, upon inspection of installation, the system complies with the rules of the Commission and the conditions of the permit.
- (2) If inspected installation does not comply with the rules of the Commission and the conditions of the permit, the permittee shall be notified in writing or a Correction Notice shall be posted on the site. System deficiencies shall be explained and satisfactory completion required. Follow-up inspections may be waived by the Agent. After satisfactory completion a Certificate shall be issued.
- (3) If the inspection is not made within seven (7) days after notification of completion, or *if* the inspection is waived *in accordance with OAR 340-71-170(2) or OAR 340-71-400(6)*, a Certificate of Satisfactory Completion shall be deemed to have been issued by operation of law. In such cases, a modified Certificate shall be issued to the owner.
- (4) A system, once installed, shall be backfilled (covered) only when:
- (a) The permittee is notified by the Agent that inspection has been waived; or
- (b) The inspection has been conducted by the Agent and a Certificate of Satisfactory Completion has been issued; or
- (c) A Certificate of Satisfactory Completion has been issued by operation of law where the inspection has not been conducted within seven (7) days of notification of completed installation.

- (5) Failure to meet requirements for satisfactory completion within thirty (30) days after written notification or posting of a Correction Notice on the site, constitutes a violation of ORS 454.605 to 454.745 and ~~these rules~~ this division.
- (6) No person shall connect to or use any system, completed on or after January 1, 1974, unless a Certificate of Satisfactory Completion has been issued for the installation, or deemed issued by operation of law as provided in ORS 454.665(2).
- (7) Unless otherwise required by the Agent the system installer shall backfill (cover) a system within ten (10) days after issuance of a Certificate of Satisfactory Completion for that system.
- (8) A Certificate of Satisfactory Completion shall be valid for a period of five (5) years ~~one (1) year~~, for connection of the system to the facility for which it was constructed. After the five (5) ~~one (1)~~ year period, rules for Authorization Notices or Alteration Permits apply, as outlined in OAR 340-71-205 and 340-71-210.
- (9) Denial of a Certificate of Satisfactory Completion may be appealed in accordance with ORS 183.310 and OAR Chapter 340, Division 11.

OAR 340-71-185 DECOMMISSIONING ~~ABANDONMENT~~ OF SYSTEMS.

- (1) The owner shall decommission ~~abandon~~ a system when:
 - (a) A sewerage system becomes available and the building sewer has been connected thereto; or
 - (b) The source of sewage has been permanently eliminated; or
 - (c) The system has been operated in violation of OAR 340-71-130(13), unless and until a repair permit and Certificate of Satisfactory Completion are subsequently issued therefor; or
 - (d) The system has been constructed, installed, altered, or repaired without a required permit authorizing same, unless and until a permit is subsequently issued therefor; or
 - (e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice authorizing same, unless and until a Certificate of Satisfactory Completion or Authorization Notice is subsequently issued therefor.

- (2) Procedures for Decommissioning ~~{Abandonment}~~:
- (a) The ~~{septic}~~ tank(s), cesspool or seepage pit shall be pumped by a licensed sewage disposal service to remove all septage/sludge;
- (b) The ~~{septic}~~ tank(s), cesspool or seepage pit shall be filled with reject sand, bar run gravel, or other material approved by the Agent, or the container shall be removed and properly disposed;
- ~~{(c) The system building sewer shall be permanently capped.}~~

~~{(d)}~~ (3) If, in the judgment of the Agent, it is not reasonably possible or necessary to comply with subsections (2)(a) and (2)(b) of this rule, the Agent may waive either or both of these requirements provided such action does not constitute a menace to public health, welfare or safety.

340-71-205 AUTHORIZATION TO USE EXISTING SYSTEMS.

~~{(1)}~~ ~~For the purpose of these rules, "Authorization Notice" means a written document issued by the Agent which establishes that an existing on-site sewage disposal system appears adequate to serve the purpose for which a particular application is made. Applications for Authorization Notices shall conform to requirements of OAR 340-71-160(2) and (4).}~~

~~{(2)}~~ (1) Authorization Notice Required. Except as otherwise allowed in this division ~~{No}~~ no person shall place into service, change the use of, or increase the projected daily sewage flow into an existing on-site sewage disposal system without first obtaining an Authorization Notice, Construction-Installation Permit or Alteration Permit as appropriate.

EXCEPTIONS:

- 1- An Authorization Notice is not required when a mobile home is replaced with similar mobile home in a mobile home park, or a recreation vehicle is replaced by another recreation vehicle in a lawful recreation vehicle park, provided the sanitary wastewater system has adequate capacity for safe treatment and disposal of sewage generated within the park; {there is a change in use (replacement of mobile homes or recreational vehicles with similar units) in mobile home parks or recreational vehicle facilities.}
- 2- An Authorization Notice is not required for placing into service a previously unused system for which a Certificate of Satisfactory Completion has been issued within ~~{one (1) year}~~ five (5) years of

the date such system is placed into service, providing the projected daily sewage flow does not exceed the design flow, and there is no other violation of these rules.

(2) An application for the Authorization Notice shall be submitted on a form approved by the Department. The application is complete only when the form, on its face, is completed in full, is signed by the owner or the owner's legally authorized representative, and is accompanied by all required exhibits and fee. The exhibits shall include:

(a) A land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission acknowledged comprehensive plan or complies with the statewide planning goals;

(b) An accurate property development plan;

(c) A sewage treatment and disposal system description;

(d) Tax lot map or equivalent plat map for the property;

(e) Documentation of hardship if such is being claimed;

(f) All other information the Agent finds is necessary to complete the application.

(3) For placing into service or for changes in the use of an existing on-site sewage disposal system where no increase in sewage flow is projected, or where the design flow is not exceeded; an Authorization Notice valid for a period not to exceed one (1) year ~~may~~ ~~shall~~ be issued if:

(a) The existing system is not failing; and

(b) All set-backs between the existing system and the structure can be maintained; and

(c) In the opinion of the Agent the proposed use would not create a public health hazard on the ground surface or in surface public waters.

~~**[(4) If the conditions of section (3) of this rule cannot be met, an Authorization Notice shall be withheld until such time as the necessary alterations and/or repairs to the system are made.]**~~

~~**[(5) (4) For placing into service, or for changing in the use of a system where projected daily sewage flow would be increased by not more**~~

than three hundred (300) gallons beyond the design capacity or by not more than fifty (50) percent of the design capacity for the system, whichever is less; an Authorization Notice valid for a period not to exceed one (1) year ~~may~~ **shall** be issued if:

- (a) The existing system is shown not to be failing; and
- (b) All set-backs between the existing system and the structure can be maintained; and
- (c) Sufficient area exists so that a complete replacement area meeting all requirements of these rules (except those portions relating to soil conditions and groundwater) is available; and
- (d) In the opinion of the Agent the proposed increase would not create a public health hazard or water pollution.

~~(6)~~ **(5)** Only one (1) Authorization Notice for an increase **of** up to three hundred (300) gallons beyond the design capacity, or increase ~~of~~ **by** **of** not more than fifty (50) percent of the design capacity, whichever is less, will be allowed per system.

~~(7)~~ **(6)** For **placing into service, or for** chang~~es~~ **ing** ~~in~~ the use of a system where projected daily sewage flows would be increased by more than three hundred (300) gallons beyond the design capacity, or increased by more than fifty (50) percent of the design capacity of the system, whichever is less, a Construction-Installation Permit shall be obtained. **The permit application procedure described in OAR 340-71-160 shall be followed. [Refer to OAR 340-71-210.]**

~~(8)~~ **(7)** Personal Hardship:

- (a) The Agent may allow a mobile home to use an existing system serving another dwelling, in order to provide housing for a person suffering hardship, or for an individual providing care for such a person, by issuing an Authorization Notice, if:
 - (A) The Agent receives satisfactory evidence which indicates that a person is suffering physical or mental impairment, infirmity, or is otherwise disabled (a hardship approval issued under local planning ordinances shall be accepted as satisfactory evidence); and
 - (B) The system is not failing; and
 - (C) The application is for a mobile home; and

- (D) Evidence is provided that a hardship mobile home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building.
- (b) The Authorization Notice shall remain in effect for a specified period ***not to exceed 5 years, but shall*** not ~~fit~~ exceed cessation of the hardship. The Authorization Notice ***may be extended for additional periods by submitting an application in accordance with the requirements in section (2) of this rule [is renewable on an annual or biennial basis].*** The Agent shall impose conditions in the Authorization Notice which are necessary to assure protection of public health.

~~(9)~~

(8)

Temporary Placement:

- (a) The Agent may allow a mobile home to use an existing system serving another dwelling in order to provide temporary housing for a family member in need, and may issue an Authorization Notice provided:
 - (A) The Agent receives evidence that the family member is in need of temporary housing; and
 - (B) The system is not failing; and
 - (C) A full system replacement area is available; and
 - (D) Evidence is provided that a temporary mobile home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building.
- (b) The Authorization Notice shall authorize use for no more than two (2) years and is not renewable. The Agent shall impose conditions in the Authorization Notice necessary to assure protection of public health. If the system fails during the temporary placement and additional replacement area is no longer available, the mobile home shall be removed from the property.

(9) If the conditions of sections (3), (4), (6), (7) and (8) of this rule cannot be met, the Agent shall either deny the Authorization Notice or shall not issue it until such time as necessary alterations and/or repairs to the system are made. The fee submitted as part of the Authorization Notice application shall be credited towards the fee for the appropriate permit. If the appropriate permit fee is higher than the fee already paid, the owner shall pay the difference. The Agent may require submittal of

the exhibits described in OAR 340-71-160(3) to complete the application, and shall issue or deny the appropriate permit consistent with sections (5), (6), (8), and (9) of that rule.

- (10) An Authorization Notice denied by the Agent shall be reviewed ***by the Department*** at the request of the applicant. The application for review shall be submitted to the Department in writing within ***forty-five (45)*** ~~*thirty (30)*~~ days of the authorization notice denial, and be accompanied by the denial review fee ***and other information the Department finds is necessary to complete the application.*** The denial review shall be conducted and a report prepared by the Department.

340-71-210 ALTERATION OF EXISTING ON-SITE SEWAGE DISPOSAL SYSTEMS.

- (1) Permit Required. ~~*(a)*~~ No person shall alter ~~*(1)*~~ or increase the design capacity of ~~*(1)*~~ an existing on-site sewage disposal system without first obtaining an Alteration Permit or Construction-Installation Permit, as appropriate. ***The permit application procedure is described in [Refer to] OAR 340-71-160.***

~~*(b) No person shall increase the projected daily sewage flow into an existing on-site sewage disposal system by more than three hundred (300) gallons beyond the design capacity or increase by more than fifty (50) percent of the design capacity of the system, whichever is less, until a Construction-Installation Permit is obtained. Refer to OAR 340-71-160.*~~

- (2) An application for an Alteration Permit shall be submitted to the Agent for proposed alterations to an existing system. ~~*that do not increase the existing system's design capacity, or do not exceed the existing system's design capacity by more than three hundred (300) gallons per day or fifty (50) percent, whichever is less.*~~ The permit may be issued if ***the provisions of either subsections (a) or (b) of this section are met:***

(a) Alterations that do not increase the system's design capacity beyond the original design flow:

(A) The existing system is not failing; and

(B) The site setbacks in Table 1 can be met except; if the setbacks in Table 1 for septic tanks, treatment units, effluent sewer and distribution units cannot be met, the Agent may allow a reasonable installation; and

(C) In the opinion of the Agent, use of the on-site system would not create a public health hazard or water pollution.

(b) Alterations that do not exceed the existing system's design capacity by more than three hundred (300) gallons per day or fifty (50) percent, whichever is less:

~~((a))~~ (A) The existing system is not failing; and

~~((b))~~ (B) The setbacks in **Table 1** can be met; and

~~((c))~~ (C) In the opinion of the Agent, use of the on-site system would not create a public health hazard or water pollution.

(3) An application for a Construction-Installation Permit shall be submitted to the Agent when the existing system's design capacity is proposed to be exceeded by greater than three hundred (300) gallons per day or greater than fifty (50) percent, whichever is less. The permit application procedure described in OAR 340-71-160 shall be followed. ~~[The permit may be issued if:~~

~~(a) The existing system is not failing; and~~

~~(b) A favorable site evaluation report has been obtained from the Agent (refer to OAR 340-71-150); and~~

~~(c) The proposed installation will be in full compliance with these rules.]~~

(4) Certificate of Satisfactory Completion Required. Upon completion of installation of that part of a system for which a permit [an Alteration Permit or Construction-Installation Permit] has been issued, the system installer shall comply with the requirements for pre-cover inspections, as described in OAR 340-71-170. The Agent shall issue or deny the [permittee shall obtain a] Certificate of Satisfactory Completion [from the Agent] for the completed construction pursuant to OAR 340-71-175. An increase in the projected daily sewage flow into the system is [shall be] prohibited until the Certificate is issued.

340-71-215 REPAIR OF EXISTING SYSTEMS.

~~[(1) For the purpose of these rules, "Emergency Repair" means the repair of a system where sewage is backing up into a dwelling or commercial facility, or there is a broken pressure sewer pipe and immediate action is necessary to correct the situation.]~~

~~{2}~~ (1) A failing system shall be immediately repaired.

EXCEPTION: If in the opinion of the Agent adverse soil conditions exist due to climatic conditions that would likely preclude a successful repair, the Agent may allow a delay in commencing repairs until the soil conditions improve. If this exception is exercised, a compliance date shall be specified in a Notice of Violation to the system owner.

~~{3}~~ (2) No person shall repair a failing system without first obtaining a Repair Permit. **The permit application procedure is described in [See] OAR 340-71-160.**

EXCEPTION: Emergency repairs may be made without first obtaining a permit provided that a repair permit application is submitted to the Agent within three (3) working days after the emergency repairs are begun.

~~{4}~~ (3) Certificate of Satisfactory Completion. Upon completion of installation of that part of a system for which a repair permit has been issued, the **system installer shall comply with the requirements for pre-cover inspections, as described in OAR 340-71-170. The Agent shall issue or deny the [permittee shall obtain a] Certificate of Satisfactory Completion [from the Agent] pursuant to OAR 340-71-175.**

~~{5}~~ (4) Criteria for Permit Issuance:

- (a) If the site characteristics and standards described in OAR 340-71-220 can be met, then the repair installation shall conform with them;
- (b) If the site characteristics or standards described in OAR 340-71-220 cannot be met, the Agent may allow a reasonable repair installation in order to eliminate a public health hazard. Reasonable repairs may require the installation of an alternative system in order to eliminate a public health hazard.

~~{6}~~ (5) Failing systems which cannot be repaired shall be **abandoned/ decommissioned** in accordance with OAR 340-71-185.

340-71-220 STANDARD SUBSURFACE SYSTEMS.

~~[(1)]~~ ~~For the purpose of these rules:~~

~~(a) "Standard Subsurface System" means an on-site sewage disposal system consisting of a septic tank, distribution unit and gravity fed absorption facility constructed in accordance with section (2) of this rule, using six (6) inches of filter material below the distribution pipe, and maintaining not less than eight (8) feet of undisturbed earth between disposal trenches;~~

~~(b) "Effective Soil Depth" means the depth of soil material above a layer that impedes movement of water, air, or growth of plant roots. Layers that differ from overlying soil material enough to limit effective soil depths are hardpans, claypans, fragipans, compacted soil, bedrock, saprolite and clayey soil;~~

~~(c) "Large System" means any on-site system with a daily sewage flow greater than two thousand five hundred (2,500) gallons;~~

~~(d) "Conditions Associated with Saturation" means:~~

~~(A) Reddish brown or brown soil horizons with gray (chromas of two (2) or less) and red or yellowish red mottles; or~~

~~(B) Gray soil horizons, or gray soil horizons with red, yellowish red or brown mottles; or~~

~~(C) Dark colored highly organic soil horizons; or~~

~~(D) Soil profiles with concentrations of soluble salts at or near the ground surface.]~~

~~[(2)]~~

(1)

Criteria For Standard Subsurface System Approval. In order to be approved for a standard subsurface system each site must meet all the following conditions:

(a) Effective soil depth shall extend thirty (30) inches or more from the ground surface as shown in **Table 3**. A minimum six (6) inch separation shall be maintained between the layer that limits effective soil depth and the bottom of the absorption facility.

(b) Water table levels shall be predicted using Standards in OAR 340-71-130(24). ~~[[f conditions associated with saturation do not occur in soil with rapid or very rapid permeability, predictions of the highest level of the water table shall be based on past recorded observations of the Agent. If such observations have not been~~

~~made, or are inconclusive, the application shall be denied until observations can be made. Groundwater level determinations shall be made during the period of the year in which high groundwater normally occurs in that area.;~~

- (A) A permanent water table shall be four (4) feet or more from the bottom of the absorption facility.

EXCEPTION: In defined geographic areas where the Department has determined through a groundwater study that degradation of groundwater would not be caused nor public health hazards created. In the event this exception is allowed, the rule pertaining to a temporary water table shall apply.

- (B) A temporary water table shall be twenty-four (24) inches or more below the ground surface. An absorption facility shall not be installed deeper than the level of the temporary water table;

- (C) Groundwater Interceptors. ~~[[Diagram 13]]~~ A groundwater interceptor may be used to intercept and/or drain temporary water from a disposal area; however, it may be required to demonstrate that the site can be de-watered prior to issuing a Construction-Installation permit. Groundwater interceptors may be used only on sites with adequate slope to permit proper drainage. **Unless otherwise authorized by the Agent, [E]each outlet shall be protected by a short section of Schedule 40 PVC or ABS plastic pipe and a grill to exclude rodents. Where required, groundwater interceptors are an integral part of the system, but do not need to meet setback requirements to property lines, wells, streams, lakes, ponds or other surface [water bodies] waterbodies which are required of the sewage disposal area.**

- (c) Soil with rapid or very rapid permeability shall be thirty six (36) inches or more below the ground surface. A minimum eighteen (18) inch separation shall be maintained between soil with rapid or very rapid permeability and the bottom of disposal trenches.

EXCEPTION: Sites may be approved with no separation between the bottom of disposal trenches and soil as defined in OAR 340-71-100~~[[114]]~~**(139)**(a) and (b), with rapid or very rapid permeability, and disposal trenches may be placed into soil as defined in OAR 340-71-100**(139)**~~[[114]]~~(a) and (b), with rapid or very

rapid permeability if any of the following conditions occur:

- 1- A confining layer occurs between the bottom of disposal trenches and the groundwater table. A minimum six (6) inch separation shall be maintained between the bottom of disposal trenches and the top of the confining layer; or
 - 2- A layer of non-gravelly (less than 15% gravel) soil with sandy loam texture or finer at least eighteen (18) inches thick occurs between the bottom of the disposal trenches and the groundwater table; or
 - 3- The projected daily sewage flow does not exceed a loading rate of four hundred fifty (450) gallons per acre per day.
- (d) Slopes shall not exceed thirty (30) percent and the slope/depth relationship set forth in **Table 3**;
 - (e) The site has not been filled or the soil has not been modified in a way that would, in the opinion of the Agent, adversely affect functioning of the system;
 - (f) The site shall not be on an unstable land form, where operation of the system may be adversely affected;
 - (g) The site of the initial and replacement absorption facility shall not be covered by asphalt or concrete, or subject to vehicular traffic, livestock, or other activity which would adversely affect the soil;
 - (h) The site of the initial and replacement absorption facility will not be subjected to excessive saturation due to, but not limited to, artificial drainage of ground surfaces, driveways, roads, and roof drains;
 - (i) Setbacks in **Table 1** can be met:
 - (A) Surface Waters~~Stream~~ Setbacks. Setback from streams or other surface waters shall be measured from bank drop-off or mean yearly highwater mark, whichever provides the greatest separation distance;
 - (B) Lots Created Prior to May 1, 1973. For lots or parcels legally created prior to May 1, 1973, the Agent may approve installation of a standard or alternative system with a setback from surface public waters of less than one

hundred (100) feet but not less than fifty (50) feet, provided all other provisions of these rules can be met;

- (C) Water Lines and Sewer Lines Cross. Where water lines and building or effluent sewer lines cross, separation distances shall be as required in the State Plumbing Code;
- (D) Septic Tank Setbacks. The Agent shall encourage the placement of septic tanks and other treatment units as close as feasible to the minimum separation from the building foundation in order to minimize clogging of the building sewer.

~~H(3)~~

(2)

Criteria For System Sizing: Disposal Fields. Disposal fields shall be designed and sized on the basis of:

- (a) **Table 2**, Quantities of Sewage Flows; or other information determined by the Agent to be reliable.

EXCEPTIONS: Systems shall be sized on the basis of three hundred (300) gallons sewage flow per day, plus seventy-five (75) gallons per day for the third bedroom when:

- 1- Systems are proposed to serve single family dwellings on lots of record that were created prior to March 1, 1978, which are inadequate in size to accommodate a system sized for a daily sewage flow of four hundred fifty (450) gallons.
 - 2- Systems for specifically planned developments, with living units of three (3) or fewer bedrooms, where deed restrictions prohibit an increase in the number of bedrooms.
- (b) **Table 4**, Minimum Length of Disposal Trench Required, Soil Texture Versus Effective Soil Depth;
 - (c) **Table 5**, Minimum Length of Disposal Trench Required, Soil Texture Versus Depth to Temporary Water;
 - (d) Strength of the Wastewater. Where the strength of the wastewater exceeds the maximum limits for "Residential Strength Wastewater", as defined in OAR 340-71-100, and/or the contents of the wastewater are atypical of the same or are foreseen as a threat to groundwater, public health, or the environment, the wastewater shall first receive pre-treatment to reduce the factor(s) to acceptable levels, before it can be discharged into a

standard or alternative treatment and disposal system. Any system which requires pre-treatment requires a WPCF permit for construction and operation. [The minimum length of disposal trench shall be determined by using the following equation:

$$\text{Length} = (P) \times (Q) \times (R),$$

where: P = Trench length from Tables 4 or 5, whichever is larger.

Q = Design peak daily sewage flow divided by 150.

R = BOD₅ of Wastewater divided by 200 mg/L, or TSS of Wastewater divided by 150 mg/L, whichever has the higher value. In no case, however, may the value of R be less than 1. For a single family dwelling, assume a value of 200 mg/L BOD₅ and 150 mg/L TSS.]

~~{4}~~ (3) Septic Tanks:

~~{a}~~ For the purpose of these rules, "Septic Tank" means a watertight receptacle which receives sewage from a sanitary drainage system, is designed to separate solids from liquids, digest organic matter during a period of detention, and allow the liquids to discharge to a second treatment unit or to a soil absorption facility.]

~~{b}~~ (a) Liquid Capacity:

(A) Septic tanks for commercial facilities shall have a liquid capacity of at least two (2) times the projected daily sewage flow, unless otherwise authorized by the Agent or Department; but in no case shall capacity be less than 1,000 gallons; [For projected daily sewage flows up to fifteen hundred (1,500) gallons the septic tank shall have a liquid capacity equal to at least one and one half (1-1/2) days sewage flow, or one thousand (1,000) gallons, whichever is greater;

~~{B}~~ For projected daily sewage flows greater than fifteen hundred (1,500) gallons, the septic tank shall have a liquid capacity equal to eleven hundred twenty five (1,125) gallons plus seventy five (75) percent of the projected daily sewage flow;]

~~HC~~ (B) Additional volume may be required by the Agent for ~~industrial or other special wastes~~ special or unique waste characteristics, including but not limited to flow patterns, volumes, waste strength, or facility operation;

~~HD~~ (C) The quantity of daily sewage flow shall be estimated from **Table 2**. For structures not listed in **Table 2**, the Agent shall determine the projected daily sewage flow;

~~HE~~ (D) Single Family Dwelling. A septic tank to serve a single family dwelling shall be sized on the number of bedrooms in the dwelling ~~as follows:~~. For a dwelling with 4 or fewer bedrooms, the tank capacity shall be at least 1,000 gallons. A 1,500 gallon (or larger) septic tank shall be required when the dwelling has more than 4 bedrooms.

~~(i)~~ 1 to 4 bedrooms 1,000 gallons

~~(ii)~~ 5 bedrooms 1,250 gallons

~~(iii)~~ More than 5 bedrooms 1,500 gallons

~~HE~~ (b) Installation Requirements:

(A) Septic tanks shall be installed on a level, stable will not settle;

(B) Septic tanks located in high groundwater areas shall be weighted or provided with an antibuoyancy device to prevent flotation;

(C) All septic tanks shall be installed with ~~the manhole access deeper than eighteen (18) inches, or when used within a sand filter system, commercial system, or pressurized system shall be provided with~~ a watertight manhole riser extending to the ground surface or above. The riser shall have a minimum nominal diameter of 20 inches, inside dimension equal to or greater than that of the tank manhole. A cover shall be provided and securely fastened or weighted to prevent easy removal. Septic tanks with a soil cover depth of more than 36 inches or having a capacity of more than 3,000 gallons shall have at least one manhole riser which is 30 inches in diameter or more;

(D) Septic tanks shall be installed in a location that provides access for servicing and pumping;

(E) Where practicable, the sewage flow from any establishment shall be consolidated into one septic tank.

(F) At the discretion of the Agent, a removable plug may be placed in the top of the septic tank's inlet sanitary tee if the septic tank discharges directly into a gravity-fed absorption facility~~[-];~~

(G) All tanks shall be tested for water tightness in accordance with OAR 340-73-025.

(H) The outlet of all septic tanks serving commercial facilities shall be equipped with an effluent filter meeting the requirements of Rule 73-056, complete with a service riser for the filter which meets all the requirements of OAR 340-71-220(3)(b)(C).

~~[(d)]~~ **(c)** Construction. Septic tank construction shall comply with minimum standards set forth in ~~{OAR 340-73-025 and 340-73-030}~~ **OAR Chapter 340, Division 73**, unless otherwise authorized in writing by the Department.

(d) Double Compartment. Where a septic tank is preceded by a sewage ejector pump, the tank shall be constructed as a two (2) compartmentalized tank. The first compartment shall be not less than two thirds the required tank capacity. All other requirements of these rules apply. An effluent filter shall be installed on the outlet of the tank.

~~[(5)]~~ **(4)** Distribution Techniques. Disposal trenches shall be constructed according to one of the following methods:

(a) Gravity Fed Equal Distribution (including Loop) ~~{system}~~.
~~[(Diagrams 3, 4 and 5)]~~

(A) [The] E[e]qual distribution [system] shall be used on generally level ground. All trenches and piping shall be level within a tolerance of plus or minus one (1) inch. All lateral piping shall be at the same elevation;

(B) A pressure operated hydrosplitter may be used to achieve equal distribution;

(C) To determine the total useable area of a looped soil absorption facility, the Agent shall take the sum of the lengths of the parallel disposal trenches plus the lengths of

a maximum of two (2) disposal trenches intersecting the parallel trenches.

- (b) Serial Distribution ~~[System].~~ ~~[(Diagrams 1 and 2).]~~ ~~[The] S[s]~~ Serial distribution ~~[system]~~ is generally used on sloping ground. Each trench shall be level within a tolerance of plus or minus one (1) inch~~[-]~~. **Serial distribution may be a combination of equal distribution and serial distribution;**
- (c) Pressurized Distribution Systems. ~~[See]~~Refer to OAR 340-71-275, for pressurized distribution requirements.

~~[(6)]~~ (5) Distribution Boxes and Drop Boxes:

- (a) Construction. Construction of distribution boxes and drop boxes shall comply with minimum standards in OAR 340-73-035 ~~[through]~~ **and 340-73-04[5]0.**
- (b) Foundation. All distribution boxes and drop boxes shall be bedded on a stable, level base~~[-]~~;
- (c) In all gravity distribution techniques, the connection of the effluent piping to the distribution piping shall include at least one distribution or drop box or other device acceptable to the Agent as a means for locating and monitoring the disposal field.**

~~[(7)]~~ (6) Dosing Tanks:

- (a) Construction of dosing tanks shall comply with the minimum standards in OAR **340-73-025 and 340-73-050**, unless otherwise authorized in writing by the Department on a case-by-case basis;
- (b) Each dosing tank shall be installed on a stable, level base;
- (c) Each dosing tank shall be provided with **at least one [a]** watertight riser and manhole cover, extending to the ground surface or above. Provision shall be made for securely fastening the manhole cover~~[-]~~, **unless the manhole cover weighs at least 50 pounds;**
- ~~[(d)]~~ **At the discretion of the Agent, a removable plug may be placed in the top of the septic tank's inlet sanitary tee, and a trench ten (10) feet long and otherwise constructed the same as a standard disposal trench may be used to provide air and gas exchange from the dosing tank, providing:**

~~(A) Ground and surface water will not infiltrate through the gravel-filled trench into the dosing tank; and~~

~~(B) The invert elevation of the perforated pipe in the ten (10) foot trench is one (1) foot higher than the invert elevation of the septic tank's inlet sanitary tee; and~~

~~(C) The design flow for the system does not exceed six hundred (600) gallons per day.~~

~~(e)~~ (d) Dosing tanks located in high groundwater areas shall be weighted or provided with an antibuoyancy device to prevent flotation.

~~(8)~~ (7) Disposal Trenches[.]; ~~[(Diagrams 1, 2, 3, 4, 5, 11, and 12)]:~~

(a) Disposal trenches shall be constructed in accordance with the standards contained in the following table, unless otherwise allowed or required within a specific rule of this division:

~~(A) Maximum length of trench 125 feet]~~

~~(B)~~ (A) Minimum bottom width of trench 24 inches;

~~(C)~~ (B) Minimum depth of trench, using:

(i) Equal or loop distribution 18 inches;

(ii) Serial distribution 24 inches;

(iii) Pressure distribution 18 inches;

~~(D)~~ (C) Maximum depth of trench 36 inches;

~~(E)~~ (D) Minimum distance of undisturbed earth between disposal trenches 8 feet.

(b) The bottom of the disposal trench shall be level within a tolerance of plus or minus one (1) inch;

(c) When the sidewall within the disposal trench has been smeared or compacted, sidewalls shall be raked to insure permeability.

(d) Trenches shall not be constructed in a manner that would allow septic tank effluent to flow backwards from the distribution pipe to undermine the distribution box, the septic tank, or any portion of the distribution unit.

- (e) ***Drain media*** ~~*Filter material*~~ shall extend the full width and length of the disposal trench to a depth of not less than twelve (12) inches. There shall be at least six (6) inches of ***drain media*** ~~*filter material*~~ under the distribution pipe and at least two (2) inches over the distribution pipe;
- (f) Prior to backfilling the trench, the ***drain media*** ~~*filter material*~~ shall be covered with filter fabric, untreated building paper, or other material approved by the Agent;
- (g) Where trenches are installed in ~~*loamy*~~ sandy ***loam*** or coarser soils, filter fabric or other non-degradable material approved by the Agent shall be used to ~~*line the trench sidewall and*~~ cover the ***drain media*** ~~*filter material*~~.

~~(9)~~ (8) Trench Backfill:

- (a) The installer shall assume responsibility for backfilling the system. Backfill shall be carefully placed to prevent damage to the system;
- (b) A minimum of six (6) inches of backfill is required, except in serial systems where twelve (12) inches is required.
- (c) Backfill shall be free of large stones, frozen clumps of earth, masonry, stumps, or waste construction materials, or other materials that could damage the system.

~~(10)~~ (9) Header Pipe ~~(OAR 340-73-060)~~: Header pipe shall be watertight, have a minimum diameter of ***three (3)*** ~~*four (4)*~~ inches, and be bedded on undisturbed earth. Where distribution boxes or drop boxes are used, header pipe shall be at least four (4) feet in length.

~~(11)~~ (10) Distribution Pipe (OAR 340-73-060):

- (a) Distribution pipes shall have a minimum diameter of ***three (3)*** ~~*four (4)*~~ inches;
- (b) Each disposal trench shall have distribution piping that is centered in the trench and laid level within a tolerance of plus or minus one (1) inch;
- (c) Distribution piping, which complies with standards in OAR 340-73-060, may consist of perforated bituminized fiber, perforated plastic, clay tile or concrete tile;
- (d) All perforated pipe shall be installed with centerline markings up;

- (e) Concrete tile and clay tile shall be laid with grade boards and with one-quarter (1/4) inch open joints. The top one-half (1/2) of the joints shall be covered with strips of treated building paper, tar paper, tile connectors, spacers, collars or clips, or other materials approved by the Agent.

~~[(12)]~~ (11) Effluent Sewer (OAR 340-73-060): The effluent sewer shall extend at least five (5) feet beyond the septic tank before connecting to the distribution unit. It shall be installed with a minimum fall of four (4) inches per one hundred (100) feet, but in no instance shall there be less than two (2) inches of fall from one end of the pipe to the other. *In addition, there must be a minimum difference of 8 inches between the invert of the septic tank outlet and the invert of the header to the distribution pipe of the highest lateral in a serial distribution disposal field or the invert of the header pipe to the distribution pipes of an equal distribution disposal field.*

~~[(13)]~~ (12) Large Systems. Systems with a projected daily sewage flow greater than two thousand five hundred (2,500) gallons shall be designed in accordance with requirements set forth in OAR 340-71-520.

340-71-260 ALTERNATIVE SYSTEMS, GENERAL.

~~[(1)]~~ *For the purpose of these rules "Alternative System" means any Commission approved on-site sewage disposal system used in lieu of the standard subsurface system.*

~~[(2)]~~ *"Sewage Stabilization Ponds" and "Land Irrigation of Sewage" are alternative systems available through the Water Pollution Control Facilities (WPCF) permit program.*

~~[(3)]~~ (1) Unless otherwise noted, all rules pertaining to the siting, construction, and maintenance of standard subsurface systems shall apply to alternative systems.

~~[(4)]~~ (2) General Requirements:

- (a) Periodic Inspection of Installed Systems. Where required by rule of the Commission, periodic inspections of installed alternative systems shall be performed by the Agent. An inspection fee may be charged;
- (b) A report of each inspection shall be prepared by the Agent. The report shall list system deficiencies and correction requirements and timetables for correction. A copy of the report shall be

provided promptly to the system owner. Necessary follow-up inspections shall be scheduled.

340-71-265 CAPPING FILLS. ~~[[Diagram 10]]~~

~~[[1]] For the purposes of this rule, "Capping Fill" means a system where the disposal trench effective sidewall is installed a minimum of twelve (12) inches into natural soil below a soil cap of specified depth and texture.]~~

- ~~[[2]]~~ (1) Criteria for Approval. In order to be approved for a capping fill system, each site must meet all the following conditions:
- (a) Slope does not exceed twelve (12) percent;
 - (b) Temporary water table is not closer than eighteen (18) inches to the ground surface at anytime during the year. A six (6) inch minimum separation must be maintained between the bottom of the disposal trench and the temporary water table;
 - (c) Where a permanent water table is present, a minimum four (4) feet separation shall be maintained between the bottom of the disposal trench and the water table;
 - (d) Where material with rapid or very rapid permeability is present, a minimum eighteen (18) inches separation shall be maintained between the bottom of the disposal trench and soil with rapid or very rapid permeability;
 - (e) Effective soil depth is eighteen (18) inches or more below the natural soil surface;
 - (f) Soil texture from the ground surface to the layer that limits effective soil depth is no finer than silty clay loam;
 - (g) A minimum six (6) inch separation shall be maintained between the bottom of the disposal trench and the layer that limits effective soil depth;
 - (h) The system can be sized according to effective soil depth in **Table 4**.
- ~~[[3]]~~ (2) Installation Requirements. The cap shall be constructed pursuant to permit requirements. Unless otherwise required by the Agent, construction sequence shall be as follows:

- (a) The soil shall be examined and approved by the Agent prior to placement. The texture of the soil used for the cap shall be of the same textural class, or of one textural class finer, as the natural topsoil;
- (b) Construction of capping fills shall occur between June 1 and October 1 unless otherwise allowed by the Agent. The upper eighteen (18) inches of natural soil must not be saturated or at a moisture content which causes loss of soil structure and porosity when worked;
- (c) The disposal area and the borrow site shall be scarified to destroy the vegetative mat.
- (d) The system shall be installed as specified in the construction permit. There shall be a minimum ten (10) feet of separation between the edge of the fill and the absorption facility;
- (e) Filter fabric shall be used between the drain media and the soil cap, unless otherwise authorized by the Agent on a case-by-case basis;**

~~##~~ **(f)** Fill shall be applied to the fill site and worked in so that the two (2) contact layers (native soil and fill) are mixed. Fill material shall be evenly graded to a final depth of **ten (10) inches over the drain media for an equal system, or sixteen (16) inches over the drain media for a serial system [gravel]. This is to allow for appropriate settled depths.** Both initial cap and repair cap may be constructed at the same time;

~~##~~ **(g)** The site shall be landscaped according to permit conditions and be protected from livestock, automotive traffic or other activity that could damage the system.

~~##~~ **(3)** Required Inspections. **Unless waived by the Agent,** the following minimum inspections shall be performed for each capping fill installed:

- (a) Both the disposal area and borrow material must be inspected for scarification, soil texture, and moisture content, prior to cap construction;
- (b) Pre-cover inspection of the installed absorption facility;
- (c) After cap is placed, to determine that there is good contact between fill material and native soil (no obvious contact zone visible), adequate depth of material, and uniform distribution of fill material;

- (d) Final inspection, after landscaping or other erosion control measures are established. A Certificate of Satisfactory Completion may be issued at this point.

340-71-270 EVAPOTRANSPIRATION-ABSORPTION (ETA) SYSTEMS. ~~[(Diagram 6 & 7)]~~

~~[(1)]~~ ~~For the purpose of these rules "Evapotranspiration-Absorption System" means an alternative system consisting of a septic tank or other treatment facility, effluent sewer and a disposal bed or disposal trenches, designed to distribute effluent for evaporation, transpiration by plants, and by absorption into the underlying soil.]~~

~~[(2)]~~ (1) Criteria for Approval. ETA systems will only be approved for waste flows which do not exceed 600 gallons per day and which meet criteria for residential strength. Installation permits may be issued for ~~evapotranspiration absorption [(ETA)]~~ systems on sites that meet all of the following conditions:

~~[(a)]~~ (a) The soil has moist matrix values and chromas greater than 2 within the first twelve (12) inches of the soil profile;

~~[(a)]~~ (b) Mean annual precipitation does not exceed twenty-five (25) inches;

~~[(b)]~~ (c) There exists a minimum of thirty (30) inches of moderately-well to well drained soil. The subsoil at a depth of twelve (12) inches and below shall be fine textured;

~~[(e)]~~ (d) Slope shall not be less than six (6) percent nor more than ~~does not exceed~~ fifteen (15) percent. Exposure may be taken into consideration.

~~[(3)]~~ (2) Criteria for System Design. ETA beds shall be designed under the following criteria:

(a) Beds shall be sized using a minimum eight hundred fifty (850) square feet of bottom surface area per one hundred fifty (150) gallons of projected daily sewage flow in areas where annual precipitation is fifteen (15) to twenty-five (25) inches, or six hundred (600) square feet of bottom surface area per one hundred fifty (150) gallons of projected daily sewage flow in areas where annual precipitation is less than fifteen (15) inches;

(b) Beds shall be installed not less than twelve (12) inches nor deeper than twenty-four (24) inches into natural fine

textured soil on the downhill side and not more than thirty-six (36) inches deep on the uphill side;

- (c) A minimum of one (1) distribution pipe shall be placed in each bed;
- (d) The surface shall ~~to~~ be seeded according to permit conditions;

~~[(e) Other bed construction standards contained in Diagrams 6 and 7 shall apply.]~~

(e) The bottom of the system shall be a minimum of six (6) inches above the layer that limits effective soil depth;

(f) Laterals in the system shall not be further than ten (10) feet apart and shall not be further than five (5) feet from the side of the excavated bed or trench;

(g) The bed or trench shall be within two (2) inches of level;

(h) A minimum of twelve (12) inches of drain media is to be installed in the trench;

(i) Filter fabric or material approved by the Agent shall cover the drain media before the system is covered with soil;

(j) The system is to be covered with soil approved by the Agent. The soil cover depth is to be a minimum of twelve (12) inches.

340-71-275 PRESSURIZED DISTRIBUTION SYSTEMS.

- (1) Pressurized distribution systems receiving residential strength wastewater may be permitted on any site meeting the requirements for installation of a standard subsurface sewage disposal system~~[s]~~, or other sites where this method of effluent distribution is ~~[desired]~~ preferable and all the following minimum site conditions can be met.
- (2) Except as provided in OAR 340-71-220~~[(2)]~~(1)(c), pressurized distribution systems shall be used where depth to soil as defined in OAR 340-71-100 ~~[(14)]~~(139)(a) and (b) is less than thirty-six (36) inches and the minimum separation distance between the bottom of the disposal trench and soil as defined in OAR 340-71-100~~[(14)]~~(139)(a) and (b) is less than eighteen (18) inches.

- (3) Pressurized distribution systems installed in soil as defined in OAR 340-71-100 ~~[(114)](139)~~(a) and (b) in areas with permanent water tables shall not discharge more than four hundred fifty (450) gallons of effluent per one-half (1/2) acre per day except where:

~~[(a)]~~ ~~*A split waste system is proposed to serve a single family dwelling on a lot of record existing prior to January 1, 1974, which has sufficient area to accommodate a gray water pressurized distribution split waste system; or*~~

~~[(b)]~~ (a) Groundwater is degraded and designated as a non-developable resource by the State Department of Water Resources; or

~~[(c)]~~ (b) A detailed hydrogeological study discloses loading rates exceeding four hundred fifty (450) gallons per one-half (1/2) acre per day would not increase the nitrate-nitrogen concentration in the groundwater beneath the site, or at any down gradient location, above five (5) milligrams per liter.

- (4) Materials and Construction:

(a) General:

(A) All materials used in pressurized systems shall be structurally sound, durable, and capable of withstanding normal stresses incidental to installation and operation;

(B) Nothing in these rules shall be construed to set aside applicable building, electrical, or other codes. An electrical permit and inspection from the Department of Commerce or the municipality with jurisdiction (as defined in ORS 456.750(5)) is required for pump wiring installation.

(b) Pressurized Distribution Piping. Piping, valves and fittings for pressurized systems shall meet the following minimum requirements:

(A) All pressure transport, manifold, lateral piping, and fittings shall meet or exceed the requirements for ~~[Glass 160]~~ PVC 1120 pressure pipe as identified in **ASTM Specification D2241** ~~[-]~~. ***For pipe diameters of one inch or less, the minimum pressure rating shall be 200 pounds per square inch (psi); for diameters greater than one inch, the minimum pressure rating shall be 160 psi;***

(B) Pressure transport piping shall be uniformly supported along the trench bottom, and at the discretion of the Agent, it

shall be bedded in sand or other material approved by the Agent. A ~~fourteen (14) gauge tracer wire shall be~~ **minimum eighteen (18) gauge green jacketed tracer wire or green color coded metallic locate tape, shall be** placed above piping when crossing property lines or entering public property or right of way;

- (C) Orifices shall be located on top of the pipe, except ~~in areas of extended frozen soil conditions in which case the Agent may specify orifice orientation~~ **as noted in paragraph 4(b)(1) of this section;**
- (D) The ends of lateral piping shall be **constructed with long sweep elbows or equal method to bring the end of the pipe to ground level. The ends of the pipe shall be** provided with threaded plugs or caps;
- (E) All joints in the manifold, lateral piping, and fittings shall be solvent welded, using the appropriate joint compound for the pipe material. Pressure transport piping may be solvent welded or rubber ring jointed;
- (F) **An isolation [gate]** valve shall be placed on the pressure transport pipe, in or near the dosing tank, when appropriate.
- (G) A check valve shall be placed between the pump and the gate valve, when appropriate~~[-]~~
- (H) All orifices shall be covered by a protective, durable, non-corrosive orifice shield designed to keep orifices from being blocked by drain media or other system components. The shields shall be removable for access to the orifices;**
- (I) Where conditions include but are not limited to, extended freezing temperatures, temporary or seasonal use, or effluent characteristics, the Agent may specify alternate orifice orientation, and/or valve arrangements;**
- (J) Where the operation of a pump could result in siphonage of effluent to below the normal off level of the pump, an anti-siphon measure, in the form of a non-discharging valve, designed for the specific purpose, shall be used. The anti-siphon valve shall be installed and operated in accordance with manufacturer's specifications.**

(c) Disposal Trench Sizing and Construction:

- (A) A system using disposal trenches shall be designed and sized in accordance with the requirements of OAR 340-71-220~~(2)(3)~~;
 - (B) Disposal trenches shall be constructed using the specifications for the standard disposal trench unless otherwise allowed by the Department on a case-by-case basis;
 - (C) Pressure lateral piping shall have not less than six (6) inches of drain media ~~filter material~~ below, nor less than four (4) inches of drain media ~~filter material~~ above the piping;
 - (D) The ~~sides of the trench and~~ top of the drain media ~~filter material~~ shall be ~~lined or~~ covered with filter fabric, or other nondegradable material permeable to fluids that will not allow passage of soil particles coarser than very fine sand. In unstable soils ~~finer textured than loamy sand~~, lining the sidewall may ~~not~~ be required.
- (d) Seepage Bed Construction:
- (A) Seepage beds may only be used in soil as defined in OAR 340-71-100~~(114)(a) and (139)~~(b) as an alternative to the use of disposal trenches, for flows less than or equal to 600 gallons per day;
 - (B) The effective seepage area shall be based on the bottom area of the seepage bed. The minimum area shall be determined ~~as follows:~~ on the basis of 200 square feet minimum per 150 gallons per day waste flow;

$$\text{[Seepage Bed Area} = R \times F \times S$$

Where:

R = ~~BOD₅ of Wastewater divided by 200 mg/L, or TSS of Wastewater divided by 150 mg/L, whichever has the higher value. In no case, however, may the value of R be less than 1.~~

F = ~~Design Peak Daily Sewage Flow in gallons divided by 150 gallons.~~

S = ~~Size factor. Seepage beds shall use a factor of 200 square feet.]~~

- (C) Beds shall be installed not less than eighteen (18) inches (twelve (12) inches with a capping fill) nor deeper than thirty-six (36) inches into the natural soil. The seepage bed bottom shall be level;
 - (D) The top of the *drain media* ~~[filter material]~~ shall be ~~[lined or]~~ covered with filter fabric, or other nondegradable material that is permeable to fluids but will not allow passage of soil particles coarser than very fine sand;
 - (E) Pressurized distribution piping shall have not less than six (6) inches of *drain media* ~~[filter material]~~ below, nor less than four (4) inches of *drain media* ~~[filter material]~~ above the piping;
 - (F) Pressurized distribution piping shall be horizontally spaced not more than four (4) feet apart, and not more than two (2) feet away from the seepage bed sidewall. At least two (2) parallel pressurized distribution pipes shall be placed in the seepage bed;
 - (G) A minimum of ten (10) feet of undisturbed earth shall be maintained between seepage beds.
- (e) Notwithstanding other requirements of this rule, when the projected daily sewage flow is greater than two thousand five hundred (2500) gallons the Department may approve other design criteria it deems appropriate.
- (5) Hydraulic Design Criteria. Pressurized distribution systems shall be designed for appropriate head and capacity:
- (a) Head calculations shall include maximum static lift, pipe friction and orifice head requirements:
 - (A) Static lift where pumps are used shall be measured from the minimum dosing tank level to the level of the perforated distribution piping;
 - (B) Pipe friction shall be based upon a Hazen Williams coefficient of smoothness of 150. All pressure lateral piping and fittings shall have a minimum diameter of two (2) inches unless submitted plans and specifications show a smaller diameter pipe is adequate. ~~[.]~~ ~~[The head loss across a lateral with multiple evenly spaced orifices may be considered equal to one third (1/3) of the head loss that~~

~~would result if the entrance flow were to pass through the length of the lateral;~~

- (C) There shall be a minimum head of five (5) feet at the remotest orifice and no more than a ~~fifteen (15)~~ ten (10) percent ~~head~~ flow variation between nearest and remotest orifice in an individual unit.
- (b) The capacity of a pressurized distribution system refers to the rate of flow given in gallons per minute (gpm):
 - (A) Lateral piping shall have discharge orifices drilled a minimum diameter of one-eighth (1/8) inch, and evenly spaced at a distance not greater than twenty-four (24) inches in coarse textured soils or greater than four (4) feet in finer textured soils;
 - (B) The system shall be dosed at a rate not to exceed twenty (20) percent of the projected daily sewage flow;
 - (C) The effect ~~effect~~ of back drainage of the total volume of effluent within the pressure distribution system shall be evaluated for its impact upon the dosing tank and system operation.

340-71-280 SEEPAGE TRENCH SYSTEM.

~~[(1) For the purpose of these rules "Seepage Trench System" means a system with disposal trenches with more than six (6) inches of filter material below the distribution pipe.]~~

- ~~[(2)]~~ (1) Criteria for Approval. Construction permits may be issued by the Agent for seepage trench systems on lots created prior to January 1, 1974, for sites that meet all the following conditions:
- (a) Groundwater degradation would not result;
 - (b) Lot or parcel is inadequate in size to accommodate a standard subsurface disposal system with a projected flow of four hundred fifty (450) gallons per day;
 - (c) All other requirements for standard subsurface systems can be met.
- ~~[(3)]~~ (2) Design Criteria:

- (a) The seepage trench may have a maximum depth of forty-two (42) inches;
- (b) The seepage trench system shall be sized according to the following formula: Length of seepage trench = (4) x (length of standard disposal trench) divided by (3 + 2D), where D = depth of drain media ~~{filter material}~~ below distribution pipe in feet. Maximum depth of drain media ~~{filter material}~~ (D) shall be two (2) feet;
- (c) The projected daily sewage flow shall be limited to a maximum of four hundred fifty (450) gallons.

340-71-285 REDUNDANT SYSTEMS. ~~{Diagram 11}~~

~~{(1)} — For the purpose of these rules "Redundant Disposal Field System" means a system in which two (2) complete disposal systems are installed, the disposal trenches of each system alternate with each other and only one system operates at any given time.}~~

~~{(2)}~~ (1) Criteria for Approval. Construction installation permits may be issued by the Agent for redundant disposal field systems to serve single family dwellings on sites that meet all the following conditions:

- (a) The lot or parcel was created prior to January 1, 1974; and
- (b) There is insufficient area to accommodate a standard system.

~~{(3)}~~ (2) Design Criteria:

- (a) Each redundant disposal system shall contain two (2) complete disposal fields;
- (b) Each disposal field shall be adequate in size to accommodate the projected daily sewage flow from the dwelling;
- (c) A minimum separation of ten (10) feet (twelve (12) feet on centers) shall be maintained between disposal trenches designed to operate simultaneously, and a minimum separation of four (4) feet (six (6) feet on centers) shall be maintained between adjacent disposal trenches~~[-];~~

(d) The system shall be designed to alternate between the disposal fields with the use of a diversion valve or other method approved by the Agent.

340-71-290 CONVENTIONAL SAND FILTER SYSTEMS.

~~{(1) For the purpose of these rules:~~

~~(a) "Conventional sand filter" means a filter with two (2) feet or more of medium sand designed to filter and biologically treat septic tank or other treatment unit effluent from a pressure distribution system at an application rate not to exceed one and twenty three hundredths (1.23) gallons per square foot sand surface area per day, applied at a dose not to exceed twenty (20) percent of the projected daily sewage flow.~~

~~(b) "Medium sand" means a mixture of sand with 100 percent passing the 3/8 inch sieve, 90 percent to 100 percent passing the No. 4 sieve, 62 percent to 100 percent passing the No. 10 sieve, 45 percent to 82 percent passing the No. 16 sieve, 25 percent to 55 percent passing the No. 30 sieve, 5 percent to 20 percent passing the No. 50 sieve, 10 percent or less passing the No. 60 sieve, 4 percent or less passing the No. 100 sieve.~~

~~(c) "Sand filter system" means the combination of septic tank or other treatment unit, a dosing system with effluent pump and controls, or dosing siphon, piping and fittings, sand filter, and absorption facility used to treat and dispose of sewage.]~~

(1) Criteria for Approval. A conventional sand filter, which meets the requirements of this rule may be approved for a construction-installation permit, provided that wastewater strength does not exceed that of residential strength wastewater and the system is to serve a single family dwelling. All others shall be constructed pursuant to a WPCF Permit.

(2) Inspection and Maintenance Requirements.

(a) Each sand filter system installed under this rule, and those filters installed under OAR 340-71-038, may be inspected by the Agent periodically [annually]. The Agent may charge an inspection [waive the annual evaluation] fee [during years when] each year the sand filter [field evaluation work] is inspected [not performed];

(b) Any permit issued by the Agent shall include requirements for periodic inspection and maintenance. Reports of this maintenance may be required to be submitted to the Agent.

(3) Sites Approved for Sand Filter Systems. Sand filters may be permitted on any site meeting requirements for standard subsurface sewage

disposal systems contained under OAR 340-71-220, or where standard or pressurized disposal trenches would be used, or where selected by the Agent, and all the following minimum site conditions can be met:

NOTE: Groundwater levels shall be predicted using Standards in OAR 340-71-130(24).

- (a) The highest level attained by temporary water would be:
 - (A) Twelve (12) inches or more below ground surface where gravity equal distribution trenches are used. Pressurized distribution trenches may be used to achieve equal distribution on slopes up to twelve (12) percent; or
 - (B) Twelve (12) inches or more below ground surface on sites requiring serial distribution where disposal trenches are covered by a capping fill, provided: trenches are excavated twelve (12) inches into the original soil profile, slopes are twelve (12) percent or less, and the capping fill is constructed according to provisions under OAR 340-71-265(2) and 340-71-265(3)(a) through (c); or
 - (C) Eighteen (18) inches or more below ground surface on sites requiring serial distribution where standard serial distribution trenches are used.
- (b) The highest level attained by a permanent water table would be equal to or more than distances specified as follows:

Soil Groups	*Minimum Separation Distance from Bottom Effective Seepage Area
(A) Gravel, sand, loamy sand, sandy loam	24 inches;
(B) Loam, silt loam, sandy clay loam, clay loam	18 inches;
(C) Silty clay loam, silty clay, clay, sandy clay	12 inches.

***NOTE:** Shallow disposal trenches (placed not less than twelve (12) inches into the original soil profile) may be used with a capping fill to achieve separation distances from permanent groundwater. The fill shall be placed in ac-

cordance to the provisions of OAR 340-71-265(2) and 340-71-265(3)(a) through (c).

- (c) ~~Permanent water table levels shall be determined in accordance with methods contained in subsection 340-71-100(1)(d).~~ Sand filters installed in soils as defined in OAR 340-71-100(139) ~~(114)~~, in areas with permanent water tables shall not discharge more than four hundred fifty (450) gallons of effluent per one-half (1/2) acre per day except where:

~~(A) A split waste system is proposed to serve a single family dwelling on a lot of record existing prior to January 1, 1974, which has sufficient area to accommodate a gray water sand filter split waste system; or~~

~~(B)~~ (A) Groundwater is degraded and designated as a non-developable resource by the State Department of Water Resources; or

~~(C)~~ (B) A detailed hydrogeological study discloses loading rates exceeding four hundred fifty (450) gallons per one-half (1/2) acre per day would not increase nitrate-nitrogen concentration in the groundwater beneath the site, or any down gradient location, above five (5) milligrams per liter.

- (d) Soils, fractured bedrock or saprolite diggable with a backhoe occur such that a standard twenty-four (24) inch deep trench can be installed and, in the judgment of the Agent, the soils, fractured bedrock, or saprolite is permeable to the extent that effluent will absorb adequately so as not to hinder the performance of the filter or disposal field. The Agent may require that an absorption test be conducted to determine the permeability of the bedrock or saprolite. Test methods must be acceptable to the Department;

- (e) Where slope is thirty (30) percent or less, except as specified in subsection (f) of this section;

(f) A sand filter may be installed on land slopes up to 45 percent where:

(A) the installation is for a single family dwelling and is sized in accordance with sand filter disposal area criteria;

(B) the soil is diggable with a backhoe to a depth of at least 36" (12" below the bottom of the trench); and

(C) the temporary water table is at least 30" below the ground surface (6" below the bottom of the trench).

- ~~##~~ (g) Setbacks in Table 1 can be met, except the minimum separation distance between the sewage disposal area and surface public waters shall be no less than fifty (50) feet.
- (4) The minimum length of standard disposal trench per one hundred fifty (150) gallons projected daily sewage flow required for a sand filter absorption facility is indicated in the following table:

	Soil Groups	Linear Feet
(a)	Gravel, sand, loamy sand, sandy loam	35;
(b)	Loam, silt loam, sandy clay loam, clay loam	45;
(c)	Silty clay loam, silty clay, sandy clay, clay	50;
(d)	<u>Permeable</u> saprolite or fractured bedrock	50;
(e)	High shrink-swell clays (Vertisols)	75.

NOTES

- 1- Disposal trenches in Vertisols shall contain twenty-four (24) inches of **drain media** ~~filter material~~ and twenty-four (24) inches of soil backfill.
- 2- On lots created prior to January 1, 1974, that have insufficient suitable area within which to install an absorption facility sized in accordance with this table, **seepage trenches may be used at** ~~may at~~ the Agent's discretion ~~utilize seepage trenches~~, providing: the design criteria and limitations contained in OAR 340-71-280 ~~(2)~~ ~~(3)~~ are met; the soil is not a high shrink-swell clay; and all other provisions of this rule are met except that a temporary water table shall be thirty (30) inches or more below the ground surface.
- 3- Seepage trenches in Vertisols are limited to areas with an annual rainfall of 25 inches or less, with minimum slopes of 5 percent, and a temporary water table which is at least 48 inches below the ground surface.**

- (5) **Sand Filter Without a Bottom.** Sites with saprolite, fractured bedrock, gravel or soil textures of sand, loamy sand, or sandy loam in a continuous section at least two (2) feet thick in contact with and below the bottom of the sand filter, that meet all other requirements of section 340-71-290(3) may, utilize either a conventional sand filter without a bottom or a sand filter in a trench that discharges biologically treated effluent directly into those materials. The application rate shall be based on the design sewage flow in OAR 340-71-295(1) and the basal area of the sand in either type of sand filter. A minimum twenty-four (24) inch separation shall be maintained between a water table and the bottom of the sand filter. **The water table shall be no less than 24 inches below the ground surface at any time of the year. In the judgment of the Agent, the saprolite, fractured bedrock, gravel or soil, shall be permeable over the basal area to the extent that effluent will absorb adequately so as not to hinder the performance of the filter. The Agent may require that an absorption test be conducted to determine the permeability of the basal area. Test methods must be acceptable to the Department.**

(6) Materials and Construction:

- (a) All materials used in sand filter system construction shall be structurally sound, durable and capable of withstanding normal installation and operation stresses. Component parts subject to malfunction or excessive wear shall be readily accessible for repair and replacement;
- (b) All filter containers shall be placed over a stable level base;
- (c) **In a gravity operated distribution system, a [areas of temporary groundwater at least twelve (12) inches of] vertical separation [unsaturated soil shall be maintained] between the invert of the underdrain piping outlet and the top of the drain media in the uppermost disposal trench shall be maintained that will not allow effluent to back up into the sand filter base before surfacing over the uppermost disposal trench; [bottom of the sand filter and top of the disposal trench]**
- (d) Piping and fittings for the sand filter distribution system shall be as required under pressure distribution systems, OAR 340-71-275;
- (e) The specific requirements for septic tanks, dosing tanks, etc. are found in OAR 340-71-220;
- (f) The requirements in OAR 340-71-295 shall be met~~[-];~~

(g) A bottomless sand filter unit does not require a minimum 10 foot separation between the original and replacement unit.

(7) "Graveless Absorption Method"

(a) Following a sand filter, disposal trenches may be constructed without the use of drain media, to the following minimum criteria:

(A) Twelve (12) inches wide by ten (10) inches deep incorporating pressurized distribution and a chamber constructed of half sections of twelve (12) inch diameter plastic irrigation pipes (PIP);

(B) Trenches shall be level end to end and across their width;

(C) At the discretion of the Agent, trenches may be installed on minimum three (3) foot centers maintaining at least two (2) feet of undisturbed earth between parallel trench sidewalls;

(D) Piping shall be minimum one inch diameter PVC meeting all the requirements of these rules;

(E) Distribution piping shall be perforated with one-eighth inch diameter orifices on maximum two foot centers at the twelve o'clock position. The hydraulic design shall provide at least two feet residual head at the distal orifice; and

(F) The chambers shall have an adequate footing to support the soil cover and all normal activity, and at a minimum shall be constructed of twelve inch PIP rated at 43 pounds per square inch meeting the appendix standards of ASTM D-2241. Each line shall be equipped with a minimum six inch diameter inspection port.

(b) Except as noted in subsection (a) of this section, all other construction and siting criteria including but not limited to the disposal field sizing for sand filter systems in OAR 340-71-290(4), and area to accommodate the installation of an initial and replacement absorption facility meeting standard trench separations in OAR 340-71-220(7)(a)(D), shall apply. Plans verifying that a system could be installed on the parcel that will meet the requirements in OAR 340-71-290(4) and 340-71-220(7)(a)(D) and all other applicable rules, are required before approval of this method.

(c) This disposal field option may be used wherever a standard or alternative type disposal trench is authorized by current rules for sand filter systems, except for Vertisols.

340-71-295 CONVENTIONAL SAND FILTER DESIGN AND CONSTRUCTION. ~~{Diagrams 8 and 9}~~

(1) Sewage Flows:

- (a) Design sewage flows for a system proposed to serve a commercial facility shall be limited to twenty-five hundred (2,500) [six hundred (600)] gallons or less, with a wastewater strength not to exceed [a BOD₅ of two hundred (200) mg/L and a TSS of one hundred fifty (150) mg/L per day] that defined for residential waste strength, unless otherwise authorized in writing by the Department;
- (b) Design sewage flows for a system proposed to serve a single family dwelling shall be in accordance with the provisions of OAR 340-71-220~~{3}(2)~~(a).

(2) Minimum Filter Area.

- (a) A sand filter proposed to serve a single family dwelling shall have an effective medium sand surface area of not less than three hundred sixty (360) [six (366)] square feet. If the design sewage flow exceeds four-hundred fifty (450) gallons per day, the medium sand surface area shall be determined with the following equation:

Area = (projected daily sewage flow) divided by ~~{1.23}~~ (1.25) gallons per square foot;

- (b) A sand filter proposed to serve a commercial facility shall be sized on the basis of projected peak daily sewage flow. If the waste strength is projected to be greater than residential strength wastewater, as defined in this division, a pre-treatment device shall be required which will reduce the BOD₅, TSS, and oil and grease to no more than 300, 150, and 25 mg/l, respectively, and to eliminate any other contaminants prior to treatment in the sand filter system. [and the strength of the wastewater, using the following equation:

~~Area = (projected peak daily sewage flow) x (R) divided by (1.23)~~

~~where R = BOD₅ of Wastewater divided by 200 mg/L, or TSS of Wastewater divided by 150 mg/L, whichever has the higher value. In no case, however, may the value of R be less than one (1).~~

(3) *Design Criteria: [Sand filter container, piping, medium sand, gravel, gravel cover, and soil crown material for a sand filter system discharging to disposal trenches shall meet minimum specifications indicated in Diagrams 8 and 9 unless otherwise authorized in writing by the Department.]*

- (a) The interior base of the filter container shall be level or constructed at a grade of one (1) percent or less to the underdrain piping elevation;*
- (b) Except for sand filters without a bottom, underdrain piping shall be installed in the interior of the filter container at the lowest elevation. The piping shall be level or on a grade of one (1) percent or less to the point of passage through the filter container;*
- (c) The underdrain piping and bottom of the filter container shall be covered with a minimum of six (6) inches of drain media or underdrain media. Where underdrain media is used, the underdrain piping shall be enveloped in an amount and depth of drain media to prevent migration of the underdrain media to the pipe perforations;*
- (d) Where drain media is used at the base of the filter, it shall be covered by a layer of filter fabric meeting the specifications found in OAR 340-73-041. Where underdrain media is used, filter fabric is not required or prescribed;*
- (e) A minimum of twenty-four (24) inches of approved sand filter media shall be installed over the filter fabric or underdrain media. Where medium sand is used, the sand shall be damp at the time of installation. The top surface of the media shall be level. Unless waived by the Agent, the sand filter media proposed for each sand filter, shall be sieve tested to determine conformance with the criteria outlined in these rules. The sieve analysis shall be done in accordance with ASTM C-136, Standard Methods for Sieve Analysis of Fine and Coarse Aggregate, and in conjunction and accordance with ASTM C-117, Standard Test Method for Materials Finer than No. 200 Sieve in Mineral Aggregates by Washing. A sieve analysis by a qualified party shall be conducted and report issued prior to each sand filter installation;*
- (f) There shall be a minimum of three (3) inches of clean drain media below the distribution laterals, and sufficient media above the laterals equal to or covering the orifice shields to provide a smooth even cover. Underdrain media may be used in lieu of drain media;*

- (g) Within the zone described in subsection (f) of this section, a pressurized distribution system, meeting the requirements of OAR 340-71-275(4) and (5), shall be constructed, with the following requirements:
- (A) Distribution laterals shall be spaced on maximum thirty (30) inch centers. Orifices shall be placed such that there is one orifice for each six (6) square feet of sand surface area;
- (B) The distribution laterals shall have not less than three (3) inches of drain or underdrain media below the piping;
- (C) The ends of the distribution laterals shall be designed and constructed with a means to perform flushing of the piping, collectively or individually, through the operation of a non-corrosive and accessible valve. The flushed effluent may be discharged to the septic tank or into the sand filter;
- (D) The diameters of the distribution manifold and laterals shall not be less than one half (1/2) inch diameter.
- (E) A sand filter shall be dosed at a rate not to exceed ten (10) percent of the projected daily sewage flow.
- (h) The top of the media in which the pressure distribution system is installed shall be covered with filter fabric meeting the specifications found in OAR 340-73-041;
- (i) The top of the sand filter area shall be backfilled with a soil cover, free of rock, vegetation, wood waste, etc. The soil cover shall have a textural class no finer than loam, unless otherwise authorized by the Agent. The soil cover shall have a minimum depth of six (6) inches and a maximum depth of twelve (12) inches;
- (j) The passage of all piping through the sand filter container shall be done in a watertight manner.

(4) Container Design and Construction:

- (a) A reinforced concrete container consisting of ~~floor and walls as shown in Diagrams 8 and 9 is required~~ watertight walls and floors shall be used where water tightness is necessary to prevent groundwater from infiltrating into the filter or to prevent the effluent from exfiltrating from the filter, except as provided in these rules. The container structure may require a building permit for construction;

- (b) Container may be constructed of materials other than concrete where equivalent function, workmanship, watertightness and at least a twenty (20) year service life can be documented:
- (A) Flexible membrane liner (FML) materials must have properties which are at least equivalent to thirty (30) mil unreinforced polyvinyl chloride (PVC) described in OAR 340-73-085. To be approved for ~~filter~~ installation, FML materials must:
- (i) Have field repair instructions and materials which are provided to the purchaser with the liner; and
 - (ii) Have factory fabricated "boots" suitable for field bonding onto the liner to facilitate the passage of piping through the liner in a waterproof manner.
- (B) Where accepted for use, flexible sheet membrane liners shall be placed against relatively smooth, regular surfaces. Surfaces shall be ~~free of sharp edges, corners, roots, nails, wire, splinters and other projections which might puncture, tear, or cut the liner. Where a smooth, uniform surface cannot be assured in the field, filter system plans must include specifications for liner protection. A four (4) inch bed of clean sand or a non-degradable filter fabric acceptable to the Agent, shall be used to provide liner protection~~ installed as required in OAR 340-73-085.

(5) Internal Pump Option: Where the effluent from a sand filter is to be discharged by means of a pump to another treatment unit, a distribution unit, or to an absorption facility, the design and construction of the filter may include provisions for an internal pump station, providing the following conditions are met:

- (a) The location, design, and construction of the pump station does not conflict with rules for design, construction and operation of a sand filter system;
- (b) The design and construction of the pump, discharge plumbing, controls, and alarm shall meet the requirements of OAR 340-73-055, except OAR 340-73-055(4)(d) and (4)(h);
- (c) The pump and related apparatus shall be housed in a corrosion resistant vault designed to withstand the stresses placed upon it and not allow the migration of drain media, sand, or underdrain media to its interior. The vault shall have a durable, affixed floor. The vault shall provide watertight access to finished grade with a

diameter equal to that of the vault and designed to receive treated effluent from an elevation equal to that of a gravity discharging sand filter;

(d) The depth of underdrain media and the operating level of the pump cycle and alarm shall not allow effluent to come within two inches of the bottom of the sand filter media. The pump off level shall be no lower than the invert of the perforations of the underdrain piping;

(e) The internal sand filter pump shall be electrically linked to the sand filter dosing apparatus in such a manner as to prevent effluent from entering the sand filter in event the internal sand filter pump fails.

340-71-300 OTHER SAND FILTER DESIGNS

(1) Other sand filters which vary in design from the conventional sand filter may be authorized by the Department if they can be demonstrated to produce comparable effluent quality.

(2) *Sand filters authorized under this Section, which serve a single family dwelling with residential strength wastewater, may be approved for a construction/installation permit. All other sand filters shall be constructed and operated under a renewable WPCF permit issued pursuant to OAR 340-71-162.*

~~(2)~~ (3) Pre-Application Submittal. Prior to applying for a construction permit for a variation to the conventional sand filter the Department must approve the design. To receive approval the applicant shall submit the following required information to the Department:

(a) Effluent quality data. Filter effluent quality samples shall be collected and analyzed by a testing agency acceptable to the Department using procedures identified in the latest edition of "**Standard Methods for the Examination of Wastewater,**" published by the American Public Health Association, Inc. The duration of filter effluent testing shall be sufficient to ensure results are reliable and applicable to anticipated field operating conditions. The length of the evaluation period and number of data points shall be specified in the test report. The following parameters shall be addressed:

(A) BOD₅;

(B) TSS;

(C) Fecal coliform;

(D) Nitrogen (Ammonia, Nitrate and Total Kjeldahl Nitrogen).

(b) A description of unique technical features and process advantages;

(c) Design criteria, loading rates, etc;

(d) Filter media characteristics;

(e) A description of operation and maintenance details and requirements;

- (f) Any additional information specifically requested by the Department.

~~(3)~~ (4) Construction Procedure. Following pre-application approval, a permit application shall be submitted in the usual manner. Applications shall include applicable drawings, details and written specifications to fully describe proposed construction and allow system construction by contractors. Included must be the specific site details peculiar to that application, including soils data, groundwater type and depth, slope, setbacks, existing structures, wells, roads, streams, etc. Applications shall include a manual for homeowner operation and maintenance of the system.

340-71-302 RECIRCULATING GRAVEL FILTER (RGF)

- (1) WPCF Permit Required. A WPCF wastewater disposal permit is required for all recirculating gravel filters. The permit will establish the effluent limitations to be achieved. No construction shall take place until the permit has been issued and final construction plans have been approved by the Department. Conceptual (preliminary) plans shall accompany all applications.
- (2) Plan Approval Required. Facility construction plans shall be submitted to the Department for review. Review of plans shall follow OAR Chapter 340, Division 52 procedures.
- (3) Technical Requirements and Guidelines. The following sections describe minimum technical requirements and guidelines for design. Use of "shall" denotes a requirement. Use of "should" implies a guideline to be followed unless sufficient justification is provided to the contrary as determined by the plan approver. The Department will consider variations in design established in this section on a case-by-case basis. Plans which vary in design shall include evidence that the proposed system will meet the limitations established in the permit, and that the facility can be reliably operated and maintained.
- (a) Filter Design and Dosing:
- (A) Filter area shall be sized based on a maximum organic load. The area shall mean basal or bottom area. For residential strength wastewater which has been pre-treated through a septic tank, the maximum hydraulic load shall be 5 gal/ft²/day;
- (B) For BOD₅ waste strengths stronger than residential strength wastewater but not exceeding 400 mg/l

(milligrams per liter), the filter size shall be increased proportionately.

(C) Higher strength wastewaters shall be pre-treated or will require special consideration. The concentration of greases and oil applied shall in no case exceed 30 mg/l.

(b) Filter Media:

(A) Where carbonaceous BOD₅ removal must be at least 85 percent, based upon the raw sewage concentration applied to the septic tank, and nitrification of wastewater is necessary, a filter media of the following fine gravel shall be required: 3 feet of very fine washed gravel, 100 percent passing a 3/8" sieve with an Effective Size between 3 and 5 millimeters, and an Uniformity Coefficient of 2 or less. Washed shall mean that negligible fines (less than 1.0%) pass the No. 10 sieve;

(B) Where additional removal of BOD₅ and denitrification is intended or required, a treatment media of the following coarse sand may be approved: 2 feet of very coarse washed sand, 100 percent passing a 3/8" sieve with an Effective Size between 1.5 and 2.5 millimeters, and an Uniformity Coefficient of 2 or less. Washed shall mean that negligible fines (less than 4.0%) pass the No. 100 sieve;

(C) Sieves used in gradation analysis shall include 3/8 inch, 1/4 inch, and Nos. 4, 6, 8, 10, 50 and 100;

(D) For each project, and prior to shipment of any media to the project site, the permittee shall take fresh samples of the intended media. The permittee shall have a laboratory gradation analysis performed, and the gradation data plotted on semi-log paper as a gradation curve. Lab data, gradation curve, and a 5 pound sample of the media shall be submitted to the Department for approval. Only Department approved media shall be used;

(E) A quality assurance plan shall be proposed by the designer to guarantee only approved media is placed. This plan shall be included in the project specifications;

(F) The Department may approve minor deviations in media gradations on a project-by-project basis.

- (c) Filter media shall be overlain by a three (3) inch bed of 1/2" to 3/4" washed gravel. It shall be only lightly covering the distribution piping. Unless otherwise authorized, each orifice is covered by an orifice shield. Orifice shields shall prevent aerial spray drift;
- (d) Filter dosing shall be with a low pressure distribution piping system operating under adequate head to pressurize the system. This should usually be 5 feet. Each lateral pipe end shall terminate with a screwed plug or cap, accessible for removal and flushing. Wherever practical a valved backflush system shall be installed to flush groups of laterals back to a septic tank or elsewhere;
- (e) Pressure distribution piping should be spaced 2 feet on center in a parallel grid. Orifice spacing should be each 2 feet on laterals. Piping grid edges should be within one foot of the filter basal edge;
- (f) Filter media shall be underlain by an 6 inch bed of a 3/8 to 3/4 inch washed gravel underdrain media. There shall be no filter fabric over the underdrain media;
- (g) Perforated collection pipes shall be bedded in the underdrain media. Pipes shall be 4 inch minimum diameter with no filter fabric wrap. There should be at least 15 lineal feet of collection pipe for each 225 square feet of filter basal area;
- (h) The filter container shall be watertight to suit the design conditions. Underflow shall be contained. Groundwater shall be excluded. A concrete container may be used. Other materials may be used where equivalent function, workmanship, water-tightness and at least a twenty (20) year service life can be expected.

(4) Recirculation/Dilution Tank:

- (a) A recirculation tank receives septic tank effluent and underflow from the filter. A pumping system at this tank delivers flow to the filter dose piping network according to a project design. The recirculation tank volume (measured from tank floor to soffit) shall be numerically equal to the projected daily sewage flow volume;
- (b) The recirculation ratio at design flow shall be not less than four (4). Recirculation ratio is the daily volume of recycle divided by design daily volume of the wastewater. A fabricated "T" or "Splitter T" float valve located in the recirculation tank should be

used whenever possible. Minimum recirculation tank liquid volume should be no less than 80 percent of the gross tank volume when a float valve is used. Alternatively, a splitter basin using orifice or weir control may be used where required and reasonable to divide underflow 20 percent to disposal and 80 percent to recycle on a daily basis. Orifice control should be used wherever possible. Minimum recirculation tank liquid volume should be no less than 50 percent of the gross tank volume when a splitter basin is used;

- (c) An evaluation and design for overflow and surge control at the recirculation tank shall be included in each design;
 - (d) A high water alarm shall be included in the recirculation tank immediately below the overflow level. A latching electrical relay shall retain the alarm — audible and/or visual — until acknowledged by a site attendant;
 - (e) Parallel pump start/stop electric controls (usually floats) should be installed to correct any unforeseen high liquid level event and keep sewage contained. This pump start function merely precludes overflow and shall operate in parallel with the start/stop function of a timer. It shall not interfere with or depend upon a timer position;
 - (f) All areas of the filter should be wetted 48 times a day, or each 30 minutes, to achieve the recirculation ratio of at least four (4);
 - (g) The recirculation tank shall be demonstrated as watertight. Testing should be witnessed by the designer. Test protocol shall be included in the plans;
 - (h) Access onto the filter shall be restricted. This should be a fence. Surface water entry onto the filter shall be positively prevented by design and construction;
 - (i) Access openings to the recirculation tank shall be provided at each end. Larger tanks should have additional openings. The least dimension of any access opening shall be 18 inches. Larger openings shall be provided if partially obstructed with piping, etc. Provision shall be made to remove dregs (settleable solids). Pumps shall be readily removable and replaceable without demolition of piping, etc.
- (5) Operation and Maintenance (O&M) Manual. The permittee shall submit a draft Operation and Maintenance manual before the facility commences operation. The facility designer should do actual preparation. This manual shall incorporate as-constructed details, and

be completed in final form for the owner's use following final inspection of the completed facility. It shall include a statement of Inspection and Certification of Proper Construction. The designer shall affirm that the facility is operating as intended based upon actual field inspection at end of construction and start of operations. If there are any negative findings, these shall be reported and correction proposed by the permittee.

340-71-305 SAND FILTER SYSTEM OPERATION AND MAINTENANCE

(1) Sand filters serving a single family dwelling with wastewater not exceeding "Residential Waste Strength" shall be subject to the following provisions:

- ~~{1}~~ (a) Sand filter operation and maintenance tasks and requirements shall be as specified on the Certificate of Satisfactory Completion. Where a conventional sand filter system or other sand filter system with comparable operation and maintenance requirements is used, the system owner shall be responsible for the continuous operation and maintenance of the system.]
- ~~{2}~~ (b) The owner of a sand filter system shall inspect the septic tank and other components of the system at least every three years for sludge accumulation, pump calibration and cleaning of the laterals. The septic tank shall be pumped when there is an accumulation of floating scum less than three (3) inches above the bottom of the outlet tee or an accumulation of sludge less than six (6) inches below the bottom of the outlet tee. A dosing septic tank shall be pumped according to manufacturers specifications. [provide the Agent written verification that the system's septic tank has been pumped at least once each forty eight (48) months by a licensed sewage disposal service business. Service start date shall be assumed to be the date of issuance of the Certificate of Satisfactory Completion.] The owner shall provide the Agent certification of tank pumping within two (2) months of the date required for pumping. Pump calibration, cleaning of the laterals and other maintenance shall be completed as necessary;
- ~~{3}~~ (c) No permit shall be issued for the installation of any other sand filter which in the judgment of the Department would require operation and maintenance significantly greater than the conventional sand filter unless arrangements for system operation and maintenance meeting the approval of the Director have been made which will ensure adequate operation and maintenance for the life of the system. Each permitted installation may be

inspected by the Agent at least every twelve (12) months and checked for necessary corrective maintenance. The Agent may waive the annual system evaluation fee during years when the field evaluation work is not performed~~12~~;

- (2) Operation and maintenance requirements for sand filters serving Commercial facilities shall be specified in a WPCF permit issued pursuant to OAR 340-71-162 of this Division.
- (3) Operation and Maintenance Standards for all sand filters. The owner/purchaser of a sand filter system shall assume the continuous responsibility to preserve the installation as near as practical in its "as built" state. This responsibility includes the control or erosion of any "mound," the control and removal of large perennial plants, the fencing out of livestock and the control of burrowing animals.

340-71-315 TILE DEWATERING SYSTEM

- (1) General conditions for approval. On-site system construction permits may be issued by the Agent for tile dewatering systems provided the following requirements can be met:
- (a) The site has a natural outlet that will allow a field tile installed on a proper grade around the proposed absorption facility to daylight above annual high water;
 - (b) Soils must be silty clay loam or coarser textured and be drainable, with a minimum effective soil depth of at least thirty (30) inches in soils with temporary groundwater, and at least seventy-two (72) inches in soils with permanent groundwater;
 - (c) Slope does not exceed three (3) percent;
 - (d) All other requirements for the system, except depth to groundwater, can be met. However, after the field collection drainage tile is installed, the groundwater levels shall conform to the requirements of OAR 340-71-220~~(1)(2)~~ or 340-71-290(3).
- (2) Construction Requirements:
- (a) Field collection drainage tile shall be installed on a uniform grade of two-tenths to four-tenths (0.2-0.4) feet of fall per one hundred (100) feet, and either:
 - (A) A minimum of thirty-six (36) inches deep in soils with temporary groundwater; or

- (B) A minimum of sixty-six (66) inches deep in soils with permanent groundwater.
- (b) Maximum drainage tile spacing shall be seventy (70) feet center to center;
- (c) Minimum horizontal separation distance between the drainage tile and absorption facility shall be twenty (20) feet;
- (d) Field collection drainage tile shall be rigid smooth wall perforated pipe, or other approved pipe material accepted by the Agent, with a minimum diameter of four (4) inches;
- (e) Field collection drainage tile shall be enveloped in clean filter material to within thirty (30) inches of the soil surface in soils with permanent groundwater, or to within twelve (12) inches of the soil surface in soils with temporary groundwater. ~~Filter material~~ Drain media shall be covered with filter fabric, treated building paper or other nondegradable material approved by the Agent;
- (f) Outlet tile shall be rigid smooth wall solid PVC pipe, meeting or exceeding ASTM Standard D-3034, with a minimum diameter of four (4) inches. ~~The outlet end shall be protected by a short section of Schedule 80 PVC or ABS or metal pipe, and a flap gate or grill to exclude rodents.~~ A flap gate or rodent guard may be required by the Agent;
- (g) A silt trap with a twelve (12) ~~thirty (30)~~ inch minimum diameter shall be installed between the field collection drainage tile and the outlet pipe unless otherwise authorized by the Department. The bottom of the silt trap shall be a minimum twelve (12) inches below the invert of the drainage pipe outlet;
- (h) The discharge pipe and tile drainage system are integral parts of the system, but do not need to meet setback requirements to property lines, wells, streams, lakes, ponds or other surface ~~water bodies~~ waterbodies;
- (i) The Agent has the discretion of requiring demonstration that a proposed tile dewatering site can be drained prior to issuing a Construction-Installation permit;
- (j) The absorption facility shall use equal or pressurized distribution.

340-71-320 SPLIT WASTE ~~[SYSTEMS]~~ METHOD

~~[(1)]~~ ~~For the purpose of these rules:~~

~~(a) "Split waste system" means a system where "black waste" sewage and "gray water" sewage from the same dwelling or building are disposed of by separate methods.~~

~~(b) "Black waste" means human body wastes including feces, urine, other extraneous substances of body origin and toilet paper.~~

~~(c) "Gray water" means household sewage other than "black wastes", such as bath water, kitchen waste water and laundry wastes.]~~

~~[(2)]~~ Criteria for Approval. In a split waste method, ~~[systems]~~ wastes may be disposed of as follows:

~~[(a)]~~ (1) Black wastes may be disposed of by the use of State Building Codes Division ~~[Department of Commerce]~~ approved nonwater-carried plumbing units such as recirculating oil flush toilets or compost toilets~~].~~

~~[(b)]~~ (2) Gray water may be disposed of by discharge to:

~~[(A)]~~ (a) An existing on-site system which is not failing; or

~~[(B)]~~ (b) A new on-site system with a soil absorption facility two-thirds (2/3) normal size. A full size initial disposal area and replacement disposal area of equal size are required; or

~~[(C)]~~ (c) A public sewerage system.

340-71-325 GRAY WATER WASTE DISPOSAL SUMPS ~~[(Diagrams 14 and 15)]~~

~~[(1)]~~ ~~For the purpose of these rules "gray water waste disposal sump" means a series of receptacles designed to receive hand-carried gray water for disposal into the soil.]~~

~~[(2)]~~ (1) Criteria for Approval:

(a) Hand-carried gray water may be disposed of in gray water waste disposal sumps which serve facilities including but not limited to ~~[such as]~~ recreation parks, camp sites, ~~[seasonal dwellings,]~~ or construction sites where the projected daily gray water flow does not exceed ten (10) gallons per unit. Gray water or other sewage

shall not be piped to the gray water waste disposal sump. Where projected daily sewage flow exceeds ten (10) gallons per unit, gray water shall be disposed of in facilities meeting requirements of OAR 340-71-320(2)~~[(b)]~~;

(b) Gray water sumps may be used only where soil conditions are approved for such use by the Agent~~[-]~~;

(c) Up to four (4) gray water waste disposal sumps may be constructed on the same property and at the same time for each construction-installation permit issued.

~~[(3)]~~ (2) In campgrounds or other public use areas, gray water waste disposal sumps shall be identified as "sink waste disposal" by placard or sign in letters not less than three (3) inches in height and in a color contrasting with the background.

340-71-330 NONWATER-CARRIED FACILITIES

~~[(1)]~~ ~~For the purpose of these rules:~~

~~(a) "Nonwater carried waste disposal facility" means any toilet facility which has no direct water connection, including pit privies, vault privies and portable toilets.~~

~~(b) "Privy" means a structure used for disposal of human waste without the aid of water. It consists of a shelter built above a pit or vault in the ground into which human waste falls.~~

~~(c) "Portable toilet" means any self contained chemical toilet facility that is housed within a portable toilet shelter, and includes but is not limited to construction type chemical toilets.]~~

~~[(2)]~~ (1) No person shall cause or allow the installation or use of a nonwater-carried waste disposal facility without prior written approval from the Agent.

EXCEPTIONS:

- 1- Temporary use pit privies used on farms for farm labor shall be exempt from approval requirements.
- 2- A Sewage Disposal Service business licensed pursuant to OAR 340-71-600 may install portable toilets without written approval

of the Agent, providing all other requirements of this rule except **Table 8 setbacks** are met.

~~{3}~~ (2) Non-water carried waste disposal facilities may be approved for temporary or limited use areas, including but not limited to ~~{such as}~~ recreation parks, camp sites, ~~{seasonal dwellings,}~~ farm labor camps, or construction sites, provided all liquid wastes can be handled in a manner to prevent a public health hazard and to protect public waters, provided further that the separation distances in **Table 8** can be met.

EXCEPTION: The use of portable toilets shall not be allowed for seasonal dwellings.

~~{4}~~ (3) Construction. Nonwater-carried waste disposal facilities shall be constructed in accordance with requirements contained in OAR 340-73-065 through 340-73-075.

~~{5}~~ (4) Maintenance. Nonwater-carried waste disposal facilities shall be maintained to prevent health hazards and pollution of public waters.

~~{6}~~ (5) General. No water-carried sewage shall be placed in nonwater-carried waste disposal facilities. Contents of nonwater-carried waste disposal facilities shall not be discharged into storm sewers, on the surface of the ground or into public waters.

~~{7}~~ (6) Pit Privy:

- (a) Unsealed earth pit type privies may be approved where the highest level attained by groundwater shall not be closer than four (4) feet to the bottom of the privy pit;
- (b) The privy shall be constructed to prevent surface water from running into the pit;
- (c) When the pit becomes filled to within sixteen (16) inches of the ground surface, a new pit shall be excavated and the old pit shall be backfilled with at least two (2) feet of earth.

~~{8}~~ (7) No person shall cause or allow the installation or use of a portable toilet unless the pumping or cleaning of the portable toilet is covered by a valid and effective contract with a person licensed pursuant to ORS 454.695. Each portable toilet shall display the business name of the sewage disposal service that is responsible for servicing it.

340-71-335 CESSPOOLS AND SEEPAGE PITS ~~[[Diagrams 16 and 17]]~~

~~[[1]]~~ ~~For the purpose of these rules:~~

~~(a) "Cesspool" means a lined pit which receives raw sewage, allows separation of solids and liquids, retains the solids and allows liquids to seep into the surrounding soil through perforations in the lining.~~

~~(b) "Seepage Pit" means a "cesspool" which has a treatment facility such as a septic tank ahead of it.~~

~~[[2]]~~ (1) Except as provided in OAR 340-71-401, construction of new cesspool sewage disposal systems in Oregon is prohibited.

~~[[3]]~~ (2) Seepage pit sewage disposal systems may be used only to serve existing sewage loads and replace existing failing seepage pit and cesspool systems on lots that are inadequate in size to accommodate a standard system or other alternative on-site sewage systems. A construction-installation permit allowing replacement of the failing system shall not be issued if a sewerage system is both legally and physically available, as described in OAR 340-71-160(5)(f).

~~[[4]]~~ (3) Construction Requirements:

(a) Each seepage pit shall be installed in a location to facilitate future connection to a sewerage system when such facilities become available;

(b) Maximum depth of seepage pits shall be thirty-five (35) feet below ground surface;

(c) The seepage pit depth shall terminate at least four (4) feet above the water table.~~[[7]]~~

~~[[d)] Other standards for seepage pit construction are as shown in diagrams 16 and 17.]~~

~~[[5]]~~ (4) Notwithstanding the permit duration specified in OAR 340-71-160(9), a permit issued pursuant to this rule may be effective for a period of less than one (1) year from the date of issue if specified by the Agent.

340-71-340 HOLDING TANKS

~~[(1)]~~ ~~For the purpose of these rules "Holding Tank" means a watertight receptacle designed to receive and store sewage to facilitate disposal at another location.]~~

~~[(2)]~~ (1) Criteria for Approval. A holding tank requires a WPCF Permit. A WPCF permit for a holding tank ~~[Installation permits]~~ may be authorized ~~[issued]~~ by the Agent for holding tanks on sites that meet all the following conditions:

(a) Permanent Use:

- (A) The site ~~cannot be approved [is not approvable]~~ for installation of a standard subsurface system; and
- (B) No community or area-wide sewerage system is available or expected to be available within five (5) years; and
- (C) The tank is intended to serve a small industrial or commercial building, or an occasional use facility such as a county fair or a rodeo; and
- (D) Unless otherwise allowed by the Department, the projected daily sewage flow is not more than two hundred (200) gallons; and
- (E) Setbacks as required for septic tanks can be met.

(b) Temporary Use:

- (A) In an area under the control of a city or other legal entity authorized to construct, operate, and maintain a community or area-wide sewerage system, a holding tank may be installed provided the application for permit includes a copy of a legal commitment from the legal entity that within five (5) years from the date of the application the legal entity will extend to the property covered by the application a community or area-wide sewerage system meeting the requirements of the Commission, and provided further that the proposed holding tank will otherwise comply with the requirements of these rules; or

~~[(B)]~~ ~~Installation of an approved on-site system has been delayed by weather conditions; or]~~

~~[(C)]~~ (B) The tank is to serve a temporary construction site.

~~[(3)]~~ (2) General:

- (a) No building may be served by more than one (1) holding tank;
- (b) A single tax lot may be served by no more than one (1) holding tank unless the holding tanks are under control of a municipality as defined in ~~[(ORS 454.310(3))]~~ Oregon Revised Statutes;

~~[(4)]~~ (3) Design and Construction Requirements:

- (a) Plans and specifications for each holding tank proposed to be installed shall be submitted to the Agent for review and approval;
- (b) Each tank shall have a minimum liquid capacity of fifteen hundred (1,500) gallons;
- (c) Each tank shall:
 - (A) Comply with standards for septic tanks contained in OAR 340-73-025 ~~and 340-73-030~~;
 - (B) Be located and designed to facilitate removal of contents by pumping;
 - (C) Be equipped with both an audible and visual alarm, placed in a location acceptable to the Agent, to indicate when the tank is seventy-five (75) percent full. The audible alarm only may be user cancelable;
 - (D) Have no overflow vent at an elevation lower than the overflow level of the lowest fixture served;
 - (E) Be designed for antibuoyancy if test hole examination or other observations indicate seasonally high groundwater may float the tank when empty.

~~[(5)]~~ (4) Special Requirements. The application for ~~an installation~~ permit shall contain:

- (a) A copy of a contract with a licensed sewage disposal service company which shows the tank will be pumped periodically, at regular intervals or as needed, and the contents disposed of in a manner and at a facility approved by the Department;

(b) Evidence that the owner or operator of the proposed disposal facility will accept the pumpings for treatment and disposal~~[/].~~

~~[(e)]~~ *A record of pumping dates and amounts pumped shall be maintained by both the treatment facility owner and the sewage disposal service, and upon request, made available to the Agent.*

~~[(6)]~~ (5) Inspection Requirements. Each holding tank ~~[installed under this rule, and those tanks installed under OAR 340-71-037(3)]~~ may be inspected annually. An ~~[alternative system evaluation fee]~~ annual compliance determination fee in accordance with the fee schedule in OAR 340-71-140 shall be charged ~~[for each annual inspection]~~.

340-71-345 AEROBIC SYSTEMS

~~[(1)]~~ *For the purpose of these rules:*

~~[(a)]~~ *"Aerobic Sewage Treatment Facility" means a sewage treatment plant which incorporates a means of introducing air (oxygen) into the sewage so as to provide aerobic biochemical stabilization during a detention period.*

~~[(b)]~~ *"Mechanical Oxidation Sewage Treatment Facility" means an aerobic sewage treatment facility.*

~~[(2)]~~ (1) Criteria for Approval. Aerobic sewage treatment facilities may be approved for a construction-installation permit provided all the following criteria are met:

(a) The facility to be served is a single family dwelling; ~~[daily sewage flow to be treated is less than five thousand (5000) gallons;]~~

~~[(b)]~~ Wastewater strength does not exceed the maximum limits for residential strength wastewater;

~~[(b)]~~ (c) The aerobic sewage treatment facility (plant) is part of an approved on-site sewage disposal system;

~~[(e)]~~ (d) The plant has been tested pursuant to the current version of the **National Sanitation Foundation (NSF) Standard No. 40**, relating to Individual Aerobic Wastewater Treatment Plants, and been found to conform with Class I or Class II and other requirements of the standard. In lieu of NSF testing, the Department may accept testing by another agency which it considers to be equivalent;

- ~~##~~ (e) The property owner records in the county land title records, in a form approved by the Department, an easement and a covenant in favor of the State of Oregon:
- (A) Allowing its officers, agents, employees and representatives to enter and inspect, including by excavation, the aerobic sewage treatment facility; and
 - (B) Acknowledging that proper operation and maintenance of the plant is essential to prevent failure of the entire on-site sewage disposal system; and
 - (C) Agreeing for himself and his heirs, successors and assigns, to hold harmless, indemnify and defend the State of Oregon, its officers, representatives, employees and agents for any and all loss and damage caused by installation or operation of the system; and
 - (D) Agreeing not to put the land to any conflicting use.

- ~~##~~ (2) The plant shall:
- (a) Have a visual and audible alarm, placed at a location acceptable to the Agent, which are activated upon an electrical or mechanical malfunction;
 - (b) Have a minimum rated hydraulic capacity equal to the daily sewage flow or five hundred (500) gallons per day, whichever is greater;
 - (c) Have aeration and settling compartments constructed of durable material not subject to excessive corrosion or decay;
 - (d) Have raw sewage screening or its equivalent;
 - (e) Have provisions to prevent surging of flow through the aeration and settling compartments;
 - (f) Have access to each compartment for inspection and maintenance;
 - (g) Have provisions for convenient removal of solids;
 - (h) Be designed to prevent:
 - (A) Short circuiting of flow;

- (B) Deposition of sludge in the aeration compartment;
- (C) Excessive accumulation of scum in the settling compartment;

(D) The passage of untreated sewage into the disposal field if the plant malfunctions.

~~{4}~~ **(3)** Disposal Field Sizing. Disposal fields serving systems employing aerobic sewage treatment facilities shall be sized according to **Tables 4 and 5** of these rules. Where a NSF Class I plant is installed, the linear footage of disposal trench installed may be reduced by twenty (20) percent, provided a full sized standard system replacement area is available.

~~{5}~~ **(4)** Operation and Maintenance:

- (a) The supply of parts must be locally available for the expected life of the unit;
- (b) The supplier of the plant shall be responsible for providing operation training to the owner;
- (c) The supplier of the plant shall provide the owner with an operation and maintenance (O & M) manual for the specific plant installed;
- (d) The owner shall remove excess solids from the plant at least once per year, or more frequently if recommended by the O & M manual.

~~{6}~~ **(5)** Inspection Requirements. Each aerobic sewage treatment facility installed under this rule shall be inspected by the Agent at least once per year (See OAR 340-71-260**(2)**). ~~{4(a)}~~

(6) Aerobic systems which serve commercial facilities, or which do not meet the above requirements shall be permitted only by WPCF Permit. Operation and maintenance requirements shall be established in the permit.

~~{340-71-350 LOW-FLUSH TOILETS}~~

~~Permits issued for installation of an on-site system shall allow a reduction of twenty-five (25) percent in the seepage area provided:~~

~~(1) The single family dwelling or commercial facility utilizes two (2) quarts or less low volume flush toilets approved by the State Department of Commerce; and~~

~~(2) A full sized initial and replacement drainfield area is available.]~~

~~[340-71-355 GRAVEL-LESS DISPOSAL TRENCH SYSTEMS~~

~~(1) Gravel less disposal trench systems may be permitted on any site providing:~~

~~(a) The site fully complies with the criteria for installation of a standard subsurface sewage disposal system, as identified in OAR 340-71-220(2); and~~

~~(b) The site has sandy loam, loamy sand, or sand soil textures; and~~

~~(c) It serves a single family dwelling.~~

~~(2) Distribution pipes for gravel less disposal trench systems shall conform to the requirements in OAR 340-73-060(2)(f).~~

~~(3) Gravel less disposal trench systems shall be constructed pursuant to the standards identified in OAR 340-71-220.~~

~~EXCEPTIONS:-~~

~~a The bottom trench width shall not be less than eighteen (18) inches wide; and~~

~~b The provisions of OAR 340-71-220(8)(c), (f), and (g) are not applicable.]~~

340-71-400 GEOGRAPHIC AREA SPECIAL CONSIDERATIONS.

(1) River Road — Santa Clara Area, Lane County:

(a) Within the areas set forth in subsection (b) of this section the Agent may issue either construction permits for new subsurface sewage disposal systems or favorable reports of evaluation of site suitability to construct systems under the following circumstances:

(A) The system complies with all rules in effect at the time the permit is issued; and

- (B) The system will not in itself contribute, or in combination with other new sources after April 18, 1980, contribute more than sixteen and seven-tenths (16.7) pounds nitrate-nitrogen per acre per year to the local groundwater. The applicant shall assure compliance with this condition by showing his ownership or control of adequate land through easements or equivalent.
- (b) Subsection (a) of this section shall apply to all of the following area generally known as River Road — Santa Clara, and defined by the boundary submitted by the Board of County Commissioners for Lane County, which is bounded on the south by the City of Eugene, on the west by the Southern Pacific Railroad, on the north by Beacon Drive, and on the east by the Willamette River, and containing all or portions of T16S, R4W, Sections 33, 34, 35, 36; T17S, R4W, Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25; and T17S, R1E, Sections 6, 7, 18, Willamette Meridian;
- (c) This rule is subject to modification or repeal by the Commission on an area-by-area basis upon petition by the appropriate local agency or agencies. Such petition either shall provide reasonable evidence that development using subsurface sewage disposal systems will not cause unacceptable degradation of groundwater quality or surface water quality or shall provide equally adequate evidence that degradation of groundwater or surface water quality will not occur as a result of such modification or repeal;
- (d) Subsections (a) and (b) of this section shall not apply to any construction permit application based on a favorable report of evaluation of site suitability issued by the Agent pursuant to ORS 454.755(1)(b), where such report was issued prior to the effective date of this rule.
- (2) General North Florence Aquifer, North Florence Dunal Aquifer Area, Lane County:
- (a) Within the area set forth in subsection (2)(b) of this rule, the agent may issue construction permits for new on-site sewage disposal systems or favorable reports of evaluation of site suitability to construct individual or community on-site sewage disposal systems under the following circumstances:
- (A) The lot and proposed system shall comply with all rules in effect at the time the permit or favorable report of site suitability is issued; or

- (B) The lot and proposed system complies with paragraph 2(a)(A) of this rule, except for the projected daily sewage loading rates, and the system in combination with all other previously approved systems owned or legally controlled by the applicant shall be projected by the Department to contribute to the local groundwater not more than fifty-eight (58) pounds nitrate-nitrogen NO₃-N per year per acre owned or controlled by the applicant.
- (b) Subsection (2)(a) of this rule shall apply to all of the following area hereby known as the General North Florence Aquifer of the North Florence Dunal Area and is defined by the hydrologic boundaries identified in the June 1982, 208 North Florence Dunal Aquifer Study, which is the area bounded on the west by the Pacific Ocean; on the southwest and south by the Siuslaw River; on the east by the North Fork of the Siuslaw River and the ridge line at the approximate elevation of four hundred (400) feet above mean sea level directly east of Munsel Lake, Clear Lake and Collard Lake; and on the north by Mercer Lake, Mercer Creek, Sutton Lake and Sutton Creek; and containing all or portions of T17S, R12W, Sections 27, 28, 33, 34, 35, 36, and T18S, T12W, sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27; W.M., Lane County, except that portion defined as the Clear Lake Watershed more particularly described by OAR 340-71-460(6)(f).
- (3) Lands Overlaying the Alsea Dunal Aquifer:
- (a) Within the area set forth in subsection (3)(c) of this rule, the Agent may issue a construction permit for a new on-site sewage disposal system or a favorable report of evaluation of site suitability to construct a single on-site system on lots that were lots of record prior to January 1, 1981; or on lots in partitions or subdivisions that have received preliminary planning, zoning, and on-site sewage disposal approval prior to January 1, 1981, providing one of the following can be met:
- (A) At the time the permit or favorable report of site suitability is issued the lot complies with OAR 340-71-100 through 340-71-~~360~~ ~~[350]~~ and OAR 340-71-410 through 340-71-520; or
- (B) The lot is found through site evaluation not to comply with OAR 340-71-100 through 340-71-~~360~~ ~~[350]~~ and OAR 340-71-410 through 340-71-520, but does meet all of the following conditions when a pressurized seepage bed is utilized:

- (i) Groundwater levels shall not be closer than four (4) feet from the ground surface or closer than three (3) feet from the bottom of the seepage bed;
 - (ii) The seepage bed shall be constructed in accordance with OAR 340-71-275(4) and (5);
 - (iii) The seepage bed shall be sized on the basis of two hundred (200) square feet of bottom area per one hundred fifty (150) gallons projected daily sewage flow;
 - (iv) Projected daily sewage flows shall be limited to not more than three hundred seventy-five (375) gallons per lot, except those lots which have a certificate of favorable site evaluation which provides for a larger flow;
 - (v) All setbacks identified in **Table 1** can be met, except that lots of record prior to May 1, 1973, shall maintain a minimum fifty (50) feet separation to surface public waters;
 - (vi) Sufficient area exists on the lot to install a seepage bed and a replacement seepage bed. The area reserved for replacement may be waived pursuant to the exception in OAR 340-71-150(4)(a)(B).
- (C) The lot is found through site evaluation not to comply with OAR 340-71-100 through 340-71-~~360~~ ~~(350)~~ and OAR 340-71-410 through 340-71-520, but does meet all of the following conditions when a conventional sand filter without a bottom is utilized:
- (i) Groundwater levels shall not be closer than one (1) foot from the ground surface and not closer than one (1) foot from the bottom of the sand filter;
 - (ii) Sewage flows shall be limited to not more than three hundred seventy-five (375) gallons per day per lot, except those lots which have a certificate of favorable site evaluation which provides for a larger flow;
 - (iii) The sand filter shall be sized at one (1) square foot of bottom area for each gallon of projected daily sewage flow;

- (iv) The conventional sand filter without a bottom shall be constructed in accordance with OAR 340-71-295(3);
 - (v) All setbacks identified in **Table 1** can be met, except that lots of record prior to May 1, 1973, shall maintain a minimum fifty (50) feet separation to surface public waters;
 - (vi) Sufficient area exists on the lot to install a bottomless conventional sand filter and a replacement bottomless conventional sand filter. The area for replacement may be waived pursuant to the exception contained in OAR 340-71-150(4)(a)(B).
- (b) Within the area set forth in subsection (3)(c) of this rule, for lots created on or after January 1, 1981, and/or when the on-site system will serve a commercial facility, the Agent may issue a construction permit for a new on-site sewage disposal system or a favorable report of evaluation of site suitability if it is determined that all rules of the Commission can be met;
- (c) The Alsea Dunal Aquifer is defined as all the land bounded on the East by Highway 101, the Pacific Ocean on the West, and from Driftwood Beach Wayside South to the southern tip of the Alsea Bay Spit;
- (d) If the results of groundwater monitoring in the Alsea Dunal Aquifer indicate unacceptable levels of degradation or if it appears necessary or desirable to pursue development of the aquifer as a source of drinking water, sewage collection and off-site treatment and disposal facilities shall be installed unless further study demonstrates that such facilities are not necessary or effective to protect the beneficial use.
- (4) Christmas Valley Townsite, Lake County:
- (a) Within the area set forth in subsection (4)(b) of this rule, the agent may consider the shallow groundwater table, if present, in the same manner as a temporary water table when preparing and/or issuing site evaluation reports and construction-installation permits;
 - (b) The Christmas Valley Townsite is defined as all land within the Christmas Valley Townsite plat located within Sections 9, 10, 11,

14, 15 and 16 of Township 27 South, Range 17 East, Willamette Meridian, in Lake County.

(5) Clatsop Plains Aquifer, Clatsop County:

The Clatsop Plains Groundwater Protection Plan, prepared by R.W. Beck and Associates and adopted by Clatsop County, provides a basis for continued use of on-site sewage disposal systems while protecting the quality of groundwater for future water supplies. For the plan to be successful, the following components must be accomplished:

- (a) By not later than January 1, 1983, Clatsop County shall identify and set aside aquifer reserve areas for future water supply development containing a minimum of two and one half (2-1/2) square miles. The reserve areas shall be controlled so that the potential for groundwater contamination from nitrogen and other possible pollutants is kept to a minimum;
- (b) The Agent may issue construction installation permits for new on-site sewage disposal systems or favorable reports of site evaluation to construct on-site systems, within the area generally known as the Clatsop Plains, which is bounded by the Columbia River to the North; the Pacific Ocean to the west; the Necanicum River, Neawanna Creek, and County Road 157 on the south; and the Carnahan Ditch-Skipanon River and the foothills of the Coast Range to the east, providing:
 - (A) The lot or parcel was created in compliance with the appropriate comprehensive plan for Gearhart (adopted by County Ordinance 80-3), Seaside (adopted by County Ordinance 80-10), Warrenton (adopted by County Ordinance 82-15), or the Clatsop County plan adopted through Ordinance No. 79-10; and either
 - (B) The lot or parcel does not violate any rule of this Division; or
 - (C) Lot or parcel does not violate the Department's Water Quality Management Plan or any rule of this Division, except the projected maximum sewage loading rate would exceed the ratio of four hundred fifty (450) gallons per one-half (1/2) acre per day. The on-site system shall be either a sand filter system or a pressurized distribution system with a design sewage flow not to exceed four hundred fifty (450) gallons per day; or

- (D) The Department may approve the use of standard on-site systems to serve single family dwellings within planned developments or clustered-lot subdivisions providing:
 - (i) The planned development or clustered-lot subdivision is not located within Gearhart, Seaside, Warrenton, or their urban growth boundaries; and
 - (ii) The lots do not violate any rule of this Division, except the projected maximum sewage loading rate may exceed the ratio of four hundred fifty (450) gallons per acre per day; and
 - (iii) The Department is provided satisfactory evidence through a detailed groundwater study that the use of standard systems will not constitute a greater threat to groundwater quality than would occur with the use of sand filter systems or pressurized distribution systems.

(6) Within areas east of the Cascade Range where the annual precipitation does not exceed twenty (20) inches, and after evaluating the site, the Agent may issue a construction-installation permit authorizing installation of a standard system to serve a single family dwelling, provided the requirements in subsections (6)(a) and (b) of this rule are met:

(a) Minimum Site Criteria:

(A) The property is ten (10) ~~twenty (20)~~ acres or larger in size. The minimum parcel size considered under this rule is designated by the County, but in no event shall it be less than ten (10) acres; with planning restrictions that prohibit division of the property into parcels containing less than twenty (20) acres;

~~(B) The property is not within an Urban Growth Boundary;~~

~~(G)~~ (B) The slope gradient does not exceed thirty (30) percent;

~~(D)~~ (C) The soils are diggable with a backhoe to a depth of at least twenty-four (24) inches;

~~(E)~~ (D) The site is found to comply with the provisions of OAR 340-71-220(1)~~(2)~~(b,e,f,g,h, and i).

(b) Minimum Construction Requirements:

- (A) The system shall contain not less than two hundred twenty-five (225) linear feet of disposal trench for projected sewage flows not exceeding four hundred fifty (450) gallons per day. Larger sewage flows shall be sized on the basis of seventy-five (75) linear feet per each one hundred fifty (150) gallons of projected flow;
 - (B) The system shall be constructed and backfilled in compliance with OAR 340-71-220: sections (3), (4), (5), (7) ~~[(6) and]~~, (8), (9), (10), and (11) ~~[(12)]~~ of this rule.
- (c) At the discretion and request of the owner or the owner's authorized representative, a single application may be submitted to the Agent for both a site evaluation report and a construction-installation permit. The application would include the sum of the fees for both activities, pursuant to OAR 340-71-140(1)(a)(A) and OAR 340-71-140(1)(b)(A) ~~(i)(iii)~~, as well as the following:
- (A) Favorable land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission acknowledged comprehensive plan or complies with the statewide planning goals;
 - (B) Property development plan acceptable to the Agent showing the location of existing and proposed improvements, including the locations of the dwelling and sewage disposal system;
 - (C) All other exhibits the Agent finds are necessary to complete the application.
- (d) The Agent may waive the pre-cover inspection for a system installed pursuant to this section, provided the system installer ~~***[certifies in writing that the system was installed in accordance with the permit plans and conditions.]***~~ ***submits the following information to the Agent at the time construction of the system is complete:***
- (A) A detailed and accurate as-built plan of the constructed system; and***
 - (B) A list of all material used in the construction of the system; and***

(C) A written certification (on a form acceptable to the Department) that the construction was in accordance with the permit and rules of the Commission.

(7) Within areas east of the Cascade Range where the annual precipitation does not exceed twenty (20) inches, the Agent may issue a construction-installation permit authorizing installation of a standard system to serve a single family dwelling, provided the requirements in subsections (7)(a) and (b) of this rule are met. The Agent may waive the site evaluation for a single family dwelling provided:

(a) Minimum Site Criteria:

(A) The property is eighty (80) acres or larger in size. The minimum parcel size considered under this rule is designated by the County, but in no event shall it be less than eighty (80) acres;

(B) The separation distance between the proposed on-site system and the nearest dwelling, other than that being served by the proposed system, is at least one-quarter mile;

(C) The nearest property line to the proposed system is at least 100 feet, the nearest domestic water source is at least 200 feet, and the nearest surface public water is at least 200 feet; and

(D) In the opinion of the Agent, sufficient topographical and soils information, including but not limited to slope, terrain, landform, and rock outcrops, is submitted with the application to determine the property can be approved for on-site sewage disposal in conformance with the purpose of these rules as stated in OAR 340-71-110.

(b) Minimum Construction Requirements:

(A) Sizing requirements of Tables 4 and 5 shall be followed as closely as possible. In any case, the system shall contain not less than two hundred twenty-five (225) linear feet of disposal trench for projected sewage flows not exceeding four hundred fifty (450) gallons per day. Larger sewage flows shall be sized on the basis of seventy-five (75) linear feet per each one hundred fifty (150) gallons of projected flow;

- (B) The system shall be constructed and backfilled as closely as possible to the requirements contained in OAR 340-71-220.
- (c) At the request of the owner or the owner's authorized representative, a single application may be submitted to the Agent for both a site evaluation report and a construction-installation permit. The application would include the fee for a site evaluation, pursuant to OAR 340-71-140, as well as the following:
- (A) Favorable land use compatibility statement from the appropriate land use authority signifying that the proposed land use is compatible with the Land Conservation and Development Commission acknowledged comprehensive plan or complies with the statewide planning goals;
- (B) Property development plan acceptable to the Agent showing the location of existing and proposed improvements, including the locations of the dwelling and sewage disposal system;
- (C) All other exhibits the Agent finds are necessary to complete the application;
- (D) If the decision is made to waive the site evaluation, the fee will be transferred to the permit.
- (d) The Agent may waive the pre-cover inspection for a system installed pursuant to this section, provided the system installer submits the following information to the Agent at the time construction of the system is complete:
- (A) A detailed and accurate as-built plan of the constructed system; and
- (B) A list of all material used in the construction of the system; and
- (C) A written certification (on a form acceptable to the Department) that the construction was in accordance with the permit and rules of the Commission.
- (e) The conditions for OAR 340-71-400(7) shall be set forth in an addendum to the memorandum of agreement (contract) between the County and the Department.

340-71-401 MID-MULTNOMAH COUNTY, CESSPOOL AND SEEPAGE PIT USE.

- (1) This rule shall be applicable only within the area defined in Appendix B of the document entitled **Evaluation of Hearing Record for Proposal to Declare a Threat to Drinking Water in a Specifically Defined Area of Mid-Multnomah County** pursuant to ORS 454.275 et seq., February 6, 1986.
- (2) Favorable site evaluation reports and new construction-installation permits for cesspool and seepage pit sewage disposal systems may be issued within the area defined in section (1) of this rule, provided all of the following conditions are met:
 - (a) Construction of sewers and connection thereto is on schedule as defined in the Mid-Multnomah County Sewer Implementation Plan, September 1985;
 - (b) The total waste load discharged into cesspool and seepage pit sewage disposal systems within the affected area at any time does not exceed that indicated by the EQC Benchmark Removal Rate line in Figure 4-1, of Mid-Multnomah County Sewer Implementation Plan, September 1985, based on the assumption that fifty-six thousand (56,000) single family dwelling unit equivalent cesspool and seepage pit systems existed in the affected area at the beginning of 1985;
 - (c) Sewers are not available to serve the proposed development. Connection to sewers shall be made whenever practicable. Connection will be deemed practicable if sewers are physically available as defined in OAR 340-71-160(5)(f) unless otherwise allowed by the Agent;
 - (d) Any land division or subdivision development that involves construction of streets shall construct dry sewers at the time of development to minimize costs and disruption when connection to a sewer becomes possible. If in the judgment of the Agent construction of dry sewers is not practicable, the land division or subdivision may be approved for cesspools and seepage pits if funds in the amount of the cost of the needed dry sewer construction is placed in an interest bearing escrow account to be applied to construction of the sewers when appropriate under the schedule for sewer construction by the local governments;
 - (e) Cesspool or seepage pit systems shall not be authorized on any lot that is large enough to install a standard or other alternative on-site system;

- (f) Site Criteria:
- (A) The permanent water table is sixteen (16) feet or greater from the surface;
 - (B) Gravelly sand, gravelly loamy sand, or other equally porous material occurs in a continuous five (5) foot deep stratum within twelve (12) feet of the ground surface;
 - (C) A layer that limits effective soil depth does not overlay the gravel stratum;
 - (D) The site is found to comply with the provisions of OAR 340-71-220~~(2)~~(1)(e, f, and i).
- (3) Construction Requirements:
- (a) Each cesspool and seepage pit shall be installed in a location to facilitate future connection to a sewerage system when such facilities become available;
 - (b) Maximum depth of cesspools and seepage pits shall be thirty-five (35) feet below ground surface;
 - (c) The cesspool or seepage pit depth shall terminate at least four (4) feet above the water table;
 - (d) Cesspool and seepage pit structures shall be of a design to assure that collapse or cave-in will not occur. ~~*Diagrams 16 and 17, which show seepage pit designs, reflect an acceptable design for cesspools.*~~
 - (e) The provisions of OAR 340-71-220~~(2)~~(1)(i) are met.
- (4) Permits to repair or replace failing cesspool or seepage pit systems may be issued if sewers are not available. Connection to sewers shall be made whenever practicable. Connection will be deemed practicable if sewers are physically available as defined in OAR 340-71-160(5)(f) unless otherwise allowed by the Agent. The Agent may exercise judgment in determining whether strict compliance with the requirements identified in section (3) of this rule are reasonable.
- (5) Notwithstanding the permit duration specified in OAR 340-71-160(9), a permit issued pursuant to this rule may be effective for a period of less than one (1) year from the date of issue if specified by the Agent.

- (6) The Agent shall report to the Department of Environmental Quality at the end of each calendar year on the number of cesspools and seepage pits removed, the number of repair and replacement systems authorized, and the number of new interim cesspool and seepage pit systems approved through on-site system and WPCF permit issuance. The calculated number of single family dwelling unit equivalent cesspools remaining in service shall at all times be less than or equal to the number derived for that point in time based on fifty-six thousand (56,000) units in existence at the beginning of 1985, and the target percent removed based on the benchmark removal rate as shown in Figure 4-1 of "Mid-Multnomah County Sewer Implementation Plan", September 1985.
- (7) For proposed new sewage loads in excess of five thousand (5000) gallons per day, applications for site evaluation reports and construction permits must be submitted to the Department of Environmental Quality. The permits shall be issued pursuant to OAR 340, Divisions 14 and 45 only after the Agent and the Department concur the provisions of subsection (2)(b) of this rule not are violated.

340-71-410 RURAL AREA **CONSIDERATION [VARIANCES]**

- (1) **[Variances] Departure** from any standard contained in subsections 340-71-220~~(2)(1)~~(a) through (h) may be granted by the Agent in certain rural zones provided:
- (a) The County designates ~~[and the Department accepts]~~ specific rural zoning classifications for purposes of this rule;
 - (b) The minimum parcel size considered under this rule is designated by the County, but in no event shall it be less than ten (10) acres;
 - (c) The parcel is an existing parcel that does not have an accessible area approvable for a standard on-site system;
 - (d) The permit is for an on-site system designed to serve a single family dwelling, or for a commercial facility with an equivalent or less sewage flow permitted by the zone;
 - (e) The on-site sewage disposal system will function in a satisfactory manner so as not to create a public health hazard, or cause pollution of public waters;
 - (f) Requiring strict compliance with the standards contained in subsections 340-71-220~~(2)(1)~~(a) through (h), would in the

judgment of the Agent, be unreasonable, burdensome, or impractical due to special physical conditions or cause.

- (2) ~~*[The conditions for rural area variances shall be set forth in an addendum to the memorandum of agreement (contract) between the County and the Department.]*~~ *The Agent has the discretion to approve design and construction for either a standard or alternative system.*

340-71-450 EXPERIMENTAL SYSTEMS

- (1) Policy: Alternative technologies to standard on-site sewage systems are needed in areas planned for rural or low density development. It is the policy of the Commission to allow the Department to pursue a program of experimentation for the purpose of obtaining sufficient data for the development of alternative sewage disposal systems, which may benefit significant numbers of people within Oregon.
- (2) Permit Required: Without first obtaining a permit from the Department, no person shall construct an experimental on-site sewage treatment and disposal system.
- (3) Application Procedures:
- (a) Application for experimental systems shall be made on Department forms;
 - (b) The application shall be complete, signed by the owner and be accompanied by the required fee;
 - (c) The application shall include detailed system design specifications and plans and any additional information the Department considers necessary;
 - (d) The owner shall agree, in writing, to hold the State of Oregon, its officers, employees, and agents harmless of any and all loss and damage caused by defective installation or operation of the proposed system.
- (4) Criteria For Approval: Sites may be considered for experimental system permits where:
- (a) Soils, climate, groundwater, or topographical conditions are common enough to benefit large numbers of people;
 - (b) A specific acceptable backup alternative is available in the event of system failure;

- (c) For absorption systems, soils in both original and system replacement areas are similar;
 - (d) Installation of a particular system is necessary to provide sufficient data sampling base;
 - (e) Zoning, planning, and building requirements allow system installation;
 - (f) A single family dwelling will be served;
 - (g) The system will be used on a continuous basis during the life of the test project;
 - (h) Resources for monitoring, sample collection, and laboratory testing are available;
 - (i) Legal and physical access by easement for construction inspections and monitoring are available;
 - (j) The property owner records a Department approved affidavit which notifies prospective property purchasers of the existence of an experimental system;
 - (k) The parcel size is at least one (1) acre.
- (5) Permit Conditions: The system installation permit shall:
- (a) Specify method and manner of system installation, operation, and maintenance;
 - (b) Specify method, manner, and duration of system testing and monitoring;
 - (c) Identify when and where system is to be inspected;
 - (d) Require that permit not be transferable;
 - (e) Require system construction and use within one (1) year of permit issuance.
- (6) Denial Appeal: The decision of staff to either issue or deny a permit may be reviewed by the Director. The Director may affirm or reverse the decision.
- (7) Inspection of Installed System:

- (a) Upon completing construction for each inspection phase required under the permit, the permit holder shall notify the Department;
 - (b) The Department ~~may~~ *shall* inspect construction to determine whether it complies with permit conditions and requirements;
 - (c) After system installation is complete and complies with permit conditions, a Certificate of Satisfactory Completion shall be issued.
- (8) Repair or Replacement of System: If the Department finds the operation of the system is unsatisfactory, the owner upon written notification, shall promptly repair or modify the system, replace it with another acceptable system, or as a last resort, abandon the system.
 - (9) System Monitoring: The system shall be monitored by the ~~permittee~~ *Department* in accordance with a schedule contained in the permit. *The Department may also monitor the operation of the system, including collection of samples for analysis.*

340-71-460 MORATORIUM AREAS

- (1) Whenever the Commission finds that construction of subsurface or alternative sewage disposal systems should be limited or prohibited in an area, it shall issue an order limiting or prohibiting such construction.
- (2) The order shall be issued only after public hearing for which more than thirty (30) days' notice is given.
- (3) The order shall be a rule of this division which contains a general description of the moratorium area. A more detailed description of the area, if needed, shall be an appendix to these rules.
- (4) No permit or site evaluation report shall be issued for construction of a new or expanded system which would violate any order of the Commission issued pursuant to ORS 454.685.
- (5) Criteria For Establishing Moratoriums: In issuing an order under this section the Commission shall consider the factors contained in ORS 454.685(2).
- (6) Specific Moratorium Areas: Pursuant to ORS 454.685, the Agent shall not issue sewage system construction-installation permits or approved site evaluation reports within the boundaries of the following areas of the state:

- ~~(a) Benton County Kingston Heights Subdivision;~~
- ~~(b) Benton County Kingston Heights Subdivision, First Addition;~~
- ~~(c) Benton County Princeton Heights Subdivision;~~
- ~~(d) Benton County Princeton Heights Subdivision, First Addition;~~
- ~~(e) Lane County Community of Dexter, as follows:~~

~~The area generally know as Dexter, and defined by the Boundary submitted by the Board of County Commissioners for Lane, which is bounded on the northeast by Willamette Highway No. 58, and contains those properties southwesterly of Highway No. 58 in the following tax assessment maps of Lane County: T19S, R1W, Section 16.2, T19S, R1W, Section 16.32, T19S, R1W, Section 16.31, T19S, R1W, Section 16.42, and T19S, R1W, Section 16 and index located totally within Lane County.~~

- ~~(f)} Lane County - Clear Lake Watershed of the North Florence Dunal Aquifer Area, as follows: The area hereby known as the Clear Lake Watershed of the North Florence Dunal Aquifer Area defined by the hydrologic boundaries identified in the June 1982, **208 North Florence Dunal Aquifer Study** which is the area beginning at a point known as Tank One, located in Section One, Township 18 South, Range 12 West, of the Willamette Meridian, Lane County, Oregon:
 Run thence S. 67° 50' 51.5" E. 97.80 ft. to the True Point of Beginning;
 Run thence S. 05° 40' 43.0" W. 1960.62 ft. to a point;
 Run thence S. 04° 58' 45.4" W. 1301.91 ft. to a point;
 Run thence S. 52° 44' 01.0" W. 231.21 ft. to a point;
 Run thence S. 15° 20' 45.4" W. 774.62 ft. to a point;
 Run thence S. 31° 44' 14.0" W. 520.89 ft. to a point;
 Run thence S. 00° 24' 43.9" W. 834.02 ft. to a point;
 Run thence S. 07° 49' 01.8" W. 1191.07 ft. to a point;
 Run thence S. 50° 26' 06.3" W. 731.61 ft. to a point;
 Run thence S. 02° 51' 10.5" W. 301.37 ft. to a point;
 Run thence S. 36° 37' 58.2" W. 918.41 ft. to a point;
 Run thence S. 47° 12' 26.3" W. 1321.86 ft. to a point;
 Run thence S. 72° 58' 54.2" W. 498.84 ft. to a point;
 Run thence S. 85° 44' 21.3" W. 955.64 ft. to a point;
 Which is N. 11° 39' 16.9" W. 5434.90 ft. from a point known as Green Two (located in Section 13 in said Township and Range);
 Run thence N. 58° 09' 44.1" W. 1630.28 ft. to a point;
 Run thence N. 25° 23' 10.1" W. 1978.00 ft. to a point;
 Run thence N. 16° 34' 21.0" W. 1731.95 ft. to a point;~~

Run thence N. 06° 13' 18.0" W. 747.40 ft. to a point;
 Run thence N. 03° 50' 32.8" E. 671.51 ft. to a point;
 Run thence N. 59° 33' 18.9" E. 1117.02 ft. to a point;
 Run thence N. 59° 50' 06.0" E. 2894.56 ft. to a point;
 Run thence N. 48° 28' 40.0" E. 897.56 ft. to a point;
 Run thence N. 31° 29' 50.7" E. 920.64 ft. to a point;
 Run thence N. 19° 46' 39.6" E. 1524.95 ft. to a point;
 Run thence S. 76° 05' 37.1" E. 748.95 ft. to a point;
 Run thence S. 57° 33' 30.2" E. 445.53 ft. to a point;
 Run thence S. 78° 27' 44.9" E. 394.98 ft. to a point;
 Run thence S. 61° 55' 39.0" E. 323.00 ft. to a point;
 Run thence N. 89° 04' 46.8" E. 249.03 ft. to a point;
 Run thence S. 67° 43' 17.4" E. 245.31 ft. to a point;
 Run thence S. 79° 55' 09.8" E. 45.71 ft. to a point;
 Run thence S. 83° 59' 27.6" E. 95.52 ft. to a point;
 Run thence N. 42° 02' 57.2" E. 68.68 ft. to a point;
 Run thence S. 80° 41' 24.2" E. 61.81 ft. to a point;
 Run thence S. 10°47' 03.5" E. 128.27 ft. to the True Point of
 Beginning; and containing all or portions of T17S, R12W,
 Sections 35 and 36; and T18S, R12W, Sections 1, 2, 11 and 12;
 W.M., Lane County.

340-71-500 COMMUNITY SYSTEMS

~~[(1)]~~ ~~For the purpose of these rules:~~

~~(a) "Community System" means an on-site system which will serve more than one (1) lot or parcel; or more than one (1) condominium unit; or more than one (1) unit of a planned unit development.~~

~~(b) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the State and any agencies thereof, and the federal government and any agencies thereof.]~~

~~[(2)]~~ (1) Without first applying for and obtaining a construction-installation permit, no person shall install a community on-site system.

~~[(3)]~~ (2) Proposed community systems with projected sewage flows greater than two thousand five hundred (2,500) gallons per day shall have a WPCF permit prior to construction and shall have plans reviewed and approved by the Department prior to construction, unless that responsibility is specifically delegated to the Agent. [permit issuance.]

- ~~{4}~~ (3) Plans for all community systems shall include operation and maintenance details including details for financing system operation and maintenance.
- ~~{5}~~ (4) The site criteria for approval of community systems shall be the same as required for standard subsurface systems contained in OAR 340-71-220 ~~{1}{2}~~, or in the case of community alternative systems, the specific site conditions for that system contained in rules: OAR 340-71-260 through 340-71-275; OAR 340-71-290 through 340-71-305; OAR 340-71-315; and 340-71-345.
- ~~{6}~~ (5) Operation Responsibility:
- (a) Responsibility for operation and maintenance of community systems shall be vested in a municipality ~~as defined in ORS 454.010(3), or,~~ a Homeowners Association, or an Association of Unit Owners as defined in ~~{ORS 94.004 and ORS 94.146}~~ Oregon Revised Statutes;
- (b) Unless otherwise required by permit, community systems shall be inspected at least annually by the responsible entity.

340-71-520 LARGE SYSTEMS

- (1) ~~*{For the purpose of these rules "large system" means any system with a projected daily sewage flow greater than two thousand five hundred (2,500) gallons.}*~~ Large systems require a WPCF permit. The Agent may authorize construction of a large system provided the following design criteria are met.
- (2) Special Design Requirements: Unless otherwise authorized by the Department, large systems shall comply with the following requirements:
- (a) Large system absorption facilities shall be designed with ~~pressure~~ distribution to the cells by means of pump(s) or siphon(s);
- (b) The disposal area shall be divided into relatively equal units. Each unit shall receive no more than thirteen hundred (1300) gallons of effluent per day;
- (c) The replacement (repair) disposal area shall be divided into relatively equal units, with a replacement disposal area unit located adjacent to an initial disposal area unit;

- (d) Effluent distribution shall alternate between the disposal area units;
 - (e) Each system shall have at least two (2) pumps or siphons;
 - (f) The applicant shall provide a written assessment of the impact of the proposed system upon the quality of public waters and public health.
- (3) Plans and specifications for large systems shall be prepared by any competent professional with education or experience in the specific technical field involved. The professional may accept an assignment requiring education or experience outside of his/her own field of competence provided he/she retains competent and legally qualified services to perform that part of the assignment outside his/her own field of competence, his/her client or employer approves this procedure, and he/she retains responsibility to his/her client or employer for the competent performance of the whole assignment.
- (4) Construction Requirements:
- (a) Construction shall be in substantial conformance with approved plans and specifications and any terms of the permit issued by the Agent;
 - (b) After completion of the system the professional shall certify that the system was installed in accordance with approved plans and specifications.

340-71-600 SEWAGE DISPOSAL SERVICE

~~((1) — For the purpose of these rules "Sewage Disposal Service" means:~~

- ~~(a) — The installation of on-site sewage disposal systems (including the placement of portable toilets), or any part thereof; or~~
- ~~(b) — The pumping out or cleaning of on-site sewage disposal systems (including portable toilets), or any part thereof; or~~
- ~~(c) — The disposal of material derived from the pumping out or cleaning of on-site sewage disposal systems (including portable toilets); or~~
- ~~(d) — Grading, excavating, and earth-moving work connected with the operations described in subsection (1)(a) of this rule, except streets, highways, dams, airports or other heavy construction~~

~~projects and except earth-moving work performed under the supervision of a builder or contractor in connection with and at the time of the construction of a building or structure; or~~

~~(e) The construction of drain and sewage lines from five (5) feet outside a building or structure to the service lateral at the curb or in the street or alley or other disposal terminal holding human or domestic sewage.]~~

~~{2}~~ (1) No person shall perform sewage disposal services or advertise or represent himself/herself as being in the business of performing such services without first obtaining a license from the Department. Unless suspended or revoked at an earlier date, a Sewage Disposal Service license issued pursuant to this rule expires on July 1 next following the date of issuance. Beginning July 1 1996, in order to be licensed, the applicant must pass a written examination to demonstrate familiarization with the on-site rules found in OAR Chapter 340, Divisions 71 and 73, or attend a Department approved training session. All persons employed by the licensee who are involved in the construction or installation of systems shall also pass the written test or attend the training session and shall carry evidence of that on their person. The Department will provide all persons, who pass the test or attend the training session, with a wallet size card for this purpose. Retesting will be required every 5 years.

~~{3}~~ (2) Those persons making application for a sewage disposal service license shall:

- (a) Submit a complete license application form to the Department for each business; and
- (b) File and maintain with the Department original evidence of surety bond, or other approved equivalent security, in the penal sum of two thousand five hundred dollars (\$2,500) for each business; and
- (c) Shall have pumping equipment inspected by the Agent annually if intending to pump out or clean systems and shall complete the "Sewage Pumping Equipment Description/Inspection" form supplied by the Department. An inspection performed after January 1st shall be accepted for licensing the following July 1st; ~~and]~~
- (d) Submit the appropriate fee as set forth in subsection 340-71-140(1)~~{h}~~(h) for each business~~];~~

(e) Pass the written examination or have attended a Department approved training session;

(f) If operating a septage pumping service, submit a copy of the past 12 months pumping records required by subsection (12)(d) of this rule.

~~(4)~~

(3)

A Sewage Disposal Service license may be transferred or amended during the license period to reflect changes in business name, ownership, or entity (i.e., individual, partnership, or corporation), providing:

- (a) A complete application to transfer or amend the license is submitted to the Department with the appropriate fee as set forth in OAR 340-71-140(1)~~(h)~~; and
- (b) The Department is provided with a rider to the surety, or a new form of security as required in subsection ~~(3)(2)~~(b) of this rule; and
- (c) A valid Sewage Disposal Service license (not suspended, revoked, or expired) is returned to the Department; and
- (d) If there is a change in the business name, a new "Sewage Pumping Equipment Description/Inspection" form for each vehicle is submitted to the Department~~;~~ and

(e) No person who takes over a Sewage Disposal Service shall operate the business until they have passed the written examination or attended the Department approved training session.

~~(5)~~

(4)

The type of security to be furnished pursuant to OAR 340-71-600~~(3)(2)~~(b) may be:

- (a) Surety bond executed in favor of the State of Oregon on a form approved by the Attorney General and provided by the Department. The bond shall be issued by a surety company licensed by the Insurance Commissioner of Oregon. Any surety bond shall be so conditioned that it may be cancelled only after forty-five (45) days notice to the Department, and to otherwise remain in effect for not less than two (2) years following termination of the sewage disposal service license, except as provided in subsection (e) of this section; or

- (b) Insured savings account irrevocably assigned to the Department, with interest earned by such account made payable to the depositor; or
- (c) Negotiable securities of a character approved by the State Treasurer, irrevocably assigned to the Department, with interest earned on deposited securities made payable to the depositor;
- (d) Any deposit of cash or negotiable securities under ORS 454.705 shall remain in effect for not less than two (2) years following termination of the sewage disposal service license except as provided in subsection (e) of this section. A claim against such security deposits must be submitted in writing to the Department, together with an authenticated copy of:
 - (A) The court judgment or order requiring payment of the claim; or
 - (B) Written authority by the depositor for the Department to pay the claim.
- (e) When proceedings under ORS 454.705 have been commenced while the security required is in effect, such security shall be held until final disposition of the proceedings is made. At that time claims will be referred for consideration of payment from the security so held.

~~46H~~ 5 Each licensee shall:

- (a) Be responsible for any violation of any statute, rule, or order of the Commission or Department pertaining to his licensed business;
- (b) Be responsible for any act or omission of any servant, agent, employee, or representative of such licensee in violation of any statute, rule, or order pertaining to his license privileges;
- (c) Deliver to each person for whom he performs services requiring such license, prior to completion of services, a written notice which contains:
 - (A) A list of rights of the recipient of such services which are contained in ORS 454.705(2); and
 - (B) Name and address of the surety company which has executed the bond required by ORS 454.705(1); or

(C) A statement that the licensee has deposited cash or negotiable securities for the benefit of the Department in compensating any person injured by failure of the licensee to comply with ORS 454.605 to 454.745 and with rules of the Environmental Quality Commission.

(d) Keep the Department informed on company changes that affect the license, such as business name change, change from individual to partnership, change from partnership to corporation, change in ownership, etc.

~~##7##~~ (6) Misuse of License:

(a) No licensee shall permit anyone to operate under his license, except a person who is working under supervision of the licensee;

(b) No person shall:

(A) Display or cause or permit to be displayed, or have in his possession any license, knowing it to be fictitious, revoked, suspended or fraudulently altered;

(B) Fail or refuse to surrender to the Department any license which has been suspended or revoked;

(C) Give false or fictitious information or knowingly conceal a material fact or otherwise commit a fraud in any license application.

~~##8##~~ (7) Pumping and Cleaning Responsibilities:

(a) Persons performing the service of pumping or cleaning of sewage disposal facilities shall avoid spilling of sewage while pumping or while in transport for disposal.

(b) Any spillage of sewage shall be immediately cleaned up by the operator and the spill area shall be disinfected.

~~##9##~~ (8) License Suspension or Revocation:

(a) The Department may suspend, revoke, or refuse to grant, or refuse to renew, any sewage disposal service license if it finds:

(A) A material misrepresentation or false statement in connection with a license application; or

- (B) Failure to comply with any provisions of ORS 454.605 through 454.785, the rules of the Environmental Quality Commission or an order of the Commission or Department; or
 - (C) Failure to maintain in effect at all times the required bond or other approved equivalent security, in the full amount specified in ORS 454.705; or
 - (D) Nonpayment by drawee of any instrument tendered by applicant as payment of license fee.
- (b) Whenever a license is suspended, revoked or expires, the licensee shall remove the license from display and remove all Department identifying labels from equipment. The licensee shall surrender the suspended or revoked license, and certify in writing to the Department within fourteen (14) days after suspension or revocation that all Department identification labels have been removed from all equipment;
 - (c) A sewage disposal service may not be considered for re-licensure for a period of at least one (1) year after revocation of its license;
 - (d) A suspended license may be reinstated, providing:
 - (A) A complete application for reinstatement of license is submitted to the Department, accompanied by the appropriate fee as set forth in OAR 340-71-140(1)(~~##~~)(b); and
 - (B) The grounds for suspension have been corrected; and
 - (C) The original license would not have otherwise expired.

~~##10H~~ (9) Equipment Minimum Specifications:

- (a) Tanks for pumping out of sewage disposal facilities shall comply with the following:
 - (A) Have a liquid capacity of at least five hundred fifty (550) gallons.

EXCEPTION: Tanks for equipment used exclusively for pumping chemical toilets not exceeding fifty (50) gallons capacity, shall have a liquid capacity of at least one hundred fifty (150) gallons.

- (B) Be of watertight metal construction;
 - (C) Be fully enclosed;
 - (D) Have suitable covers to prevent spillage.
- (b) The vehicle shall be equipped with either a vacuum or other type pump which will not allow seepage from the diaphragm or other packing glands and which is self priming;
 - (c) The sewage hose on vehicles shall be drained, capped, and stored in a manner that will not create a public health hazard or nuisance;
 - (d) The discharge nozzle shall be:
 - (A) Provided with either a camlock quick coupling or threaded screw cap;
 - (B) Sealed by threaded cap or quick coupling when not in use;
 - (C) Located so that there is no flow or drip onto any portion of the vehicle;
 - (D) Protected from accidental damage or breakage.
 - (e) No pumping equipment shall have spreader gates;
 - (f) Each vehicle shall at all times be supplied with a pressurized wash water tank, disinfectant, and implements for cleanup;
 - (g) Pumping equipment shall be used for pumping sewage disposal facilities exclusively unless otherwise authorized in writing by the Agent;
 - (h) Chemical toilet cleaning equipment shall not be used for any other purpose.

~~(11)~~ (10) Equipment Operation and Maintenance:

- (a) When in use, pumping equipment shall be operated in a manner so as not to create public health hazards or nuisances;
- (b) Equipment shall be maintained in a reasonably clean condition at all times.

~~(12)~~ (11) Vehicles shall be identified as follows:

- (a) Display the name or assumed business name on each vehicle cab and on each side of a tank trailer:
 - (A) In letters at least three (3) inches in height; and
 - (B) In a color contrasting with the background.
- (b) Tank capacity shall be printed on both sides of the tank:
 - (A) In letters at least three (3) inches in height; and
 - (B) In a color contrasting with the background.
- (c) Labels issued by the Department for each current license period shall be displayed at all times at the front, rear, and on each side of the "motor vehicle" as defined by United States Department of Transportation Regulations, Title 49 U.S.C.

~~(13)~~ (12) Disposal of ~~[Pumpings]~~ Septage. Each licensee shall:

- (a) Discharge no ~~[part of the pumpings]~~ septage upon the surface of the ground unless approved by the Department in writing;
- (b) Dispose of ~~[pumpings]~~ septage only in disposal facilities approved by the Department;
- (c) Possess at all times during pumping, transport or disposal of ~~[pumpings]~~ septage, origin-destination records for sewage disposal services rendered;
- (d) Maintain on file complete origin-destination records for sewage disposal services rendered. Origin-Destination records shall include:
 - (A) Source of ~~[pumpings]~~ septage on each occurrence, including name and address;
 - (B) Specific type of material pumped on each occurrence;
 - (C) Quantity of material pumped on each occurrence;
 - (D) Name and location of authorized disposal site, where ~~[pumpings]~~ septage was deposited on each occurrence;
 - (E) Quantity of material deposited on each occurrence.

- (e) Transport ~~[pumpings]~~ septage in a manner that will not create a public health hazard or nuisance;~~;-~~
- (f) Possess a current septage management plan, approved by the Department. The plan shall be kept current, with any revisions approved by the Department before implementation;
- (g) Comply with the approved septage management plan, and the septage management plan approval letter issued by the Department.

340-71-605 IMPLEMENTATION DATE OF RULE MODIFICATIONS

OAR 340-71-115 and 340-71-130(2) become effective immediately upon filing with the Secretary of State. OAR 340-71-140(6) takes effect on October 7, 1994. Unless otherwise specified in the individual rule, all other rule modifications become effective April 1, 1995. Until these rule modifications become effective, the existing rules remain in effect.

TABLE 1
Minimum Separation Distances

Items Requiring Setback	From Sewage Disposal Area Including Replacement Area	From Septic Tank and Other Treatment Units, Effluent Sewer and Distribution Units
1. Groundwater Supplies.	100'	50'
2. Temporarily Abandoned Wells.	100'	50'
3. Springs: ● Upgradient. ● Downgradient.	50' 100'	50' 50'
*4. Surface Public Waters: ● Year round. ● Seasonal.	100' 50'	50' 50'
5. Intermittent Streams: ● Piped (watertight not less than 25' from any part of the on-site system). ● Unpiped.	20' 50'	20' 50'
6. Groundwater interceptors: ● On a slope of 3% or less. ● On a slope greater than 3%: ● Upgradient. ● Downgradient.	20% 10' 50'	<u>10' [20']</u> <u>5' [10']</u> <u>10' [25']</u>
7. Irrigation Canals: ● Lined (watertight canal). ● Unlined: ● Upgradient. ● Downgradient.	25' 25' 50'	25' 25' 50'
8. Cuts Manmade in Excess of 30 Inches (top of downslope cut): ● Which Intersect Layers that Limit Effective Soil Depth Within 48 Inches of Surface. ● Which Do Not Intersect Layers that Limit Effective Soil Depth.	50' 25'	25' 10'
9. Escarpments: ● Which Intersect Layers that Limit Effective Soil Depth. ● Which Do Not Intersect Layers that Limit Effective Soil Depth.	50' 25'	10' 10'
10. Property Lines.	10'	<u>5' [10']</u>
11. Water Lines.	10'	10'
12. Foundation Lines of any Building, Including Garages and Out Buildings.	10'	5'
<u>13. Underground Utilities.</u>	<u>10'</u>	=

* This does not prevent stream crossings of pressure effluent sewers.

Oregon Administrative Rules, Chapter 340, Division 71

All references to Diagrams have been deleted from the text of this Division.

Therefore, the following Diagrams are deleted from OAR Chapter 340, Division 71:

- ~~{Diagram 1 — Typical Serial Distribution System (With Drop Boxes)};~~
- ~~{Diagram 2 — Typical Serial Distribution System (Without Drop Boxes)};~~
- ~~{Diagram 3 — Typical Equal Distribution System (With Distribution Box)};~~
- ~~{Diagram 4 — Typical Equal Distribution System};~~
- ~~{Diagram 5 — Typical Loop Equal Distribution Systems};~~
- ~~{Diagram 6 — ETA Bed on Gently Sloping Site};~~
- ~~{Diagram 7 — ETA Beds on Sloping Site};~~
- ~~{Diagram 8 — Reinforced Concrete Sand Filter Container};~~
- ~~{Diagram 9 — Reinforced Concrete Sand Filter Container};~~
- ~~{Diagram 10 — Capping Fill};~~
- ~~{Diagram 11 — Redundant System};~~
- ~~{Diagram 12 — Disposal Trench Cross Sections};~~
- ~~{Diagram 13 — Typical Curtain Drain};~~
- ~~{Diagram 14 — Typical Gray Water Waste Disposal Sump (Using Seepage Chamber)};~~
- ~~{Diagram 15 — Typical Gray Water Waste Disposal Sump (Using Disposal Trench)};~~
- ~~{Diagram 16 — Pre Cast Concrete Liner Details};~~
- ~~{Diagram 17 — Typical Topview and Cross Section of Parallel Seepage Pits};~~
- ~~{Diagram 18 — [Idealized Cross Section of Escarpment]};~~
- ~~{Diagram 19 — [Idealized Cross Section of Escarpment]};~~
- ~~{Diagram 20 — [Idealized Cross Section of a Soil Column]};~~
- ~~{Diagram 21 — [Idealized Illustration of Unstable Landforms]};~~
- ~~{Diagram 22 — [Idealized Cross Section of Unstable Landform]};~~
- ~~{Diagram 23 — [Idealized Cross Section of Unstable Landform]}.~~

PROPOSED AMENDMENTS TO
OAR CHAPTER 340, DIVISION 73

NOTE:

The ***bold italicized underlined*** portion of text represents proposed additions made to the rules.

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

340-73-025 ~~SEPTIC~~ TANK CONSTRUCTION.

The following ***construction*** requirements shall apply to all ***holding, dosing, septic, and dosing*** septic tanks manufactured for use in Oregon unless specifically exempted by other portions of these rules:

- (1) Compartments: ~~Septic tanks shall~~ ***Tanks may*** have single or multiple compartments. Multiple compartment tanks shall comply with the following:
 - (a) The first compartment shall have a minimum liquid capacity of ~~at least~~ ***not less than*** two-thirds (2/3) of the total required liquid capacity, as measured from the invert of the outlet fitting~~;~~
 - ~~(b) The second and succeeding compartments shall each have a minimum liquid capacity equal to or greater than one half (1/2) of the liquid capacity of the first compartment.~~
 - ~~(c)~~ ***(b)*** Each compartment shall have access provided by a manhole having not less than eighteen (18) inches across its shortest dimension unless otherwise approved by the Department. The manhole cover shall not weigh more than seventy-five (75) pounds. ***All tanks shall be constructed to accommodate watertight risers per OAR 340-71-220(3)(b)(C). Tank lids shall be constructed with or provided with a durable, non-degradable, resilient gasket, the purpose of which is to restrict access to vectors and vermin and to control odors and retard infiltration;***
 - ~~(d)~~ ***(c)*** No compartment shall have an inside horizontal dimension of less than twenty-four (24) inches~~;~~
- (2) Liquid Depth: The liquid depth of any compartment shall be at least thirty (30) inches. Liquid depths greater than seventy-two (72) inches

shall not be considered in determining the working liquid capacity, except for tanks greater than 3,000 gallons capacity.

(3) ~~[Septic tanks shall be watertight.]~~ Watertightness: After installation, all [Septic] tanks shall be watertight. Each tank shall be water tested by filling to a point at least two (2) inches above the point of riser connection to the top of the tank. During the test there shall be no more than a one (1) gallon leakage over a 24 hour period.

(4) In the case where the tank manufacturer does not install and/or seal the tank at the job site, the manufacturer shall provide bonding and sealing agents and instruction manual with the tank.

~~{(4)}~~ (5) Structural: All [Septic] tanks shall be capable of supporting an earth load of at least three hundred (300) pounds per square foot when the maximum coverage does not exceed three (3) feet. Tanks installed with more than three (3) feet of cover shall be reinforced to support the additional load. Lateral load shall be 62.4 pcf of equivalent fluid pressure (EFP.) Tanks shall be capable of withstanding long-term external hydrostatic loads in addition to soil loads. Internal hydrostatic pressures shall be omitted to allow for septage pumping during critical groundwater conditions. A 2,500 pound wheel load concentrated over the critical elements of the tank shall also be considered.

~~{(5)}~~ (6) The inlet and outlet fittings shall be of ~~cast iron,~~ Schedule 40 P.V.C. plastic, Schedule 40 ABS plastic, or other materials approved by the Department, with a minimum diameter of four (4) inches:

- (a) The distance between the inlet and outlet fittings shall be equal to, or greater than, the liquid depth of the tank~~;~~
- (b) The inlet and outlet fittings, where applicable, shall be located at opposite ends of the tank. The inlet must be readily accessible by way of the service access or other means approved by the Department in the design of the tank. They shall be attached in a watertight manner approved by the Department~~;~~
- (c) The inlet fitting shall be a "sanitary tee" extending at least six (6) inches above and at least twelve (12) inches below the normal high and low liquid levels.
- (d) The outlet fitting, holes or ports provided in a vault or outlet filtering device shall be ~~a "tee" extending~~ positioned to withdraw effluent horizontally from the clear zone, at an elevation measured from the inside bottom of the tank 65 to 75 percent of the lowest operating liquid depth. The net area of the ports shall be not less than 6 square inches. ~~below liquid level a distance~~

~~equal to not less than thirty five (35) percent nor greater than fifty (50) percent of the liquid depth, and~~ **The outlet fitting shall extend** at least six (6) inches above the **highest normal** liquid depth in order to provide scum storage. When the tank is used as a holding **or dosing** tank, the outlet fitting shall be provided with a watertight plug, **or omitted**;

- (e) Ventilation shall be provided through the fittings by means of a two (2) inch minimum space between the underside of the top of the tank and the top of the **inlet** "tee" fitting;
- (f) The invert of the inlet fitting shall be not less than one (1) inch and preferably three (3) inches above the invert of the outlet fitting, **or the highest normal liquid level**;

(g) A convenient means of monitoring sludge and scum accumulation shall be provided, with access extending to ground level;

~~[(g)]~~ **(h)** The ~~[septic]~~ tank manufacturer shall provide with each fitting a rubber or neoprene rubber gasket meeting ASTM Specification C-564, or an appropriate coupler which the Department determines will provide a watertight connection between the fittings and the building and effluent sewer pipes;

~~[(h)]~~ **(i)** ~~[An access cover of not less than six (6) inches across shall be provided above each fitting.]~~ **Manufacturer shall provide a method to attach a specified type of riser to the tank in a watertight manner.**

~~[(6)]~~ **(7)** At least ten (10) percent of the inside volume of the tank shall be above liquid level to provide scum storage **and reserve**.

~~[(7)]~~ **(8)** In tanks with more than one (1) compartment, a four (4) inch diameter (minimum) "tee" fitting shall be placed in each common compartment wall, using the same specifications as required for the outlet fitting. The invert of this "tee" fitting shall be at the same elevation as the outlet "tee". **Access ports and risers shall be provided for inspection and maintenance.**

~~[(8)]~~ **(9)** ~~Except as provided in 73-026, [Septic] tanks shall be constructed of concrete, fiberglass, [not less than twelve (12) gauge or thicker steel,] or other noncorrosive materials approved by the Department.~~

~~[(a)] Steel tanks shall be coated inside and out with asphalt or other protective coatings, meeting the most current American National Standards Institute UL 70 standard Sections 25 through 43, or other coatings of equal or better performance approved by the Department.~~

~~[(b)]~~ (a) Precast concrete tanks shall have a minimum wall, compartment, and bottom thickness of two and one-half (2-1/2) inches, and shall be adequately reinforced. The top shall be at least four (4) inches thick ~~1/2~~;

~~(b)~~ Cast-in-place tanks shall be designed by a civil/structural engineer to the requirements of these rules and the tank construction shall be certified by the designer or qualified representative. A structural permit from the Building Codes Division or the municipality with jurisdiction (as defined in ORS 456.750(5)) is required when cast-in-place concrete tanks are used;

~~(c)~~ Tanks made of other noncorrosive materials shall be constructed to provide structural integrity to meet the requirements of sections (3), (4) and (5) of this rule;

~~[(e)]~~ Where concrete block tanks are permitted by the Agent, the tanks shall be constructed of heavyweight concrete block, eight (8) inch minimum thickness, laid on a six (6) inch (minimum) poured foundation slab. The mortared joints shall be well filled. All block holes or cells shall be filled with mortar or concrete. "k" webbing shall be installed at every third row of block. Number three (3) re-bar shall be installed vertically in every block. Tank interiors shall be surfaced with at least two (2) one quarter (1/4) inch thick coats of corrosion-resistant waterproof sealant. The first row of blocks shall be keyed or doweled to the concrete foundation.

~~(d)~~ Cast-in-place concrete tanks shall be constructed using the minimum sidewall thickness, bottom thickness, top thickness, and reinforcing shown in Diagram 1. All other requirements contained herein shall also be met. A structural permit is required from the Department of Commerce or the municipality with jurisdiction as defined in ORS 456.750(5). (See Diagram 1).

~~(e)~~ For cast-in-place septic tanks with dimensions different from those shown in Diagram 1, or when the septic tank is to be located under a road or driveway, two (2) copies of detailed plans and specifications, prepared by a registered professional engineer licensed to practice in Oregon shall be provided to the Agent for review and approval.

~~[(9)]~~ (10) All prefabricated ~~[septic]~~ tanks shall be marked on the uppermost tank surface over the outlet with the liquid capacity of the tank, the burial depth limit, date of manufacture, and either the manufacturer's full business name or the number assigned by the Department.

~~[(10)]~~ (11) Each commercial manufacturer of prefabricated ~~[septic]~~ tanks shall

provide two (2) complete sets of plans and specifications, prepared by a registered professional engineer licensed to practice in Oregon, to the Department for review and approval. Plans submittal shall include the structural analysis, calculation of total gallons, operating gallons, gallons per inch, and buoyancy, including predetermined countermeasures.

~~[(11)]~~ (12) Each commercial manufacturer of prefabricated ~~[septic]~~ tanks shall provide the Department with written certification that ~~[septic]~~ tanks for use in on-site sewage disposal systems in the State of Oregon will comply with all requirements of this rule.

(13) An installation manual, on waterproof paper, shall be provided by the manufacturer with each tank distributed. It shall describe proper installation of the tank, riser(s) and lid, pipe connections, testing procedures, backfill, and any special precautions or limitations.

340-73-026 SEPTIC TANKS.

(1) Septic tanks shall be constructed of concrete, fiberglass, steel, or other noncorrosive materials approved by the Department. Steel septic tanks shall be not less than twelve (12) gauge or thicker steel. They shall be coated inside and out with asphalt or other protective coatings, meeting the most current American National Standards Institute UL 70 standard, Sections 25 through 43, or other coatings of equal or better performance approved by the Department.

(2) The outlet of a septic tank serving a commercial facility shall be equipped with an effluent filter or treatment device meeting the requirements of OAR 340-73-056, complete with a service riser that meets all the requirements of these rules.

340-73-030 DOSING SEPTIC TANK ~~[ASSEMBLIES]~~.

(1) ~~[Introduction:]~~ A dosing septic tank ~~[combines the functions of a septic tank and dosing tank into one unitized assembly by withdrawing septic tank] may discharge~~ effluent with a pump or dosing siphon from the clear zone at the outlet end of the tank. These may be considered by the Department for equipment approval for installations where the design flow does not exceed 600 ~~[450]~~ gallons per day.

~~[(2)]~~ Structural: Dosing septic tanks shall comply with applicable standards for septic tanks and for dosing tanks. Each tank shall be water tested

~~by filling to the soffit for a period of one hour. During the test there shall be no measurable drop in water level, and no visible leakage. Each tank shall be certified watertight.]~~

~~[(3)]~~ (2) Special Configuration:

~~[(a)]~~ ~~A typical design is shown in Diagram 2.]~~

~~[(b)]~~ (a) The minimum total primary volume of the tank shall be 1,100 gallons for flows \leq 450 gallons per day and 1,500 gallons for flows up to 600 gallons per day].;

~~[(c)]~~ (b) The minimum submerged volume at the lowest operating liquid level shall ~~be 900 gallons.]~~ ensure optimum surge capacity, reserve storage capacity, sludge and scum capacity, and hydraulic retention time;

~~[(d)]~~ (c) Unless otherwise authorized by the Department, liquid levels shall be controlled so that no more than twenty (20) percent of the projected daily sewage flow is discharged each cycle; except that for sand filters the discharge shall be no more than ten (10) percent per cycle].;

~~[(e)]~~ (d) All apparatus shall be constructed and installed to facilitate ease of service without having to alter any other component;

~~[(f)]~~ (e) Besides the requirements in 340-73-025(13), the installation manual shall describe the installation of pump or siphon, piping, valves, controls, and wiring to manufacturer's specifications and these rules;

~~[(g)]~~ (f) ~~The invert of the inlet tee shall be not less than one inch above the high operating liquid level.~~

~~[(h)]~~ (g) ~~Ports, or holes provided in a vault or outlet device shall be located to withdraw effluent horizontally at an elevation measured from the inside bottom of the tank of 65 to 75 percent of the lowest operating liquid depth. The net area of the ports shall be not less than 20 square inches.~~

~~[(i)]~~ (h) ~~A convenient means of monitoring sludge and scum accumulation shall be provided, with access extending to ground level.~~

~~[(4)]~~ (4) Features:

~~[(a)]~~ (a) ~~Design and equipment shall emphasize ease of maintenance and longevity and reliability of components, and shall be proven~~

~~suitable by operational experience, test, or analysis suitable to the Department.~~

~~(b) An easy means of electrical and plumbing disconnect shall be provided, preventing the need for a repairman to be more than briefly exposed to the sewerage atmosphere.~~

~~(c) Component materials shall be durable and corrosion resistant such as Type 316 stainless steel, suitable plastics, or 85-5-5 bronze.~~

~~(5) Approvals:~~

~~Each commercial manufacturer of prefabricated dosing septic tanks shall provide two (2) complete sets of plans and specifications, prepared by a registered professional engineer licensed to practice in Oregon, to the Department for review and approval. Each manufacturer must also provide written certification to the Department that such assemblies distributed for use in on-site sewage disposal systems in Oregon will comply with all requirements of this Rule.]~~

340-73-035 DISTRIBUTION BOXES.

- (1) Distribution Boxes shall be constructed of concrete, fiberglass, or other materials acceptable to the Department.
- (2) Distribution boxes shall be constructed of durable, watertight materials, resistant to deterioration, and be [watertight, and] designed to accommodate watertight connections for the effluent sewer and/or header pipes. [the necessary distribution laterals. (See Diagram 3 for detail).] The top, walls, and bottom of concrete distribution boxes shall be at least one and one-half (1-1/2) inches thick.
- (3) The invert elevation of all outlets shall be the same, and shall be at least two (2) inches below the inlet invert.
- (4) Each distribution box shall be provided with a sump extending at least two (2) inches below the invert of the outlets.
- ~~[(5) The minimum inside horizontal dimension measured at the bottom shall be eight (8) inches, with a minimum bottom inside surface area of one hundred sixty (160) square inches. The bottom outside surface area shall be equal to or greater than the top outside surface area.]~~

~~[(6)]~~ (5) Distribution box covers shall be marked with the manufacturer's full business name, or number assigned by the Department.

- ~~[[7]]~~ (6) Each manufacturer shall provide the Department with complete, detailed plans and specifications of the distribution box, and shall certify, in writing, that distribution boxes manufactured for use in on-site sewage systems in Oregon will comply with all requirements of this rule.

340-73-040 DROP BOXES.

- (1) Drop boxes shall be constructed of concrete, fiberglass, or other materials acceptable to the Department.
- (2) Drop boxes shall be constructed of durable, watertight materials, resistant to deterioration, and be ~~watertight, and~~ designed to accommodate watertight connections for the effluent sewer and/or header pipes. ~~the necessary piping.~~ ~~[[See Diagram 3 for detail.]]~~ The top, walls, and bottom of concrete drop boxes shall be at least one and one-half (1-1/2) inches thick.
- (3) The inverts of the inlet and overflow port shall be at the same elevation. The invert of the header pipe port(s) leading to the disposal trench(es) shall be six (6) inches below the inlet invert.
- (4) Drop box covers shall be marked with the manufacturer's full business name, or number assigned by the Department.
- (5) Each manufacturer shall provide the Department with complete, detailed plans and specifications of the drop box, and shall certify, in writing, that drop boxes manufactured for use in on-site sewage disposal systems in Oregon will comply will all requirements of this rule.

340-73-045 DIVERSION VALVES.

- (1) Diversion valves shall be constructed of durable material, ~~and be of a design approved by the Department. They shall be~~ corrosion-resistant, watertight, and designed to accommodate the inlet and outlet pipes, in a secure and watertight manner.
- ~~[[2]] The manufacturer's name or number assigned by the Department shall be marked on the cover.~~
- ~~[[2]] Diversion valves shall be constructed with access to finished grade, adequate in size to provide for ease of operation and service of valve.~~
- (3) Each manufacturer shall provide the Department with complete, detailed plans and specifications of the diversion valve, including an instruction

manual, and shall certify, in writing, that diversion valves manufactured for use in on-site sewage disposal systems in Oregon will comply with all requirements of this rule.

340-73-050 DOSING TANKS ~~[CONSTRUCTION]~~.

~~[(1)] Dosing tanks used in on-site sewage disposal systems in Oregon shall be watertight. They may be constructed of concrete, fiberglass, or other noncorrosive materials approved by the Department:~~

~~(a) Fiberglass dosing tanks shall be a minimum three sixteenths (3/16) inch thick and constructed with a glass fiber content of 40 percent and a resin content of 60 percent, with no exposed non-resin covered glass fibers.~~

~~(b) Precast concrete dosing tanks shall have a minimum wall and bottom thickness of two and one half (2 1/2) inches. The top shall be not less than four (4) inches thick. There shall be no seams in the walls or bottom.~~

~~(c) Cast-in-place concrete dosing tanks shall have a minimum wall, top, and bottom thickness of six (6) inches when the liquid capacity is twelve hundred (1200) gallons or less. A structural permit from the Department of Commerce or the municipality with jurisdiction (as defined in ORS 456.750(5)) is required when cast-in-place concrete dosing tanks are used. Cast-in-place concrete dosing tanks with a liquid capacity greater than twelve hundred (1200) gallons shall require submittal of detailed plans and specifications, prepared by a registered professional engineer licensed to practice in Oregon.~~

~~(2) Each dosing tank shall be constructed and reinforced to withstand the loads imposed upon the top, walls and bottom.]~~

~~[(3)]~~ (1) Each dosing tank employing one (1) or more pumps shall have a minimum liquid capacity equal to the projected daily sewage flow for flows up to twelve hundred (1200) gallons per day. The Department may use its discretion in sizing dosing tanks when the projected daily sewage flow is greater than twelve hundred (1200) gallons per day. The liquid capacity shall be as measured from the invert elevation of the inlet fitting.

~~[(4)] The inlet fitting shall be of hubbed cast iron soil pipe or other materials approved by the Department, with a minimum diameter of four (4) inches. The dosing tank manufacturer shall supply a rubber or neoprene rubber compression gasket meeting the minimum~~

~~requirements of ASTM specification C-564 with each fitting, or an appropriate coupler which the Department determines will provide for a watertight connection.]~~

~~{(5)}~~ (2) Each dosing tank ~~[proposed to serve a commercial facility with a maximum projected daily sewage flow of twenty five (2500) gallons, or proposed to serve a single family dwelling,]~~ shall be provided with an access manhole and a manhole cover, both having a minimum horizontal measurement of eighteen (18) inches.

~~{(6)}~~ (3) Each dosing tank proposed to serve a commercial facility ~~[with a projected daily sewage flow greater than twenty five (2500) gallons or when]~~ containing more than one (1) pump or siphon shall be provided with one or more [a] manhole accesses that [conforms to the following minimum horizontal dimensions] provide adequate area to construct, install, service, and operate the equipment in accordance with provision of these rules.:

~~(a) Opening at tank soffit thirty (30) inches;~~

~~(b) Inside of manway forty two (42) inches;~~

~~(c) Manhole cover opening twenty three (23) inches.~~

~~(7) Each prefabricated dosing tank shall be marked on the uppermost surface with the liquid capacity and the manufacturer's full business name or number assigned by the Department.~~

~~(8) Each commercial manufacturer of prefabricated dosing tanks shall provide two (2) complete sets of plans and specifications, prepared by a registered professional engineer, licensed to practice in Oregon, to the Department for review and approval. Each manufacturer must also provide written certification to the Department that such tanks distributed for use in on-site sewage disposal systems in Oregon will comply with all requirements of this Rule.]~~

~~(4) Besides meeting the requirements in OAR 340-73-025(13), the installation manual shall describe the installation of pump or siphon, piping, valves, controls, and wiring to manufacturer's specifications.~~

~~{(9)}~~ (5) Dosing tanks with siphons shall be designed and sized for each specific project. The tank manufacturer shall specify the type or model of siphon, screen, and related apparatus to be used with that tank. [and shall allow sufficient clearance above the siphon dome to allow removal of the dome.]

~~(6) The inlet fitting shall extend below the lowest operating level of the~~

pump or siphon.

340-73-055

DOSING ASSEMBLIES: EFFLUENT PUMPS, CONTROLS AND ALARMS, AND DOSING SIPHONS.

- (1) Design and equipment shall emphasize ease of maintenance and longevity and reliability of components, and shall be proven suitable by operational experience, test, or analysis suitable to the Department.
- (2) An easy means of electrical and plumbing disconnect shall be provided. All apparatus shall be constructed and installed to facilitate ease of service without having to alter any other component.
- (3) Component materials shall be durable and corrosion resistant such as Type 316 stainless steel, suitable plastics, or 85-5-5-5 bronze.

~~{1}~~

- (4) Pumps, Siphons, Controls, and Alarms: All pumps, siphons, controls and related apparatus shall be field tested under working conditions and found to operate and perform satisfactorily in order to be considered in compliance with these rules. Electrical components used in on-site sewage disposal systems shall comply with State of Oregon Electrical Code, and the following provisions:

- (a) Motors shall be continuous-duty, with overload protection~~[]~~
- (b) Pumps shall have durable impellers of bronze, cast iron, or other materials approved by the Department~~[]~~
- (c) Submersible pumps shall be provided with an easy, readily accessible means of electrical and plumbing disconnect, and a noncorrosive lifting device as a means of removal for servicing~~[]~~
- (d) Except where specifically authorized in writing by the Agent ~~[Director]~~, the pump or siphon shall be placed within a corrosion-resistant screen that extends above the maximum effluent level within the pump chamber. The screen shall have at least twelve (12) square feet of surface area, with one-eighth (1/8) inch openings. The use of a screen is not required if the dosing assembly is preceded by a tank with an effluent filter; ~~[pump does not discharge into a pressurized distribution system, and the pump has a nonlog impeller capable of passing a 3/4 inch diameter solid sphere.]~~
- (e) Pumps shall be automatically controlled by ~~[sealed mercury]~~ float switches with a minimum ~~[mercury tube]~~ rating of twelve (12)

amps at one hundred fifteen (115) volts A.C. or by a Department approved equivalently reliable switching mechanism. The switches shall be installed so that no more than [approximately] twenty (20) percent of the projected daily sewage flow is discharged each cycle, unless otherwise authorized by the Agent. The pump "off" level shall be set to maintain the liquid level above the top of the pump or to the pump manufacturer's specifications;

- (f) An audible and visual high water level alarm with manual silence switch shall be located in or near the building served by the pump. The audible alarm only may be user cancelable. The switching mechanism controlling the high water level alarm shall be located so that at time of activation the [dosing] tank has one-third (1/3) of its capacity remaining for effluent storage. Commercial applications shall provide at least 6 hours of reserve storage capacity based on projected daily flows;
- (g) When a system has more than one (1) pump, the Department may require they be wired into the electrical control panel to function alternately after each pumping cycle. If either pump should fail the other pump will continue to function, while an audible (user cancelable) and visual alarm (not user cancelable) indicating pump malfunction will activate. A cycle counter shall be installed in the electrical control panel for each pump~~[-]~~;
- (h) All pump installations shall be designed with adequate sludge storage area below the effluent intake level of the pump;
- (i) All commercial systems with a design flow greater than 600 gallons shall be constructed in duplex (two or more alternating pumps) unless otherwise authorized in writing by the Department. Controls shall be provided such that an alarm shall signal when one (1) of the pumps malfunctions;
- (j) All pumps serving commercial systems shall be operated through a pre-manufactured electrical control panel. Means of monitoring pump performance through the use of elapsed time meters and cycle counters are required;
- (k) Where multiple pumps are operated in series, an electrical control panel shall be installed which will prevent the operation of a pump or pumps preceding a station which experiences a high level alarm event.

~~(2)~~ (5) Dosing Siphons. Dosing siphons used in on-site sewage disposal systems shall comply with all of the following minimum requirements:

- (a) The siphon shall ~~[Shall]~~ be constructed of corrosion-resistant materials~~[-]~~;
- (b) The siphon shall ~~[Shall]~~ be installed in accordance with the manufacturer's recommendations~~[-]~~;
- (c) The manufacturer's installation and maintenance instructions shall be kept on site;
- (d) The installation shall include an electrically operated device which tracks the operation of the siphon by measuring cycle events and records them by means of an event counter mounted within the dwelling or structure served.

340-73-056 EFFLUENT FILTERS.

Effluent filters used in on-site sewage disposal systems shall meet the following criteria:

- (1) Filters shall be of durable, resilient, corrosion resistant, non-degradable materials resistant to deformation under normal operating conditions.
- (2) Filters shall be designed to prevent the escape of sludge or scum during normal operation and in the event of a malfunction, including filter clogging.
- (3) The filter shall retain all particles greater than one-eighth (1/8) inch in size.
- (4) The filter assembly shall baffle the sludge and scum layers to prevent the escape of gross solids during sludge bulking or gas ebullition..
- (5) Filters shall be designed and positioned to allow for easy, trouble-free removal from and reinstallation to the screen apparatus from the assembly.
- (6) The assembly shall be capable of withstanding stresses placed upon it by installation, operation and service.
- (7) The assembly shall perform as a conventional tank outlet, meeting the requirements of OAR 340-73-025(6), when the filter is removed.
- (8) The assembly shall be vented with nominal one-half inch diameter opening to an elevation above the top of the tank.
- (9) The filter must be designed to handle the flow of the system it is to serve and not result in excessive maintenance. For a single family

dwelling, maintenance is considered "excessive" when the filter requires service or cleaning more than one (1) time per year. Service shall be performed each time the tank is pumped, and in accordance with the manufacturer's specifications.

- (10) To obtain Department approval, the manufacturer of an effluent filter shall provide the Department with the necessary technical data to show that the design and materials comply with these rules. Each manufacturer shall provide an operation and maintenance manual with each unit distributed.

340-73-060 PIPE MATERIALS AND CONSTRUCTION.

- (1) Effluent Sewer Pipe:

The effluent sewer shall be constructed with materials in conformance to building sewer standards, as identified in the Oregon State Plumbing Laws and Administrative Rules. The effluent sewer pipe shall have a minimum diameter of three (3) inches. When the septic tank is fitted with an effluent filter, the minimum nominal diameter of piping may be reduced to one and one-quarter (1.25) inches.

- (2) Distribution and Header Pipe and Fittings:

- (a) Plastic Pipe and Fittings:

- (A) Styrene-rubber plastic distribution and header pipe and fittings shall meet the most current ASTM (American Society for Testing and Materials) Specification D 2852 and Sections 5.5 and 7.8 of Commercial Standard 228, published by the U.S. Department of Commerce. Pipe and fittings shall also pass a deflection test withstanding three hundred-fifty (350) pounds/foot without cracking by using the method found in ASTM 2412. In addition to the markings required by ASTM 2852, each manufacturer of styrene-rubber plastic pipe shall certify, in writing to the Department, that the pipe to be distributed for use in absorption facilities within the State of Oregon will comply with all requirements of this section ~~1.2~~.
- (B) Polyethylene distribution pipe in ten (10) foot lengths and header pipe in lengths of ten (10) feet or greater of which pipe and fitting shall meet the current ASTM Specification F405. Pipe and fittings shall also pass a deflection test withstanding three hundred-fifty (350) pounds per foot without cracking or collapsing by using the method found in

ASTM 2412. Pipe used in absorption facilities shall be heavy duty. In addition to the markings required by ASTM F405, each manufacturer of polyethylene pipe shall certify, in writing to the Department that the pipe to be distributed for use in absorption facilities within the State of Oregon will comply with all requirements of this section ~~f.12~~;

- (C) Polyvinyl chloride (PVC) distribution and header pipe and fittings shall meet the most current ASTM Specification D-2729. Pipe and fittings shall pass a deflection test withstanding three hundred-fifty (350) pounds per foot without cracking or collapsing by using the method found in ASTM 2412. Markings shall meet requirements established in ASTM Specification D-2729, subsections 9.1.1., 9.1.2 and 9.1.4. Each manufacturer of polyvinyl chloride pipe shall certify, in writing to the Department, that pipe and fittings to be distributed for use in absorption facilities within the State of Oregon will comply with all requirements of this section ~~f.12~~;
- (D) Polyethylene smooth wall distribution and header pipe (ten (10) foot lengths) and fittings shall meet the most current ASTM specification F 810. Pipe and fittings shall also pass a deflection test of three hundred fifty (350) pounds per foot without cracking or collapsing by using the method found in ASTM 2412. Markings shall meet the requirements established in ASTM specification F 810, Section 9. Each manufacturer of polyethylene smooth wall pipe shall certify, in writing to the Department that the pipe to be distributed for use in absorption facilities within the State of Oregon will comply with all requirements of this rule ~~f.12~~;
- (E) The four types of plastic pipe described above shall have two (2) rows of holes spaced one hundred-twenty (120) degrees apart and sixty (60) degrees on either side of a center line. For distribution pipe, a line of contrasting color shall be provided on the outside of the pipe along the line furthest away and parallel to the two (2) rows of perforations. Markings, consisting of durable ink, shall cover at least fifty (50) percent of the pipe. Markings may consist of a solid line, letters, or a combination of the two. Intervals between markings shall not exceed twelve (12) inches. The holes of each row shall be not more than five (5) inches on center and shall have a minimum diameter of one-half (1/2) inch.

- (b) Concrete tile in twelve (12) inch lengths shall meet the current

ASTM Specification C 412. Each manufacturer of concrete tile shall certify, in writing to the Department, that the pipe to be distributed for use in absorption facilities within the State of Oregon will comply with all of the requirements of this section~~f-z~~.

- (c) Clay drain tile in twelve (12) inch lengths shall meet the current ASTM Specification C 4. Tile used as part of an absorption facility shall bear the ASTM number above and some identification as to which quality standard it meets (Standard, Extra-Quality, Heavy-Duty). In addition to the markings required above, each manufacturer of clay tile shall certify, in writing to the Department, that the pipe to be distributed for use in absorption facilities within the State of Oregon shall comply with all of the requirements of this section~~f-z~~.

- (d) Bituminized fiber solid pipe and fittings shall meet the current ASTM Specification D 1861. Perforated bituminized fiber pipe shall meet the current ASTM Specification D 2312. Each length of pipe and each fitting shall be marked with the nominal size, the manufacturer's name or trademark, or other symbol which clearly identifies the manufacturer and the appropriate ASTM specification number above. Markings on pipe shall be spaced at intervals not greater than two (2) feet. In addition to the markings required above, each manufacturer of bituminized pipe shall certify, in writing to the Department, that the pipe to be distributed for use in absorption facilities within the State of Oregon shall comply with all requirements of this section. In addition, all bituminized pipe that is to be installed as part of an absorption facility shall comply with the following requirements. The pipe shall have two rows of holes spaced one hundred-twenty (120) degrees apart and sixty (60) degrees on either side of a center line. For distribution pipe, a line of contrasting color shall be provided on the outside of the pipe along the line furthest away and parallel to the two (2) rows of perforations. Markings, consisting of durable ink, shall cover at least fifty (50) percent of the pipe. Markings may consist of a solid line, letters, or a combination of the two. Intervals between markings shall not exceed twelve (12) inches. The holes of each row shall not be more than five (5) inches on center and shall have a minimum diameter of one-half (1/2) inch~~f-z~~.

- (e) Polyvinyl chloride (PVC) pressure transport pipe, pressure manifolds, and pressure lateral pipe and fittings shall meet the current requirements for Class 160 PVC 1120 pressure pipe as identified in ASTM Specification D-2241. The pipe and fittings shall marked be as required by ASTM Specification D-2241.

~~[(f) Gravel less disposal trench systems shall be constructed using corrugated polyethylene pipe, fittings and couplings that comply with the requirements of ASTM F 667. The pipe shall have two rows of holes spaced approximately one hundred twenty (120) degrees apart, and approximately one hundred twenty (120) degrees apart each from the location stripe which shall be a contrasting color. The drain holes shall be a minimum of one half (1/2) inch diameter. The minimum outlet area shall be one (1) square inch per lineal foot of pipe. There shall be at least one (1) drain hole present in the valley of each corrugation. The gravel less disposal trench pipe shall have a minimum inside diameter of ten (10) inches, and be encased in a factory installed filter fabric wrap acceptable to the Department. Each manufacturer of this pipe shall certify in writing to the Department that the pipe and fittings to be distributed for use in absorption facilities within the State of Oregon will comply with all requirements of this subsection.]~~

NONWATER-CARRIED WASTE DISPOSAL FACILITIES, MATERIALS, AND CONSTRUCTION.

340-73-065 PRIVIES AND PORTABLE TOILET SHELTERS.

- (1) Privies and portable toilet shelters shall comply with the following general requirements:
 - (a) Structures shall be free of hostile surface features, such as exposed nail points, sharp edges, and rough or broken boards, and shall provide privacy and protection from the elements~~f-12~~
 - (b) Building ventilation shall be equally divided between the bottom and top halves of the room. All vents shall be screened with sixteen (16) mesh screen of durable material~~f-12~~
 - (c) Buildings shall be of fly-tight construction and shall have self-closing doors with an inside latch~~f-12~~
 - (d) Pits, tanks or vaults shall be vented to the outside atmosphere by a flue or vent stack having a minimum inside diameter of four (4) inches. Vents shall extend not less than twelve (12) inches above the roof~~f-12~~
 - (e) Interior floors, walls, ceilings, partitions, and doors shall be finished with readily cleanable impervious materials resistant to wastes, cleansers and chemicals. Floors and risers shall be

constructed of impervious material and in a manner which will prevent entry of vermin~~f.i.z~~

- (f) Seat tops shall be not less than twelve (12) inches nor more than sixteen (16) inches above the floor. The seat openings shall be covered with attached, open-front toilet seats with lids, both of which can be raised to allow use as a urinal~~f.i.z~~
 - (g) The distance between the front of the riser and the building wall shall not be less than twenty-one (21) inches~~f.i.z~~
- (2) Privies. In addition to complying with the requirements specified in section 1 of this rule, privies shall be provided with:
- (a) **Adequate ventilation shall be provided to allow for the free escape of gases and odors; ~~Vents equal in area to not less than one-fifth (1/5) the floor area or a minimum of three (3) square feet, whichever is greater.~~**
 - (b) A minimum clear space of twenty-four (24) inches between seats in multiple-unit installations and a clear space of twelve (12) inches from the seat opening to the building wall in both single and multiple units.
- (3) Portable Toilet Shelters. Portable toilet shelters may be prefabricated, skid mounted, or mobile. In addition to complying with the requirements specified in Section 1 of this Rule, portable toilet shelters shall:
- (a) Provide screened ventilation to the outside atmosphere having a minimum area of one (1) square foot per seat~~f.i.z~~
 - (b) Provide a minimum floor space outside of the riser of nine (9) square feet per seat~~f.i.z~~
 - (c) Be furnished with a toilet tissue holder for each seat~~f.i.z~~
 - (d) Be located in areas readily accessible to users and to pumping/cleaning services~~f.i.z~~
 - (e) Provide separate compartments with doors and partitions or walls of sufficient height to insure privacy in multiple-unit shelters except that separate compartments are not required for urinals.

340-73-080 CONSTRUCTION OF GRAY WATER WASTE DISPOSAL SUMPS.

A gray water waste disposal sump shall consist of a receiving chamber, settling chamber, and either a seepage chamber or disposal trench. ~~*{An acceptable design for gray water waste disposal sumps is shown in OAR 340, Division 71, Diagrams 14 and 15.}*~~

340-73-085 FLEXIBLE MEMBRANE LINERS FOR SAND FILTERS TREATING SEPTIC TANK EFFLUENT.

- (1) Unsupported polyvinyl chloride (PVC) shall have the following properties:

Property		Test Method	
(a)	Thickness	ASTM D1593 Para 8.1.3 9.1.3	30 mil, minimum
(b)	Specific Gravity (Minimum)	ASTM D792 Method A	
(c)	Minimum Tensile Properties (each direction)	ASTM D882	
(A)	Breaking Factor (pounds/inch width)	Method A or B (1 inch wide)	69
(B)	Elongation at Break (percent)	Method A or B	300
(C)	Modulus (force) at 100% Elongation (pounds/inch width)	Method A or B	27
(d)	Tear Resistance (pounds, minimum)	ASTM D1004 Die C	8
(e)	Low Temperature	ASTM D1790	-20°F
(f)	Dimensional Stability (each direction, percent change maximum)	ASTM D1204 212°F, 15 min.	±5
(g)	Water Extraction	ASTM D1239	-0.35% max.
(h)	Volatile Loss	ASTM D1203 Method A	0.7% max.
(i)	Resistance to Soil Burial (percent change maximum in original value)	ASTM D3083	
(A)	Breaking Factor		-5
(B)	Elongation at Break		-20
(C)	Modulus at 100% Elongation		±10
(j)	Bonded Seam Strength (factory seam, breaking factor, ppi width)	ASTM D3083	55.2
(k)	Hydrostatic Resistance	ASTM D751 Method A	82

(2) Installation Standards:

- (a) Patches, repairs and seams shall have the same physical properties as the parent material~~[-]z~~
- (b) Site considerations and preparation:
 - (A) The supporting surface slopes and foundation to accept the liner shall be stable and structurally sound including appropriate compaction. Particular attention shall be paid to the potential of sink hole development and differential settlement~~[-]z~~
 - (B) Soil stabilizers such as cementations or chemical binding agents shall not adversely affect the membrane; cementations and chemical binding agents may be potentially abrasive agents.
- (c) Only fully buried membrane liner installation shall be considered to avoid weathering~~[-]z~~
- (d) Unreinforced liners have high elongation and can conform to irregular surfaces and follow settlements within limits. Unreasonable strain reduces effective thickness and may reduce life expectancy by lessening the chemical resistance of the thinner (stretched) material. Every effort shall be made to minimize the strain (or elongation) anywhere in the flexible membrane liner~~[-]z~~
- (e) Construction and installation ~~for site~~:
 - (A) Surface condition:
 - (i) Preparation of earth subgrade. The prepared subgrade shall be of soil types no larger than Unified Soil Classification System (USCS) sand (SP) to a minimum of four (4) inches below the surface and free from loose earth, rock, fractured stone, debris, cobbles, rubbish and roots. The surface of the completed subgrade shall be properly compacted, smooth, uniform and free from sudden changes in grade. Importing suitable soil may be required~~[-]z~~
 - (ii) Maintenance of subgrade. The earth subgrade shall be maintained in a smooth, uniform and compacted condition during installation of the lining.

(B) Climatic conditions:

- (i) Temperature. The desirable temperature range for membrane installation is 42°F to 78°F. Lower or higher temperatures may have an adverse effect on transportation, storage, field handling and placement, seaming and backfilling and attaching boots and patches may be difficult. Placing liner outside the desirable temperature range shall be avoided~~f-1~~;
- (ii) Wind. Wind may have an adverse effect on liner installation such as interfering with liner placement. Mechanical damage may result. Cleanliness of areas for boot connection and patching may not be possible. Alignment of seams and cleanliness may not be possible. Placing the liner in high wind shall be avoided~~f-1~~;
- (iii) Precipitation. When field seaming is adversely affected by moisture, portable protective structures and/or other methods shall be used to maintain a dry sealing surface. Proper surface preparation for bonding boots and patches may not be possible. Seaming, patching and attaching 'boots' shall be done under dry conditions.

- (C) Structures. ~~***Penetration of a flexible liner by any designed means shall be avoided.***~~ Where penetrations are necessary, ~~***such as horizontal and vertical pipes, it is essential to obtain a secure, liquid-tight seal between the pipes and the flexible liner.***~~ ~~***Liners***~~ liners shall be attached to pipes with a mechanical type seal supplemented by a chemically compatible caulking or adhesives to effect a liquid-tight seal. The highest order of compaction shall be provided in the area adjacent to pipes to compensate for any settlement~~f-1~~;

(D) Liner Placement:

- (i) Size. The final cut size of the liner shall be carefully determined and ordered to generously fit the container geometry without field seaming or excess straining of the liner material~~f-1~~;
- (ii) Transportation, handling and storage. Transportation, handling and storage procedures shall be

planned to prevent material damage. Material shall be stored in a secured area and protected from adverse weather~~---~~

- (iii) Site inspection. A site inspection shall be carried out by the Agent and the installer prior to liner installation to verify surface conditions, etc~~---~~
- (iv) Deployment. Panels shall be positioned to minimize handling. Seaming should not be necessary. Bridging or stressed conditions shall be avoided with proper slack allowances for shrinkage. The liner shall be secured to prevent movement and promptly backfilled~~---~~
- (v) Anchoring trenches. The liner edges should be secured frequently in a backfilled trench~~---~~
- (vi) Field seaming. Field seaming, if absolutely necessary, shall only be attempted when weather conditions are favorable. The contact surfaces of the materials should be clean of dirt, dust, moisture, or other foreign materials. The contact surfaces shall be aligned with sufficient overlap and bonded in accordance with the suppliers recommended procedures. Wrinkles shall be smoothed out and seams should be inspected by nondestructive testing techniques to verify their integrity. As seaming occurs during installation, the field seams shall be inspected continuously and any faulty area repaired immediately~~---~~
- (vii) Field repairs. It is important that traffic on the lined area be minimized. Any necessary repairs to the liner shall be patched using the same lining material and following the recommended procedure of the supplier~~---~~
- (viii) Final inspection and acceptance. Completed liner installations shall be visually checked for punctures, rips, tears and seam discontinuities before placement of any backfill. At this time the installer shall also manually check all factory and field seams with an appropriate tool. In lieu of or in addition to manual checking of seams by the installer, either of the following tests may be performed:

- (I) Wet Test: The lined basin shall be flooded to the one (1) [four (4)] foot level with water after inlets and outlets have been plugged. There shall not be any loss of water in a 24 hour test period; [Workmanship shall be accepted if leakage rate in a 24-hour period is no greater than 0.25 inches.]
- (II) Air Lance Test: ~~[Inspect all seams (factory and field) for unbonded areas using an air nozzle directed on the upper seam edge and surface to detect loose edges.]~~ Check all bonded seams using a minimum 50 PSI (gauge) air supply directed through a 3/16 inch (typical) nozzle, held not more than 2 inches from the seam edge and directed at the seam edge. Riffles indicate unbonded areas within the seam, or other undesirable seam construction.

~~[(3) — Operation and Maintenance Standards. The owner/purchaser of a sand filter system must recognize that he assumes the continuous responsibility to preserve the installation as near as practical in its "as built" state. This responsibility includes the control or erosion of any "mound," the control and removal of large perennial plants, the fencing out of livestock and the control of burrowing animals.]~~

IMPLEMENTATION DATE

340-73-090

These rules become effective April 1, 1995. Until these rules become effective, existing rules remain in effect. Nothing in this Section is intended to prevent the Department from taking any action necessary to prepare for implementing the new rules.

Oregon Administrative Rules, Chapter 340, Division 73

All references to Diagrams have been deleted from the text of this Division.

Therefore, the following Diagrams are deleted from OAR Chapter 340, Division 73:

~~*{Diagram 1 — Typical Cast In-Place Concrete Septic Tank Specifications};*~~

~~*{Diagram 2 — Typical Dosing Tank};*~~

~~*{Diagram 3 — Typical Pre-Cast Concrete Distribution Box and Drop Box Details}*~~

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality

Water Quality Division

OAR Chapter 340-13,14,45,52,71,73

DATE:	TIME:	LOCATION:
July 22, 1994	3 pm	Department of Environmental Quality, N.W. Region, 2020 S.W. Fourth, Suite 400 Portland Or Room A
July 25, 1994	3 pm	Blue Mountain Community College 2411 N.W. Carden Pendleton, OR Morrow Hall, Room M-130
July 26, 1994	3 pm	Cascade Natural Gas Building 334 N.E. Hawthorne Bend, OR Public Meeting Room
July 27, 1994	5 pm	Jackson County Courthouse 10 South Oakdale Medford, OR Auditorium
July 28, 1994	3 pm	Springfield City Hall 225 5th Street Springfield, OR Council Meeting Room

HEARINGS OFFICER(s): Charles K. Ashbaker

STATUTORY AUTHORITY: ORS 454.625; ORS 454.780; and ORS 468.020

ADOPT: OAR 340-71-162, 302

AMEND: OAR 340-14
OAR 340-45
OAR 340-52
OAR 340-71
OAR 340-73

REPEAL: OAR 340-71-350.

NOTE: In addition to the proposed rule changes listed above, the DEQ Environmental Quality Commission may consider limited pilot projects through which certain on-site sewage disposal activities may be contracted out to private contractors.

- This hearing notice is the initial notice given for this rulemaking action.
- This hearing was requested by interested persons after a previous rulemaking notice.
- Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY:

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 Division 71 and 73.

LAST DATE FOR COMMENT: August 4, 1994.

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

AGENCY RULES COORDINATOR: Chris Rich, (503) 229-6775
AGENCY CONTACT FOR THIS PROPOSAL: Sherman Olson,
ADDRESS: Water Quality Division
811 S. W. 6th Avenue
Portland, Oregon 97204
TELEPHONE: (503) 229-6443

or Toll Free 1-800-452-4011

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.



Signature

6/15/94

Date

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

**Modification of Rules Affecting On-Site Sewage Disposal
OAR Chapter 340, Divisions 71, 73, 14, 45, and 52**

Date Issued: June 22, 1994

Public Hearings: July 22, 25, 26,
27, & 28, 1994

Comments Due: August 4, 1994

WHO IS AFFECTED: Those who are involved with the construction of on-site sewage disposal systems, those who are manufacturing equipment used for on-site sewage disposal systems, and those who are regulating these systems are affected by these rule modifications.

WHAT IS PROPOSED: The Department has been working with a Technical Advisory Committee for the past year in reviewing the on-site sewage disposal program and rules. Some of the changes proposed are housekeeping changes, while others are quite significant. The intent is to better address new technology, require better operation and maintenance of complex systems, move all rules affecting on-site sewage disposal into Divisions 71, 72 and 73 of Oregon Administrative Rules Chapter 340, and to provide more flexibility for those involved in administering the rules.

In addition to those issues which the Technical Advisory Committee has been working on for the past several months, the Environmental Quality Commission may consider limited pilot projects through which certain on-site sewage disposal activities may be contracted out to private contractors. This concept is a late development and has not been part of the deliberations over the past year. However, the Department is inviting public comments on this concept.

WHAT ARE THE HIGHLIGHTS: A summary of the proposed rule changes is attached.

HOW TO COMMENT: Public Hearings to provide information and receive public comment are scheduled as follows:

DATE:	TIME:	LOCATION:
July 22, 1994	3 pm	Department of Environmental Quality, Northwest Region 2020 S.W. Fourth, Suite 400 Portland, OR - Room A

- OVER -



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.

DATE:	TIME:	LOCATION:
July 25, 1994	3 pm	Blue Mountain Community College 2411 N.W. Carden Pendleton, OR - Morrow Hall, Room M-130
July 26, 1994	3 pm	Cascade Natural Gas Building 334 N.E. Hawthorne Bend, OR - Public Meeting Room
July 27, 1994	5 pm	Jackson County Courthouse 10 South Oakdale Medford, OR - Auditorium
July 28, 1994	3 pm	Springfield City Hall 225 5th Street Springfield, OR - Council Meeting Room

Written comments must be received by 5:00 p.m. on August 4, 1994. Comments must be sent or delivered to the following address:

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

Because of the size of this rule package (136 pages), a summary only is being supplied in this mailing. A complete copy of the proposed rule modifications package may be reviewed at the above address as well as each of the Department's field offices and contract county offices. A list of these other locations is attached. A copy of the proposed rules may be obtained after July 1, 1994 by calling the Department's Water Quality Division at (503) 229-6474, or by calling toll free in Oregon 1-800-452-4011. To obtain additional information about these materials, please call Sherman Olson at (503) 229-6443, or the above toll free number.

WHAT HAPPENS NEXT: 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. It is currently anticipated that the Commission will act on the rule modifications at their regular meeting August 26, 1994.

ACCOMMODATION OF DISABILITIES: In order to accommodate persons with disabilities, please notify the Department of any special physical or language accommodations you may need as far in advance of the meeting dates as possible. To make these arrangements, contact Ed Sale in Public Affairs at (503) 229-5766. For the hearing impaired, the Department's TDD number is (503) 229-6993.

ACCESSIBILITY INFORMATION: This publication is available in alternate format (e.g. large print, braille) upon request. Please contact Ed Sale in DEQ Public Affairs at (503) 229-5766 to request an alternate format.

Date: June 22, 1994

To: Interested and Affected Public

Subject: Rulemaking Proposal - Modification of On-site rules

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules/rule amendments regarding the on-site sewage disposal program. It includes modifications to OAR Chapter 340 Divisions 71, 73, 14, 45, and 52.. This proposal would make several housekeeping changes to the on-site rules in addition to making substantive changes. It also brings applicable portions of Divisions 14, 15, 45, and 52 into Division 71 so that all rules pertaining to on-site sewage disposal are in the same Division.

What's in this Package?

Attachments to this memorandum provide details on the proposal as follows:

- | | |
|--------------|--|
| Attachment A | Summary of Proposed Rule Changes * |
| Attachment B | The "Legal Notice" of the Rulemaking Hearing. (required by ORS 183.335) |
| Attachment C | The official Rulemaking Statements for the proposed rulemaking action. (required by ORS 183.335) |
| Attachment D | The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335) |

- * Note: Because of the length of this rule package (136 pages), the entire package is not being provided in this mailing. However, in about 1 week, copies will be available, upon request, and copies will be available for viewing at each of the DEQ field offices as well as contract county offices.

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

Memo To: Interested and Affected Public
June 22, 1994
Page 2

- Attachment E A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans.
- Attachment F Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements.

Hearing Process Details

You are invited to review these materials and present written or oral comment in accordance with the following:

Date: July 22, 1994
Time: 3:00 pm
Place: DEQ Northwest Region Office, 2020 S.W. Fourth, Suite 400,
Portland - Conference Room A, Fourth Floor

July 25, 1994
3:00 pm
Blue Mountain Community College, 2411 N.W. Carden, Pendleton,
Morrow Hall, Room M-130

July 26, 1994
3:00 pm
Cascade Natural Gas Building, 334 N.E. Hawthorne, Bend
Public Meeting Room

July 27, 1994
5:00 pm
Jackson County Courthouse, 10 South Oakdale, Medford
Auditorium

July 28, 1994
3:00 pm
Springfield City Hall, 225 5th St., Springfield
Council Meeting Room

Deadline for submittal of Written Comments: August 4, 1994, 5:00 pm

Charles K. Ashbaker will be the Presiding Officer at this hearing. Following close of the public comment period, the Presiding Officer will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report and all written comments submitted. The public hearing will be tape recorded, but the tape will not be transcribed.

If you wish to be kept advised of this proceeding and receive a copy of the recommendation that is presented to the EQC for adoption, you should request that your name be placed on the mailing list for this rulemaking proposal.

What Happens After the Public Comment Period Closes

The Department will review and evaluate comments received, and prepare responses. Final recommendations will then be prepared, and scheduled for consideration by the Environmental Quality Commission (EQC).

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is August 26, 1994. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

The EQC expects testimony and comment on proposed rules to be presented during the hearing process so that full consideration by the Department may occur before a final recommendation is made. The EQC may elect to receive comment during the meeting where the rule is considered for adoption; however, such comment will be limited to the effect of changes made by the Department after the public comment period in response to testimony received. The EQC strongly encourages people with concerns regarding the proposed rule to communicate those concerns to the Department at the earliest possible date so that an effort may be made to understand the issues and develop options for resolution where possible.

Background on Development of the Rulemaking Proposal

What is the problem

Current on-site sewage disposal rules are out-of-date. There is new technology which cannot be fully utilized the way the rules are currently written. The current rules provide very little flexibility to staff in making judgement decisions. There are segments of rules affecting on-site sewage disposal systems which are located in several different Divisions of Chapter 340.

How does this proposed rule help solve the problem

The rules as drafted add more flexibility for the Department to make judgement decisions. They establish an on-going Technical Review Committee to evaluate new technology and to make recommendations to the Department on their implementation. In order to make it easier for the regulated community, those portions of Divisions 14, 15, 45, and 52 which regulate certain aspects of the on-site sewage disposal program have been extracted and placed in Division 71.

How was the rule developed

The rule has been developed over the past 12 months through the use of a Technical Advisory Committee. The Committee has met monthly. In addition, the Committee was divided into an Administrative Subcommittee and Technical Subcommittee which met separately, at least monthly.

How does it affect the public, regulated community, other agencies

The modified rules will add some new requirements to septic tanks which will add some additional cost for new systems. The rules will require on-site system installers to take an examination to show their understanding of the on-site rules. The rules will require some facilities such as intermediately sized disposal fields, larger sand filters, facilities with high waste strength, and holding tanks to have a renewable operational permit which will require routine maintenance of the system. The rules will provide a mechanism for getting new technology evaluated.

Note: In addition to the proposed rule changes listed in this notice, the Environmental Quality Commission may consider limited pilot projects through which certain on-site sewage disposal activities may be contracted out to private contractors. This concept is

Memo To: Interested and Affected Public
June 22, 1994
Page 5

a late development and has not been discussed with the Technical Advisory Committee. The Department is inviting public comments on this concept.

How does the rule relate to federal requirements or adjacent state requirements

The federal government does not have rules regulating on-site disposal systems, with the exception of those requiring a permit under the Underground Injection Control program. These rules make no change in that relationship.

How will the rule be implemented

Portions of the rules will go into effect immediately upon adoption by the EQC and filing with the Secretary of State. Those portions related to testing of on-site system installers will not go into effect until July 1995. On-site sewage disposal work is on-going work.

Are there time constraints

There are no time constraints for this rule action.

Contact for more information

If you would like more information on this rulemaking proposal, a full copy of the rules, or would like to be added to the mailing list, please contact:

Sherman Olson
DEQ Water Quality
811 S. W. Sixth Street
Portland, OR 97204
Phone 229-6443 or
Toll Free 1(800) 452-4011
TTY 229-6993

SUMMARY OF PROPOSED CHANGES TO ON-SITE SEWAGE DISPOSAL RULES

DIVISION 71

Some of the general goals of this rule revision are to provide more flexibility to the Department and Agent in administering the on-site sewage disposal program, provide better oversight of large and complex systems which are likely to fail if not properly maintained, bring all rules which regulate on-site sewer disposal systems into one set of rules, and update rules to the standards being used today.

In addition to the major rule revisions listed in this summary, there are several "housekeeping" changes which are not listed in this summary.

340-71-100 DEFINITIONS

Definitions for "Building Sewer", "Filter Material", "Strength of Wastewater", and "Water Pollution" were deleted because they were redundant, replaced by other terms, or no longer used.

Definitions for "Aerobic Sewage Treatment Facility", "Construction", "Conventional Sand Filter", "Disposal Field", "Emergency Repair", and "Sewage Disposal Service" were modified.

Definitions for "Biochemical Oxygen Demand (BOD)", "Design Criteria", "Drain Media", "Effluent Filter", "Hydrasplitter", "Residential Strength Wastewater", "Sand Filter Media", "Septage", "Split Waste System", "Surface Waters", "Total Kjeldahl Nitrogen (TKN)", "Underdrain Media", and "WPCF Permit" were added.

All definitions have been located in this definition section of the rules. Definitions currently found in the text of the rules have been removed.

340-71-120 JURISDICTION AND POLICY

These rules were changed to better define the delineation of responsibility between the Department and local governments acting as the Department's Agents. It also discusses the use of general permits for some of the categories of systems which will require renewable Water Pollution Control Facilities (WPCF) permits, rather than just a construction permit. It establishes the use of a Technical Review Committee for the Department to use in evaluating new technology, rule implementation, and regulation of sewage disposal service workers.

340-71-130 GENERAL STANDARDS, PROHIBITIONS AND REQUIREMENTS

There have been several changes made to this rule. The most noteworthy is the requirement for standard on-site systems with a flow greater than 2,500 gallons per day, systems which treat sewage which is not residential strength wastewater, aerobic systems and sand filters with design flow exceeding 600 gallons per day, and holding tanks to be placed on a WPCF Permit. The WPCF permit will be ongoing and renewable. The permit will establish maintenance and monitoring requirements.

Applicable portions of the performance bond requirements, found in Oregon Administrative Rules Chapter 340 Division 15, have been brought into this rule in order to consolidate all on-site rules into one set of rules.

340-71-140 FEES -- GENERAL

The only change to these rules being proposed in this document is the addition of permit fees for WPCF permit. A major rewrite of the entire fee schedule is being considered in a separate rule revision package. Most of these fees already exist but are found in Division 45.

340-71-160 PERMIT APPLICATION PROCEDURES -- GENERAL REQUIREMENTS

The rule was changed to allow the Agent discretion in waiving the requirement for an evaluation report for a system repair or alteration. It also provides for approval of the use of a septic tank as a temporary holding tank when soil conditions are too wet to allow for the construction of the disposal field.

340-71-162 PERMIT APPLICATION PROCEDURES -- WPCF

This is a new rule which establishes the procedures for applying for and receiving a WPCF permit. Portions of Division 14 and Division 45 were used in writing this rule. It also describes those portions of Divisions 71, 72, and 73 which do not apply to WPCF permits.

340-71-170 PRE-COVER INSPECTIONS

This rule has been changed to better define what is expected from an installer before the Agent can waive a pre-cover inspection.

340-71-205 AUTHORIZATION TO USE EXISTING SYSTEMS

The requirements associated with getting an Authorization Notice are better defined. The rule also eliminates the annual renewal of a personal hardship Authorization Notice.

340-71-220 STANDARD SUBSURFACE SYSTEMS

There have been several changes made to these rules, particularly as they pertain to septic tank installation. The sizing criteria has changed, pre-treatment is required when the waste is stronger than residential strength wastewater, greater accessibility is required, and an effluent filter is required. Some clarifications have also been made in the disposal trench design and the relationship between the septic tank and disposal system.

340-71-260 ALTERNATIVE SYSTEMS, GENERAL

This rule has been changed to allow the Director or Designee to authorize minimum standards for new technologies or modification of existing standards.

340-71-265 CAPPING FILLS

A requirement that filter fabric be used between the drain media and the fill cap has been added to the rule.

340-71-270 EVAPOTRANSPIRATION-ABSORPTION (ETA) SYSTEMS

These systems have been limited to waste flows not exceeding 600 gallons per day. Some other minor changes have been proposed.

340-71-275 PRESSURIZED DISTRIBUTION SYSTEMS

Minor changes are proposed, the most significant of which is the requirement for orifice shields to keep the orifices from being blocked.

340-71-280 SEEPAGE TRENCH SYSTEM

No changes proposed.

340-71-285 REDUNDANT SYSTEMS

No changes proposed.

340-71-290 CONVENTIONAL SAND FILTER SYSTEMS

The specifications for the sand filter media and the drain media have been changed to more closely relate to available materials. This should make sand filter media less costly. Several other changes are proposed with regard to location of water table, slopes, and soil conditions. In addition, a section regarding "Graveless Absorption Facility Option" has been added.

340-71-295 CONVENTIONAL SAND FILTER DESIGN AND CONSTRUCTION

The use of sand filters will be limited to "residential strength wastewater". Several changes have been made in the design criteria of conventional sand filters.

340-71-300 OTHER SAND FILTER DESIGNS

Sand filters with a projected daily flow of more than 600 gallons must be on a WPCF permit.

340-71-302 RECIRCULATING GRAVEL FILTERS

A new section on the design of recirculating gravel filters has been added to the rules.

340-71-305 SAND FILTER SYSTEM OPERATION AND MAINTENANCE

Sand filters with a projected daily flow of more than 600 gallons must be on a WPCF permit. Operation and maintenance requirements will be established in the permit.

340-71-310 STEEP SLOPE SYSTEMS

No changes proposed.

340-71-315 TILE DEWATERING SYSTEM

The requirement for the outlet pipe to be Schedule 80 PVC or ABS with a flap gate or grill has been deleted from the rule. The rule has also been changed to allow for the use of corrugated pipe as an alternative material. This will reduce the cost of this system.

340-71-320 SPLIT WASTE SYSTEMS

A reduced size soil absorption facility will not be allowed for the gray water from a split waste system. Also Gray water alone shall not be discharged to a sand filter.

340-71-325 GRAY WATER WASTE DISPOSAL SUMPS.

No changes proposed.

340-71-330 NONWATER-CARRIED SYSTEMS.

No changes proposed.

340-71-340 HOLDING TANKS

Holding tanks will be required to have a WPCF operational permit.

340-71-345 AEROBIC SYSTEMS

Aerobic systems with a projected daily flow of more than 600 gallons will be required to have a WPCF operational permit.

340-71-350 LOW FLUSH TOILETS

Since these toilets are universally required, this rule has been deleted.

340-71-355 GRAVEL-LESS DISPOSAL TRENCH SYSTEMS.

Because of a high failure history of these systems, this section as previously written has been deleted from the rules. It has been replaced with procedures for getting approval for newer gravel replacement technology.

340-71-360 DISPOSAL TRENCHES IN SAPROLITE

No changes proposed.

340-71-400 GEOGRAPHIC AREA SPECIAL CONSIDERATIONS

This rule has been modified to reduce the acreage necessary to receive special considerations. The rule has also been changed to better define when the Agent can waive the pre-cover inspection. A section has been added to allow the Agent to also waive the site evaluation under certain conditions east of the Cascade Range.

340-71-401 MID-MULTNOMAH COUNTY, CESSPOOL AND SEEPAGE PIT USE

No changes proposed.

340-71-410 through 445 These rules pertain to the variance program.

No changes proposed.

340-71-450 EXPERIMENTAL SYSTEMS

Only minor changes are proposed for this rule. The responsibility of monitoring the operation of the system is transferred from the Department to the owner.

340-71-460 MORATORIUM AREAS

Certain areas which are now served by sewers have been removed from the list of moratorium areas.

340-71-500 COMMUNITY SYSTEMS

All community systems, with flows exceeding 2,500 gallons per day, will be required to have a WPCF operational permit.

340-71-520 LARGE SYSTEMS

All large systems, with flows exceeding 2,500 gallons per day, will be required to have a WPCF operational permit.

340-71-600 SEWAGE DISPOSAL SERVICE

Beginning July 1, 1995, all those engaged in the business of installing or constructing on-site sewage disposal systems will be required to pass a written examination before they will be issued a license. The written exam will test their knowledge of the on-site sewage disposal rules.

Those engaged in septage pumping service shall submit an annual report of their pumping and disposal records.

TABLE 1

Some changes in separation distances (setbacks) have been changed in TABLE 1.

DIAGRAMS

The current rules include several diagrams. Those diagrams will be eliminated in the revised rules. Although the Department will still use diagrams in their handout material, they will not be located within the rules.

DIVISION 73

There have been significant changes proposed for these rules. These changes include the sizing of septic tanks, the location and size of septic tank access man holes, risers at the access manholes, and the use of effluent filters on septic tanks. In addition, minor changes have be proposed for dosing septic tanks, distribution boxes, diversion valves, and effluent pumps and controls. These changes are not retroactive. They apply only to new systems.

DIVISION 14

Minor changes are proposed for Division 14 to indicate that permitting rules for on-site sewage systems are found in Division 71 rather than Division 14.

DIVISION 45

Minor changes are proposed for Division 45 to indicate that WPCF permits issued for on-site sewage disposal systems are issued pursuant to Division 71 and the fees for the on-site WPCF permits are found in Division 71.

DIVISION 52

Minor changes are proposed for Division 52 to indicate which on-site systems are controlled by Division 71 as apposed to Division 52.

Note: Concurrent with this rule modification process, the rules regarding on-site system fees in 340-71-140 and 340-72, are also being modified. Those proposed changes have not been made part of this package. Also concurrent with this rule modification process, the fee schedule in Division 45 is being modified. Part of that modification will exclude on-site sewage systems from that fee schedule since they have been added to Division 71.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Adoption of Rule Amendments for On-Site Sewage Disposal

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 454.625
ORS 454.780
ORS 468.020

2. Need for the Rule

The Department of Environmental Quality (DEQ) is charged with the responsibility of regulating the design and construction of on-site sewage disposal systems and the regulation of persons or businesses that provide sewage disposal services. The current rules were last amended in 1991 for fees only and in 1988 for technical rule changes. The current rules need to be updated due to technical advances in the field, the evolution of complex systems needing on-going maintenance, and to begin continuing education of persons involved in installation and servicing of these systems.

The proposed rules will allow for technical improvements to be implemented, without requiring future rule changes, through recommendations to the Department by a Technical Review Committee (TRC). The TRC will review and recommend implementing changes in the standards to the Department. Operating permits will be required for systems; 1) using distinctive technology, 2) with larger sewage flows, or 3) with high waste strengths. These permits will necessitate maintenance of the systems by the owners or operators. Persons involved in the business of servicing and installing on-site systems will be examined for knowledge of the rules.

In addition to the rulemaking actions discussed above, the DEQ Environmental Quality Commission may consider initiating limited pilot projects through which

certain on-site sewage disposal activities may be contracted out to private contractors.

3. Principal Documents Relied Upon in this Rulemaking

ORS 454

Oregon Administrative Rules Chapter 340

4. Advisory Committee Involvement

The On-Site Rules Advisory Committee, and sub committees, have met one to three times per month for 17 months. The Committee had direct involvement in developing the proposals, based on input from the public, industry, sewage disposal service businesses, consultants, counties and the Department. Two sub committees were formed for technical issues and administrative issues. On May 24, 1994 the On-Site Rules Advisory Committee recommended to the Department that the proposed rulemaking be submitted for public hearings.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Adoption of Rule Amendments for On-Site Sewage Disposal

Fiscal and Economic Impact Statement

Introduction

The proposed rules will increase cost for all new on-site sewage disposal systems due to technical improvements to the septic tank. The costs will vary depending on the type and location of the system. For the majority of on-site systems serving single family residences, the increases should amount to a 3 to 5 percent increase. This is expected to add \$150 - \$200 to the average new on-site standard residential sewage disposal system.

However, the new systems constructed should be more reliable and should be less likely to fail, thereby reducing the number of expensive system replacements. Other system owners that may require an operating permit, will have a renewable permit that will have an annual compliance fee. However, with greater oversight and better maintenance required by the operating permit, the systems should perform better and last longer.

General Public

Individual home owners proposing to install a new standard on-site sewage disposal system will see a direct cost increase in the price they pay for system installation and maintenance. These costs will be associated with proposed changes to all septic tanks, where effluent filters will be required and for larger tanks at homes with more than 3 bedrooms. These costs will be for the materials needed and for servicing the filter on a regular basis. However, with the effluent filters being required, the disposal trenches will be better protected and should last longer, thereby reducing the number of premature failures and expensive replacements. Some changes, such as the relaxation of the sand characteristic requirements for sand filters and expansion of permissible types of pipe for tile dewatering could result in materials savings for some residential systems.

If a home owner needs a distinctive technology, an operating permit may be required. This permit will be renewable (generally on a 5 year basis) and have a renewal fee and annual compliance fees. These costs should be offset by longer usable life of the systems. However, the purpose of the operating permit is to assure proper maintenance and the equipment should last longer and work better, thereby preventing premature failure.

It is estimated that approximately 95 percent of on-site sewage disposal systems serve single family residences.

Small Business

Businesses licensed to service and install on-site sewage disposal systems may have an indirect cost due to time taken by employees for the proposed license exam. It is estimated that this will require only four to five hours of an employee's time each year. This cost should be offset by having employees more familiar with the rules and thus more efficient. It is expected that these provisions will apply to approximately 1100 licensees and to some 4000 individuals. There will also be an annual reporting requirement but the information to be reported to DEQ is information currently collected by the installers and reporting it to DEQ once each year should not require the small business to incur any additional material costs. Generally such training and reporting costs are passed through with other costs of doing business to the owners of the on-site disposal systems.

Due to maintenance that is necessary for proper operation of on-site systems, businesses doing system maintenance and installation may see increased revenues as demand elevates for system maintenance. Other small businesses will see at least the same cost as an individual homeowner if they are utilizing on-site sewage disposal. Systems using a holding tank will be required to obtain a operating permit within 12 months of rule adoption.

Large Business

Large Businesses will see the same economic effect as the general public and small businesses if they are using on-site sewage disposal systems. Most large businesses using on-site disposal systems are currently classified as large (over 5,000 gallons per day) systems and are thus required to obtain WPCF permits. The overall effect on large businesses is expected to be less than the effect on small businesses or the general public.

Local Governments

Those few Local Governments using on-site sewage disposal systems will see the same economic effect as the general public and businesses. Like large businesses, most of these installations are large and are already subject to the WPCF permitting requirements.

Those local governments having intergovernmental agreements with the Department to implement portions of the on-site program, may see increased revenues due to the operating permits renewal fee and annual compliance fees. However these revenue increases should be offset by the cost of compliance inspections.

State Agencies

Other state agencies should be affected to the same extent as the public and businesses. Those state facilities using on-site sewage disposal systems tend to be large operations such as state parks which are currently subject to WPCF permitting requirements.

Assumptions

It is assumed that there should be little or no impact on resources within the Department, with the following possible exception; Increased staff level may be needed to manage the examination process of people licensed to install and service on-site systems. It is further assumed that the amount of resources to accomplish the goals of these rules will be provided from existing staff.

It is assumed that there will be no decrease in program delegation to local governments due to these rules. Contracts will be written to allow for delegated local governments to assume the responsibilities and revenues to provide support of the proposed rules.

Pilot Project

The proposed rule provides for the possibility of limited pilot projects through which certain on-site sewage disposal activities may be contracted out to private contractors. All phases of site evaluation, system design review and construction inspection will be carried out by these private contractors. All fees, except the permit application fee, will be determined by negotiation between the owner of the system and the contractor.

This will result in the net transfer of revenue to the private sector - most if not all of which will go to small businesses.

In counties where DEQ currently operates the permitting/review/inspection process itself, DEQ can expect an estimated decrease in revenue of approximately \$1,000 for each installation. It is expected that concomitant reduction in DEQ staff will occur.

In counties where the local government operates the permitting/review/inspection process, the local government can expect the same approximately \$1,000 per installation decrease in revenue. It is unknown if any local government will reduce staff as a result.

If the private contractor's costs are greater than the public sector fees charged, there will be a net cost to the system owner, and vice versa. It is expected that most system owners affected will be private householders who will absorb the results of the cost shifting. However neither the magnitude nor direction of the cost change can be estimated at this time, nor can the likely number of affected systems.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Proposed Adoption of Rule Amendments for On-Site Sewage Disposal

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rules will allow consideration of update technology, increase flexibility of design, create provisions for operating permits, and provide for continuing education of businesses licensed to service and install on-site sewage disposal systems. In addition to the rulemaking actions listed above, the DEQ Environmental Quality Commission may consider initiating limited pilot projects through which certain on-site sewage disposal activities may be contracted out to private contractors.

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

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

The on-site sewage disposal permit program regulates the placement, construction and operation of on-site sewage disposal systems.

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

Yes No (if no, explain):

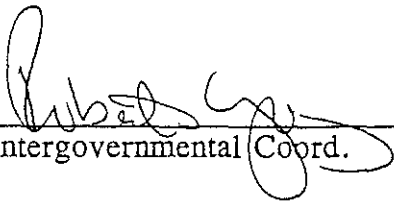
In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The purpose of the on-site sewage disposal program is to protect the public waters of the state and the public health of the residents of Oregon. Permits to construct or to operate a on-site sewage system are considered DEQ land use actions. The local jurisdiction must review and approve a DEQ land use compatibility statement before an on-site permit application will be processed.

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

N/A

Division


Intergovernmental Coord.

6/15/94
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.

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

The federal underground injection control (UIC) rules require UIC permit for injection wells. EPA has determined that large on-site systems can be considered as injection wells. Currently, the WPCF permit we issue for large on-site systems meets the requirements for the UIC permit. The rule modification will not change that.

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

The federal UIC rules for Class V wells, which includes large on-site systems, are permitting rules only. They do not establish performance requirements.

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 requests?*

Normally, public notice is not required for WPCF permits. It is discretionary. However, those on-site systems which are large enough to be considered a UIC facility do require public notice under federal rules. The rule modifications make that requirement clear.

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?*

The rules changes do clarify several issues and make the rules more certain. The new design criteria in the rules apply only to new facilities and will require no upgrading of existing facilities.

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

The proposed rules bring those rules which affect on-site systems from Divisions 14, 15, 45, and 52 into Division 71. This will make it easier for the public to know and understand the requirements.

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

The proposed rules will make it easier to get new technologies approved and thereby increasing the chances for approving sites for on-site systems which cannot be served by existing technology.

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

All those facilities which do need routine maintenance in order to operate properly are being required to have a renewable WPCF permit which will establish operation and maintenance requirements.

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

The added costs associated with additional operation and maintenance requirements should improve the longevity of the facility and make it less likely that large replacement costs would be prematurely imposed.

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?*

There are no current federal standards for operation and maintenance. They leave that up to the states in their permitting process.

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

Demonstrated technology is available to meet all of the requirements of the proposed rules.

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

Properly designed on-site sewage disposal systems which can be easily maintained, are a pollution prevention vehicle. They prevent both surface waters and ground waters from being polluted.

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 29, 1994

To: Environmental Quality Commission
From: Charles K. Ashbaker
Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: July 22 1994, beginning at 3 p.m.
Hearing Location: 2020 S.W. Fourth Ave.
Portland, Oregon

Title of Proposal: On-Site Sewage Disposal Rules Modification

The rulemaking hearing on the above titled proposal was convened at 3:05 p.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

people were in attendance, three (3) people signed up to give testimony.

Prior to receiving testimony, Dennis Illingworth briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

1. Alex Mauck, an on-site system installer, testified he would like the homeowner and or manufacturer of a system to be present when the periodic inspection of installed system take place, (71-260). He requested that the sizing requirements for the proposed Graveless Absorption Facility, be clarified. He believes that the system as proposed is not equal in absorptive area as a drainfield, (71-290). He thought that there should be uniform sizing criteria adopted under 71-355.
2. Richard Polson, Director of Environmental Services for Clackamas County, testified that the County had various concerns about the proposed rules both substantive and housekeeping. The county will provide that testimony in writing.

ATTACHMENT C (Portland)

2

Memo To: Environmental Quality Commission
July 29, 1994
Presiding Officer's Report on
July 22, 1994, Rulemaking Hearing
Page 2

The following people handed in written comments but did not present oral testimony:

NONE

There was no further testimony and the hearing was closed at 3:45 p.m.

Attachments:

Written Testimony Submitted for the Record.

NONE

ATTACHMENT C, Portland

Date: July 29, 1994

To: Environmental Quality Commission

From: Charles K. Ashbaker

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: July 26, 1994, beginning at 3:00 p.m.
Hearing Location: Cascade Natural Gas Building,
Bend Oregon

Title of Proposal: On-Site Sewage Disposal Rules Modification

The rulemaking hearing on the above titled proposal was convened at 3:05 p.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Eight (8) people were in attendance, two (2) people signed up to give testimony.

Prior to receiving testimony, Dennis Illingworth briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

1. Roger Everett, Director of the Environmental Health Division, Deschutes County, was in favor of the proposed rules. He was opposed to the privatization of the On-Site Sewage Disposal Program. He believes this is an important public health program, and therefore should be in government. He thought that citizens want an unbiased opinion. He also spoke in favor of the examination requirement for people who work on on-site systems. He suggests that the Department look at various ways of implementation, ie; using Community Colleges
2. Fred Jenke, an on-site installer, spoke in favor of the proposed examination of people who work on on-site systems. His opinion as to implementation, is to provide training similar to what the state provides for manufactured home

ATTACHMENT C, Bend

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 29, 1994

To: Environmental Quality Commission

From: Charles K. Ashbaker

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: July 25, 1994, beginning at 3:00 p.m.
Hearing Location: Blue Mountain Community College
Pendleton, Oregon

Title of Proposal: On-Site Sewage Disposal Rules Modification

The rulemaking hearing on the above titled proposal was convened at 3:15 p.m. People

No people were in attendance and no people signed up to give testimony.

There was no testimony and the hearing was closed at 3:20 p.m.

Attachments:

No written testimony was submitted for the record.

ATTACHMENT C (Pendleton)

Memo To: Environmental Quality Commission
July 29, 1994
Presiding Officer's Report on
July 26, 1994, Rulemaking Hearing
Page 2

installers. This would include having a short day or two class for installers,
followed by the examination.

The following people handed in written comments but did not present oral testimony:

NONE

There was no further testimony and the hearing was closed at 3:45 p.m.

Attachments:

NONE

ATTACHMENT C, Bend

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 29, 1994

To: Environmental Quality Commission

From: Charles K. Ashbaker

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: July 27, 1994, beginning at 5:00 pm
Hearing Location: Jackson County Courthouse Auditorium,
Medford

Title of Proposal: On-Site Sewage Disposal Rule Modification

The rulemaking hearing on the above titled proposal was convened at 5:05 pm. 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.

11 people were in attendance, 6 people signed up to give testimony.

Prior to receiving testimony, the hearing officer, Kent Ashbaker, briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

Glenn Hawkins, an installer, supported the larger septic tanks and manhole access. He suggested the distance between curtain drains and sand filters be reduced.

Ken Cote, Jackson County, questioned the need for larger tanks and effluent filters. He did not think the additional cost to the home owner was worth the added benefit. He felt that the filter would just be removed by the home owner the first time it created a problem. He also did not agree with the use of a drop box or distribution box in every case. He also suggested that the approved material below a bottomless sand filter be clarified. He thought the rules were inconsistent with other Department guidance, particularly with the approval of construction in weakly cemented sands. He indicated that he would submit extensive comments in writing.

ATTACHMENT C (Medford)

Memo To: Environmental Quality Commission
July 29, 1994
Presiding Officer's Report on
July 27, 1994 Rulemaking Hearing
Page 2

Sam Michel, an installer, was opposed to rule changes, without more involvement with the installers. He indicated that he did not think the Department had done it's homework.

Brad Prior, Supervising Sanitarian for Jackson County, suggested that the Technical Review Committee be appointed by the Commission and not the Director. He also questioned the authority the rules seem to give to the Director or Director's designee. He questioned the legality of that. He indicated that all aerobic systems need a WPCF permit and not just those over 600 gallons per day. He questioned the need for increasing the tank size to 1500 gallons per day. He suggested the Department do a cost/benefit study on that issue. He said that conducting a leak test on an installed septic tank was not practical. Often there is not water at the site when the tank is installed. Any testing for water tightness should be conducted by the manufacturer at the site of manufacture. He was opposed to reducing the effluent pipe size to 2 inches because of the potential for the home owner to remove the effluent filter and the potential for clogging of a 2 inch line. Perhaps this change could be made later after some history of effluent filter use. He was opposed to any pilot projects for turning portions of the on-site program over to private contractors. He felt that such a program would be open to extreme abuse. Brad also had other editorial comments.

Dick Florey, Jackson County Sanitarian, can't see need for larger tanks. Did not think that risers were necessary at a dry site where the tank was close to the ground surface. He questioned the use of a leak test at the site. If used, should be only at high groundwater sites. Would prefer to see effluent filters be optional. He had several comments regarding the sand filter rules and requested clarification on some of the changes. He thought the graveless option placed at only 10 inches would freeze. He did not see the necessity of reducing the sand filter cover to 6 inches. He also was opposed to excluding gray water from sand filters.

Charles Henke, Jackson County, very opposed to privatization of the on-site program. He felt that it would be a conflict of interest for consultants to do the work.

The following people handed in written comments but did not present oral testimony:

ATTACHMENT C (Medford)

Memo To: Environmental Quality Commission
July 29, 1994
Presiding Officer's Report on
July 27, 1994 Rulemaking Hearing
Page 3

None

There was no further testimony and the hearing was closed at 7:15 pm.

Attachments:

Written Testimony Submitted for the Record.

NONE

ATTACHMENT C (Medford)

State of Oregon
Department of Environmental Quality

Memorandum

Date: July 29, 1994

To: Environmental Quality Commission

From: Charles K. Ashbaker

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: July 28, 1994, beginning at 3:00 pm
Hearing Location: Springfield City Hall, Springfield

Title of Proposal: On-Site Sewage Disposal Rule Modification

The rulemaking hearing on the above titled proposal was convened at 3:05 pm. 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.

10 people were in attendance, 3 people signed up to give testimony.

Prior to receiving testimony, Dan Bush briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

1. Bill Bowne questioned the need for prescriptive design criteria for effluent filter. Performance criteria would be sufficient.
2. Terry Bounds said that if prescriptive design criteria was omitted for effluent filters, performance documentation should be required.
3. Paul Kennedy, DEQ, Roseburg, said that he would be submitting comments regarding the addition of septage lime stabilization rules to the Division 71, on-site rules.

The following people handed in written comments but did not present oral testimony:

ATTACHMENT C (Springfield)

Memo To: Environmental Quality Commission
July 29, 1994
Presiding Officer's Report on
July 28, 1994 Rulemaking Hearing
Page 2

none

There was no further testimony and the hearing was closed at 4:45 pm.

Attachments:

Written Testimony Submitted for the Record.

NONE

ATTACHMENT C (Springfield)

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 8, 1994

To: Environmental Quality Commission
From: Charles K. Ashbaker
Subject: List of Those Submitting Written Comments Regarding the Modification of On-site Sewage Disposal Rules

1. Ron Meyer & Associates, Inc. - Disagrees with increase in diameter of risers to 24 inches. Disagrees with dimensions of distribution box. Leaching chambers should be included in the rules as an alternative to gravel.
2. John O'Neill - Disagrees with the requirement to have small holding tanks on WPCF permit.
3. James L. Rust, dba Hoedown Co. - General philosophical comments on rule changes and recent increase in fees. Not convinced that the new fee increases and new proposed requirements in the rule package are necessary. Will be a financial burden on home owner.
4. Linn County Board of Commissioners - Support rule changes. Against any privatization of the on-site program.
5. Shields Septic Tank Service - Adding risers to the septic tank will make them more difficult to pump. Testing of installers a good idea.
6. Clackamas County Department of Transportation & Development - Submitted very comprehensive comments on housekeeping and rule clarification. Do not recommend septic tank size to be increased to 1500 gallons for septic tanks serving more than 3 bedrooms. Should not bring ends of pressure distribution laterals to finished grade. Do not believe any sites should be approved without a site review. Questions the implementability of installer testing program. Questions the need for effluent filters in a septic tank. Questions the reduction in effluent sewer diameter from 3 inches to 2 inches. Are against privatization of the on-site program. Supports the appointment of a Technical Review Committee.
7. Ken Cote, Jackson County Department of Planning and Development - Disagrees with the privatization of the on-site program. Several comments were made on

ATTACHMENT D

housekeeping language for clarification. Technical Review Committee should be appointed by Commission, not Director. Likes the idea of Department having the flexibility to approve new materials and designs; however, he questions the legality of that. Pleased to see many of the proposed changes. Does not agree with larger septic tanks as written in proposed rules. Water testing of septic tanks on site not practical because of the lack of water at the time the systems are installed. Does not agree with the universal requirement for effluent filter without more testing.

8. Pre-Mix - Septic tanks should not be increased in size. Septic tank manufacturer should be included in the Technical Review Committee. Agree with testing of licensed installers. Disagree with the requirement of a riser for all tanks. The water tightness testing of all septic tanks on site is not practical because of the lack of water. Cost to bring water in would be from \$75 to \$100. The whole rule process should be put on hold for 90 days to give the manufacturers more time to study the implications of the rule changes.
9. Angelo's Backhoe Service - Testing should be of licensed installers only, not their employees. Suggest classes instead of testing. Experienced installers should be exempt from testing. Larger septic tanks will be much higher cost. Effluent filters not a good idea. They will likely be removed by homeowner. Drop boxes can be a detriment to the system.
10. Dick Florey, Jackson County - Privatization of most portions of the on-site program not a good idea. May have some merit in monitoring and regulating things such as holding tanks and sand filter tank pumpings.
11. Charles S. Henke, Jackson County Department of Transportation & Development - Submitted comprehensive comments for housekeeping and clarification. Testing of installers long overdue, but would be better to require course work at a community college. Do not agree with effluent filters for single family residences.
12. Thorsby & Bowne - Object to the prescriptive design criteria for the effluent filters as written. It would exclude some of the filters on the market. Should be a performance standard, not design standard.
13. Tom Sloan, Deschutes County Community Development Department - Submitted comments for clarification and housekeeping of rules. If graveless absorption option allows for smaller disposal area, a full sized repair area should be available.

14. Davison's Readymix - Since most on-site failures are due to lack of routine septic tank pumping, suggests mandatory pumping every 4 years. Questions the need for the larger tanks. Questions the need for water tightness test of tanks. Questions the use of effluent filters.
15. Morgan General Contracting - Suggest decision of rules be postponed until manufactures and installers can better evaluate the rule and give more input on the effect of them. Larger tanks, water tightness test, effluent filters, and risers will probably add an additional \$1000 to each installation with no demonstrated need. Existing systems are working fine.
16. Diana Godwin, Clearwater Ecological Systems Pacific, Inc. - Suggested language for creation of Technical Review Committee. Also suggested language to alleviate some of the legal questions regarding the Department approving design and construction standards outside of those defined in the rules.
17. Terry Bounds, ORENCO SYSTEMS, INC. - Submitted several changes for housekeeping and clarification.
18. Michael G. Ebeling, City of Portland, Bureau of Buildings - Fees need to be adjusted to reflect new on-site fees just adopted. Asked, if septic tanks require a water tightness test, who will perform the inspection. Suggested that if the contract agent is to do it, another fee would be required. Does not believe that effluent filters have been demonstrated to be effective. Expressed concern about their maintenance. Concerned about the graveless absorption systems. Expressed opposition to privatization of on-site program. Does not believe that private consultants are concerned about public health.
19. Oregon Coalition of Local Health Officials - Expressed concern about privatization of on-site program. If a pilot project is conducted, it should not relieve the local government of the responsibility to apply regulatory standards, develop conditions of approval, provide citizens with full access to the regulatory decision making process, address all legitimate issues and concerns, and balance interests.
20. Michael's Precast Concrete - Object to the larger septic tank for four bedroom home. Object to the requirement to have two risers for tanks more that 4 feet deep. The tank which they produce is only 6 feet in diameter and would not support two large risers. Suggested an inspection port as an alternative to the second riser.

21. William M. Ross, Washington County Department of Health & Human Services - Suggested several housekeeping changes. Suggested a two compartment tank instead of the effluent filter. Filter has high maintenance requirement. Technical Review Committee should have even split between the regulated and the regulators. Support the larger septic tank for four bedroom homes, in fact recommend it also be required for three bedroom homes. A minimum of two drain lines should be required. Silt trap should not be reduced to 12 inches in diameter. Too hard to clean. Recommend minimum of 24 inches with 30 inches preferred. Suggest that the \$2,500 surety bond be increased. It is not enough to even cover a standard system. Do not understand the WPCF process and have some concerns about implementing it at this time. Are against privatization of on-site regulation. A conflict of interest would develop. Lots are harder to evaluate now because the easy ones are built on. The risk is too great.
22. Diane E. Naglee, Heath Department of Jefferson County - Generally in support of the rule modifications, but suggested several housekeeping changes for clarification. Does not support the requirement for a holding tank to be on WPCF permit. Rule for testing of installers is too vague. Testing should not be required of employees. Jefferson County does not support the proposed privatization of site evaluations, system design review, or construction inspections.
23. Crane Pumps & Systems - The requirement that pumps and controls be removable without requiring power disconnect is a safety hazard and should be eliminated.
24. Association of Oregon Counties - Appreciate the efforts of those who have been involved in the rule modification process. Believe that it is the role of local government to be applying regulatory standards, developing conditions of approval, providing citizens with full access to the regulatory decision making process, addressing all legitimate issues and concerns, and balancing interests. the responsibility of local government includes ensuring the public health and safety of its citizenry. Any pilot project for privatization should be consistent with these responsibilities and should not reduce the role of local government.
25. Taylor Construction - Since the changes have an economic impact on the public, those who are present or past applicants for sewage permits should have been notified so they could have been heard. I need more time to study the rules.
26. Infiltrator Systems, Inc. - Commend the Department for updating the rules. Strongly support the use of a Technical Review Committee. Discussed their plastic chamber system and suggest the Department require proper engineering for graveless systems,

particularly in relation to footing design, otherwise failure may occur.

27. Vic Affolter, Tillamook County Department of Community Development - Discussed the pros and cons of the pilot project for privatization on the on-site sewage disposal program. He expressed several concerns with such a proposal.
28. Robin Davis, Jackson County Planning Department - Expressed opposition to the larger septic tanks for dwellings larger than 3 bedrooms, effluent filters, reduction in drainfield pipe to 3 inches, mandatory drop box, and use of bottomless sand filters in fractured rock or weakly cemented sands. Indicated that criteria should be established for identifying the location of temporary water table associated with seepage trenches in vertisols. Voices opposition to any privatization of on-site program.
29. Gary Artman, Curry County Department of Public Services - Supports the appointment of a standing Technical Review Committee. Against privatization of the on-site sewage disposal program.
30. Hollis Gunter, Yamhill County Department of Planning and Development - Substantially in agreement will most of the rule changes except water testing of each septic tank after installation and effluent filters. Also expressed concerns about the proposed pilot project for on-site program privatization.
31. Ron Smith, Benton County Environmental Health Division - Expressed concerns about implementation of the WPCF program. Questioned the privatization of the on-site sewage disposal program. Suggested that DEQ provide the cards for the installers who have passed the test. The agent could distribute them. Had other comments concerning interpretation of the rules.
32. Alex Mauck, Northwest EEE ZZZ Lay Drain Co. - Suggested some wording for inspecting and evaluating alternative systems. Provided comments of the Graveless Absorption Facility Option for sand filters. Suggested that the Department adopt drainfield sizing criteria from an equation developed by Kenneth Pankow.

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 9, 1994

To: Environmental Quality Commission

From: Charles K. Ashbaker

Subject: On-site Sewage Disposal Rule Modification - Department's Evaluation of Public Comments

The Department has received hundreds of rule housekeeping and clarifying comments from Department staff, Department Contract Agents, and others. All of these comments will be given due consideration. However, all of these comments will not be included in this evaluation report. Only those comments considered significant or those comments which would change the intent of the rule are considered in this report. In addition, many of the comments received ask questions or gave suggestions for improving the on-site program. While all of these comments will be considered and clarifications in the rules made where appropriate, they are too numerous to include within this evaluation

1. One person requested a provision to the rules to require the Department or Agent to notify the permittee prior to an inspection so that the home owner could be present.

Response: Although, normally, the permittee is notified prior to an inspection, there are times when a surprise inspection is prudent. No change is proposed in the rules.

2. Several persons commented on the proposal to require those licensed to perform on-site sewage disposal work pass a written exam prior to getting their license. Most were in support of the proposal but suggested that attendance at a training course provided by the Department or community college be an alternative to the examination.

Response: The rules have been changed to allow attendance at a Department authorized training course in lieu of the examination.

3. Many people commented on the increased size of the septic tank for larger than 3 bedroom homes. Some were in favor, but most were opposed.

Response: This requirement has been re-evaluated and removed from the rules. The rules now allow a 1,000 gallon tank up to and including 4 bedrooms. For homes larger than 4 bedrooms, a 1,500 gallon tank is required.

4. Many people commented on the requirement for septic tank effluent filters. Some were in favor of the filters, but most were opposed to them because of cost and maintenance. One was in favor of the filters but requested that the prescriptive design criteria be eliminated in order to allow the industry to develop filters which might vary in design but still meet the

ATTACHMENT E

necessary performance standards.

Response: After further evaluating the cost and maintenance liability to the owner, the Department has decided to require effluent filters for commercial facilities only. Effluent filters may be installed by single family residences, but will not be required. In addition, the prescriptive design criteria of 4 square feet of filter area has been removed.

5. There were several comments regarding the requirement to extend the septic tank manholes to the surface of the ground with a riser. Some were in favor of the risers because of the ease of getting access to the tank for pumping and filter maintenance. Others were opposed to the risers because of a potential hazard to children if left unlocked and the visual unsightliness of an exposed riser. One indicated that it would be harder to remove solids if a riser was installed. One company which builds plastic septic tanks requested the 24 inch diameter size limitation of the riser be retained at 18 inches in order to accommodate the manufacturers of plastic tanks who currently have 20 inch diameter risers.

Response: The rules have been changed to require a minimum diameter of the riser to be 20 inches, in order to accommodate certain septic tank designs.

6. One person suggested that all aerobic treatment systems be covered by a WPCF permit, instead of a construction/installation permit.

Response: The draft rules require all aerobic systems, except for those serving a single family residence to be covered by WPCF permit. Since there are few aerobic systems for single family residences and the environmental risk of failure if not properly maintained would be minimal, the requested change was not made. However, the rule was changed to clarify that all commercial systems, regardless of size, require a WPCF permit.

7. One person was opposed to the reducing the septic tank effluent pipe size from 3 inches to 2 inches when an effluent filter is used.

Response: With the installation of effluent filters, the Department felt justified in reducing the cost of the installation by reducing the size of the effluent pipe. No change is proposed. This is a significant cost savings if the disposal area is a great distance from the septic tank. It will also provide an incentive to install an effluent filter which has now been made optional for single family residences.

8. Several people commented on the requirement to have septic tanks tested for water tightness after installation. Some spoke in favor of the requirement and some spoke in opposition to it. Those who spoke in opposition to it stated that often, at the time the septic tank is installed, there is no water at the site. That would require water to be hauled in to

conduct the test.

Response: Because the integrity of the septic tank is essential for the successful operation of the system, the Department has retained this requirement in the rules. However, it is recognized that there are site conditions which might preclude this requirement. In these cases, the Agent may waive the test.

9. One person was opposed to reducing the disposal field pipe size to 3 inches.

Response: Since the need for a 4 inch pipe in the disposal trench has not been demonstrated, the Department feels that some cost savings could be provided the homeowner if 3 inch pipe is allowed.

10. Some expressed concerns that allowing bottomless sand filters in fractured rock or weakly cemented sands would cause failures.

Response: That portion of the rules have been clarified to indicate that permeability of the area must be demonstrated. Weakly cemented sands have been removed.

11. One person voiced opposition to the 8 inch minimum diameter of a drop box.

Response: This is an existing rule. No change has been proposed.

12. Two people expressed opposition to requiring a WPCF permit for holding tanks. Others have expressed their support of this requirement indicating that it is long overdue.

Response: Because of the existing problems associated with holding tanks and the lack of maintenance, the Department proposes to retain this WPCF Permit requirement for holding tanks. However, those holding tanks receiving flows of less than 200 gallons per day would be exempt from the WPCF Permit requirement.

13. Several people gave their support to the flexibility written in the rules to allow the Director or designee to establish material standards for new materials where they are not already established within the rules. However, they question the legality of that allowance.

Response: This issue has been explored with the Justice Department. Some changes in wording have been made pursuant to their recommendations.

14. One person suggested that ETA systems (evapotranspiration) be eliminated from the rules because of high failure rates in their county.

Response: Rather than eliminating them altogether, the rules limit them to single family residences.

15. Some questioned the use of graveless absorption systems as established in the rules.

Response: The graveless option has been retained in the rules; however, the proposal

for trenches on three (3) foot centers has been changed to ten (10) foot centers.

16. Some have questioned the change in sand filter design.

Response: The Technical Subcommittee of the Technical Advisory Committee spent considerable time and effort in updating the sand filter rules to correspond with the most up-to-date practice.

17. One person indicated that requiring the septic tank manufacturer to supply the dosing siphon, screen, etc., was too restrictive and interferes with private enterprise.

Response: The Department agrees. That requirement has been removed.

18. Some expressed that the rules should be phased in over a period of time and not become effective immediately.

Response: The Department has added a phase-in schedule to the rules. Portions will become effective immediately, some by April 1, 1995, and some by July 1, 1995.

19. One attorney who has been closely involved with the rule modification process suggested language to better define the duties of the Technical Review Committee.

Response: Much of the language proposed has been incorporated.

20. Some indicated that the fee schedule in the draft rules do not reflect the on-site fee schedule recently adopted by the Commission.

Response: The fee schedule in the rules has been changed to correspond with the new fee schedule adopted by the Commission.

21. One person indicated that requiring two manhole risers for tanks which are buried at least 4 feet deep would not work for the tanks which they manufacture, since they are cylindrical in shape with a diameter of only 6 feet 6 inches.

Response: The rule has been changed to provide that flexibility.

22. Some noticed that the diagrams had been omitted from the rules.

Response: The Department believes that diagrams are not appropriate in rules and so they have been removed. A narrative description has been added where necessary. Diagrams will be used by the Department in handout material and training material, but will not be used in the rules.

23. Some indicated that rodent proofing ground water interceptors were well worth the trouble and cost and wondered why that requirement had been removed.

Response: The committee determined that rodent proofing was unnecessary. However,

it may be required at the Agent's discretion.

24. One person indicated that by reducing the silt trap to 12 inches would make it difficult to clean and wondered why the size had been reduced.

Response: The committee determined that silt traps are seldom cleaned and a cost savings could be realized by reducing the size. The rule remains as drafted.

25. One person indicated that the \$2,500 bond required of licensees was too low since it would not even be enough to replace a standard system.

Response: Although the Department agrees, this is a statutory limitation and cannot be increased by rule.

26. Some commented on the change in the rules to eliminate the 125 feet maximum length of a disposal trench. One indicated the maximum should be retained. One indicated that at least two lines should be required.

Response: This matter was thoroughly discussed by the Technical Subcommittee of Technical Advisory Committee. It was determined that those requirements were unnecessary and the rule as modified provided some needed flexibility.

27. One pump manufacturer indicated that the requirement that pump wiring must be designed such that pump and controls can be removed without disconnection could provide a hazard from electric shock and should be changed.

Response: That change has been made in the rules.

28. Some have commented that the entire rule package has a significant economic impact with the larger septic tanks, risers, and effluent filters.

Response: The requirements for larger tanks and effluent filters for single family residences have been removed.

30. One person suggested that the Technical Review Committee be given more authority and that it's members be appointed by the Commission rather than Director.

Response: The Department does not believe this to be appropriate. No change was made to the proposed rule.

31. Some expressed concern about the ability to change over all of the facilities requiring WPCF Permit by the new rules within a 12 month period as proposed in the rules.

Response: the rule has been changed to require the WPCF operating permit at time of repair, alteration or expansion. Only the owners of existing holding tanks will be required to obtain a WPCF permit within one year.

32. There was concern raised by the Department of Justice concerning the use of the term "guidance" as it pertained to the rules as they applied to WPCF permits.

Response: The term "guidance" has been removed. The rules still allow some variations to established design criteria through the process of plan review.

33. Some did not want the authorization notice fee to apply toward an alteration of repair permit if, during the authorization notice investigation, it was determined that an alteration or repair permit was necessary.

Response: In most cases the Department or Agent should be able to determine which permit is required at the time of the application. No change to the language is proposed.

34. Some asked the Department to remove the requirement for a drop box or other monitoring unit on all gravity systems.

Response: Some language providing the Agent flexibility has been added.

35. The question was raised as to the use of a Homeowners' Association in the list of those entities who can operate and maintain community systems pursuant to 71-500.

Response: After conferring with the Department of Justice, Homeowners' Association was added, since recent statutes grant them equal authority to the Condominium Unit Owners.

36. A private company proposed a rule to utilize a disposal trench sizing technique different from what is currently in use.

Response: The sizing proposal, dated July 25, 1994, is quite long and detailed. There was no opportunity for review by the Technical Advisory Committee or by Department staff. The proposal was tabled for review by the Department and/or the Technical Review Committee at a later date.

37. A private company proposed a rule for a procedure whereby the Department may grant a permit to the applicant to install an unspecified number of unapproved alternative systems during a two year period.

Response: The Department does not agree. The proposed language is not included in the rule.

There have been numerous other minor changes made to the rules in response to comments from staff and the public. They have been made to clarify the rules and make them easier to read. A response to those comments has not been included in this report.

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August 9, 1994
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All comments received were regarding Divisions 71 or 73. There were no comments on the proposed changes in Divisions 14, 45, and 52.

ATTACHMENT E

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 14, 1994

To: Environmental Quality Commission
From: Charles K. Ashbaker
Subject: Changes to the Original Rule Package in Response to Public Comments

With the exception of hundreds of housekeeping changes, the following substantive changes have been made to the original rule package in response to public comments and staff input:

<u>Rule</u>	<u>Page</u>	<u>Change</u>
71-100(4)		Added "Aerobic System" definition.
71-100(8)		Added "Approved Material" definition.
71-100(9)		Added "Approved Criteria" definition.
71-100(10)		Added "ASTM" definition.
71-100(32)		Expanded the curtain drain definition.
71-100(55)		Added "Equal Distribution Method" definition.
71-100(65)		Added "General Permit" definition.
71-100(92)		Added "Operating Permit" definition.
71-100(104)		Added "Pretreatment" definition.
71-100(108)		Added "safety margin" concept for projected daily sewage flow.
71-100(112)		Added "Recirculating Gravel Filter System" definition.
71-100(154)		Added "Treatment" definition.
71-100(157)		Added "Vertisols" definition.
71-100		Other definitions that were placed in 71-100 were those already in the existing Division 71 but in other sections.
71-115(1)		Expanded on the purpose of the Technical Review Committee.
71-115(5)		Added staffing provisions for Technical Review Committee.
71-115(6)		Added effective date for this section.
71-120(4)		Added "pilot program utilizing private contractors" section.
71-130(1)		Added direction for Agent when exceeding minimum standards.
71-130(2)		Added wording that allows Director's approval of new technologies, material, and designs after review of Technical Review Committee and Department. This concept was throughout proposed rules that went to public hearing. This addition is an effort to condense the concept in one rule section. Other sections that contained similar language have had the language eliminated.

ATTACHMENT F

Memo To: Environmental Quality Commission

September 14, 1994

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- 71-130(15)(d) Changed language to require operating permits for sand filter systems serving commercial facilities.
- 71-130(15)(e) Requires operating permit for aerobic systems serving commercial facilities.
- 71-130(15)(g) Added section requiring an operating permit for all other non-discharge systems not specifically described in rule.
- 71-130(16) Eliminated proposed requirement for all recirculating gravel filters, aerobic systems, and sand filters to be placed on WPCF permit within 12 months of effective date of rules.
- 71-130(20)(b) Revised proposed language to clarify when the Department can vary from design criteria for WPCF systems.
- 71-130(24) Added language for determining groundwater levels.
- 71-162(9) Revised permit term from 10 years to 5 years.
- 71-162(10) (new) Added qualifications for persons constructing WPCF absorption facilities.
- 71-162(11) (new) Added requirement of certification of completed WPCF system prior to use.
- 71-162(17)(a) Revised exclusions from 165 (all) to 165(1).
- 71-162(17)(c) Deleted the exclusion from 73-050(6).
- 71-205(10) Revised 30 days to 45 days for requesting denial review.
- 71-210(2)(a)(B) Added flexibility for Agent to allow a reasonable installation even if setbacks from the septic tank cannot be met.
- 71-220(3) Reduced septic tank size to present rule requirements for single family dwellings up to 4 bedrooms. 1,500 gallons or more is required for homes larger than 4 bedrooms. Tanks for commercial facilities are sized at twice the flow, with a minimum size of 1,000 gallons.
- 71-220((3)(b)(C) Reduced the diameter of the riser to 20 inches from 24 inches. The soil cover depth requiring a riser of 30 inch diameter has been reduced to 36 inches from 48 inches, and only one riser (30 inch diameter) is required.
- 71-220(3)(b)(H) Deleted the requirement for an effluent filter on a septic tank for a single family residence.
- 71-220(4)(a)(C) Clarified the method for measuring the size of an equal distribution absorption facility.
- 71-220(5)(c) Added flexibility for Agent discretion to delete the requirement of a drop box or distribution box.

- 71-265(2)(f) Changed the depth for the soil cap required over equal distribution system from 16 inches to 10 inches.
- 71-265(3) Added Agent flexibility for waiving inspections.
- 71-270(2)(e)through(j) Added construction specifications to supplant diagrams that were formerly used.
- 71-275(1) Added flexibility for selection of system.
- 71-275(3) Deleted the exception for split waste systems on lots of record.
- 71-275(4)(b)(B) Added a requirement for tracer wire in trenches.
- 71-275(4)(b)(D) Added flexibility to construction standard for ends of pressure laterals.
- 71-275(4)(b)(I) Added flexibility for Agent due to climate conditions.
- 71-275(4)(b)(J) Added requirement for anti-siphon device when indicated.
- 71-290(1) Changed the criteria for sand filter operating permit. Sand filters, other than those serving single family dwellings with no more than residential waste strength wastewater, shall be authorized under a WPCF permit.
- 71-290(3)(a)(C) Deleted the 12 inch temporary water table rule for graveless method.
- 71-290(3)(d) Added criteria for approval in diggable soils.
- 71-290(5) Deleted approvals in weakly cemented sands.
- 71-290(7) Changed trenches to 10 foot centers for the "Graveless absorption facility method."
- 71-295(3)(e) Added Agent flexibility, and sieve analysis specifications.
- 71-295(3)(g)(A) Increased lateral spacing to 30 inches; required one orifice for each 6 square feet of sand surface area.
- 71-295(3)(i) Added Agent flexibility on textural class of sand filter cover, and removed the option of allowing a deeper cover over the sand filter.
- 71-295(4)(c) Renumbered to 71-295(5).
- 71-295(5)(d) Clarified language for placement of underdrain media.
- 71-300(2) As per 71-290(1), changed the criteria for requiring an operating permit for sand filters.
- 71-305(1) Changed as per 71-300(2) and 71-290(1).
- 71-305(1)(b) Adds requirements for a sand filter system owner to inspect and maintain the system.
- 71-305(3) Relocated this rule from Division 73.

- 71-325(1)(a) Deleted seasonal dwelling as a specific use to be connected to a gray water waste system.
- 71-325(1)(c) Added a rule allowing up to 4 sumps on the same property installed at the same time to be under one permit.
- 71-330(1) Deleted the requirement for a disposal company to comply with Table 8 setbacks when placing a portable toilet.
- 71-330(2) Deleted seasonal dwellings as a specific use for non-water carried waste disposal facilities.
- 71-345(1)(a) Changed to limit aerobic system construction permits to single family dwellings.
- 71-345(3) Deleted the proposed wording for review by the Technical Review Committee (TRC). This concept is covered in 71-130.
- 71-400(6)(a)(B) Changed maximum slope back to thirty (30) percent.
- 71-500(5) Added Homeowners Associations to the entities to be vested with operation and maintenance of community systems.
- 71-600(1), (2)(e), (3)(e) Added the option to attend a Department-approved training session in order to be licensed.
- 71-600(12)(f)&(g) Added requirements for septage management plans and for compliance with those plans.

Division 73

Note: Division 73 was revised such that 73-025 (formerly septic tanks only) now contains criteria for all tanks: septic, dosing, and dosing septic. Any redundant rules found in the sections dealing with the specific tanks were deleted. The section for septic tanks was renumbered to 73-026.

- 73-025(1)(b) Added the requirement for watertight risers.
- 73-025(3) Expanded and clarified watertight determination.
- 73-025(4) (new) Added a requirement for the tank manufacturer to supply bond/seal and instructions if others are installing.
- 73-025(5) Structural specifications were expanded. The burial depth to the top of the tank was returned to 3 feet.
- 73-025(6)(c) Expanded the inlet fitting language.

- 73-025(6)(d) Expanded the outlet fitting language.
73-025(6)(g) (new) Added a requirement for a means to monitor sludge accumulation.
- 73-025(8) Added a requirement for access ports and risers.
73-025(9)(c) Added to the certification language for cast-in-place tanks.
73-025(9)(d)&(e) (new) Added regulations for fiberglass tanks and for tanks made of other noncorrosive materials.
- 73-025(10) Added manufacture date to be stamped on tanks.
73-025(13) Added to requirements pertaining to tank instruction manuals.
- 73-026(2) (new rule section) Added a requirement for an effluent filter on the outlet of septic tanks proposed to serve commercial facilities. Proposal that went to hearing required effluent filter on all septic tanks.
- 73-030(2) Deleted as redundant. See 73-025. Subsequent sections were renumbered.
- 73-030(2)(b) (was renumbered from 73-030(3)) Added flexibility language.
73-030(2)(c) Changed to limit sand filter discharge to 10 percent of design flow.
- 73-030(2)(d) Deleted the language requiring removal without (electrical) disconnect.
- 73-030(2)(e) (new) Added requirement for installation manual.
73-030(2)(e),(f),(g) Deleted as redundant. See 73-025.
73-030(4),(5),(6) Deleted as redundant. See 73-025.
- 73-035(2) Added requirement for watertight connections on distribution boxes.
73-035(5) Entirely deleted.
- 73-040(2) Deleted the watertight requirement for drop boxes.
- 73-050(1),(2),(4),(7),(8) Deleted these sections as redundant. See 73-025.
73-050(6) Added requirement to extend inlet fitting to below the low operating level of the pump or siphon.
- 73-055(1) (new) Added design requirements.
73-055(2) Deleted the language requiring removal without (electrical) disconnect.
73-055(3) (new) Added requirement for durable, corrosion resistant components.
73-055(4) (renumbered from 73-055(1)) Added requirement to pass field

- test of components.
- 73-055(4)(f) Added language on storage capacity at time of alarm.
73-055(4)(h) Changed sludge storage to "adequate."
73-055(4)(i) Deleted agent option to waive duplex pump operation for large commercial systems. It is still a Department option.
73-055(5)(d) (new) Added requirement for cycle counter on dosing siphons.
- 73-056(9) Expanded the service requirement language.
73-056(11) Deleted.
- 73-065(2)(a) Changed venting language to be less prescriptive.
- 73-085(2)(d)(D)(viii)(I) Changed flood depth to one (1) foot. No leakage is allowed in a 24 hour period.
73-085(3) Relocated to sand filter operation and maintenance rules 71-305.

Divisions 14, 45, and 52

There were no changes from the originally proposed changes to these rules. Effective dates of April 1, 1995, were added to Divisions 14 and 45.

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July 19, 1994

Mr. Fred Hansen
Director
Oregon Department of
Environmental Quality
811 SW Sixth Avenue
Portland, OR 97201

Re: Proposed Revision to the On-Site
Sewage Disposal System Rules

Dear Fred:

As Chair of the On-Site Sewage Disposal Technical Advisory Committee I would like to share my thoughts with you on the draft rules recently released for public comment and to urge the Environmental Quality Commission ("EQC") to adopt the revised rules. As you know, I replaced Arno Denecke, as Chair of the Task Force following his recent death. The Task Force had already spent an enormous amount of time reviewing and revising the existing rules contained in OAR Chapter 340, Division 71 when I joined the group.

The Task Force members worked hard and effectively represented private industry, local agencies responsible for program implementation and DEQ field personnel. They all brought years of practical experience and technical expertise to the Committee's deliberations.

The existing on-site sewage disposal system rules are amazingly out-of-date. They are more detailed and complex than many of the rules on more controversial and technically challenging topics such as the voluntary cleanup program. This reflects, I believe, the difference between these rules and other rules adopted by the EQC. Specifically, these rules must be followed by countless homeowners and contractors throughout the state. In some respects they are more like building codes than environmental quality regulations. They demand the same level of specificity as building codes for the regulated

ATTACHMENT G

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PORTLAND,
OREGON

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BELLEVUE,
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IDAHO

SALT LAKE CITY,
UTAH

WASHINGTON,
DISTRICT OF COLUMBIA

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July 19, 1994
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community to use them effectively. Because of the specificity, however, technical innovation has been forbidden at a time when technologies for environmentally sound on-site sewage disposal are improving greatly. The Task Force had to address balancing the need for cookbook prescriptions with the need for flexibility in the face of rapid technical change.

The existing on-site sewage rules also fail to focus clearly on the environmental protection objectives they are designed to achieve. They were originally written for single family quite straightforward residential septic systems. As Oregon's population has grown, especially in areas outside urban growth boundaries, houses are now being built on sites where it is difficult to install traditional septic systems. These range from steep slopes to boggy areas and require new types of systems. In addition, many nonresidential facilities in rural areas must use on-site sewage systems. These facilities such as restaurants, mobile home parks, kennels and similar commercial establishments pose on-site sewage disposal problems not addressed by the existing on-site rules.

Conceptually there is no difference in the environmental protection standards that should be expected from holders of water pollution control facility permits (where Oregon requires applicants to meet an anti-degradation standard) and the environmental protection requirements for on-site sewage disposal systems. This meant that the Task Force had to reexamine the fundamental distinctions between the so-called standard residential on-site sewage treatment system and the higher volume or special waste facilities which are now covered by the program.

The Task Force decided to redraw the line between the basic systems, where cookbook technical prescriptions and one time permit issuance is appropriate, and the more complex systems where case by case permit review and ongoing compliance with operating permits should be required.

Finally, it became obvious when working with the rules that significant editing and consolidation was needed. As a result, the Task Force recommends consolidating portions of divisions 14, 15, 45 and 52, which regulate certain aspects of the on-site sewage disposal program, into Division 71 where they are easily accessible to the regulated community. This extensive rewrite of the rules is critical, in my opinion, in

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order to eliminate tremendous confusion and redundancy in the existing rules.

I strongly recommend adoption of the revised rules. Revision is needed not only to make the regulations more understandable, but most importantly to provide better oversight of large and complex systems which are likely to fail if not properly maintained. In addition, the new rules will provide important regulatory flexibility so that as new technology is developed for on-site sewage treatment, it can be utilized in Oregon.

The DEQ staff and especially Charles K. Ashbaker have done an extraordinary job in developing these rules. I would also like to thank all the members of the Task Force and citizens who actively participated in a 17 month effort to complete the rules. I regret that I will not be able to attend the EQC meeting when the rules are adopted; however, I hope you will share this letter with the EQC when they consider the final adoption of the proposed rules.

Sincerely yours,



Gail L. Achterman

GLA:bjc

bcc: Mr. Kent Ashbaker

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ATTACHMENT G

State of Oregon
Department of Environmental Quality

Memorandum

Date: August 22, 1994

To: Environmental Quality Commission
From: Charles K. Ashbaker
Subject: Plan for Implementing On-site Sewage Rule Revisions

This modification to the on-site sewage disposal rules is comprehensive and long overdue. Many changes are easy to understand and can be implemented easily without the need for training. However, some are more difficult to understand and will require some training on the Department's part. Shortly after adoption, the Department intends to provide training opportunities throughout the state. This could possibly also be used as the training required of septic system installers as discussed below.

The revised on-site sewage disposal rules require septic system installers to either pass an examination to show their understanding of the on-site rules or to attend a training course on the rules. This has to be accomplished prior to the licensing period which is July 1, 1995. The Department will need to work with the agents to provide a training opportunity or test prior to that time. The preference of the Department, the agents, and those installers who commented on the rules is for the training rather than the examination. However, it will probably be necessary to have an examination available for those who were unable to attend the training session.

Several new categories of on-site sewage disposal systems will require a WPCF operational permit. In order for the Department and contract agents to efficiently implement the rules, it is the Department's intent to issue a series of general permits to cover those categories requiring WPCF permits. That should be accomplished before the April 1, 1995, implementation date of the rules.

At the current time the Department contracts with several municipal entities to act as the Department's agents in implementing the on-site sewage disposal program. Each agent has a contract with the Department. It will be necessary to re-negotiate those contracts once the rules have been adopted. It is anticipated that the contract agents will also distribute the general permits for the Department and conduct most of the site evaluation and plan review functions associated with those permits. This may vary from agent to agent, depending on the staff they have available. The Department intends to have these contracts re-negotiated prior to the April 1, 1995, implementation date of the rules.

ATTACHMENT H

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August 22, 1994
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The rules provide for the appointment of a standing Technical Review Committee to work with and assist the Department in the use of new technology and other on-site issues. This rule becomes effective immediately upon filing with the Secretary of State. This will allow the Director to receive nominations and appoint a committee prior to the April 1, 1995, implementation date of the rules.

The rules modifications are intended to provide some added flexibility to the Department and its agents. It will take some time to establish the ground rules for this added flexibility. It will be necessary for the Department and contract agents to update handouts and other information for homeowners and installers to assist them in understanding the rules.

The reason April 1, 1995, was picked as the implementation date of most of the rules is because it gives the maximum amount of time prior to the next construction season.

ATTACHMENT H

Environmental Quality Commission

- Rule Adoption Item
 Action Item
 Information Item

Agenda Item H
October 21, 1994 Meeting

Title:

Adoption of Rules to Implement Oregon's Rigid Plastic Container Law

Summary:


The proposed rules for adoption include the following major topics:

- * A definition of "Rigid Plastic Container" which includes jars, bottles, cups, tubs, pails, trays with sidewalls, and "clamshell" containers but does not include tubes;
- * Clarification of statutory exemptions for: rigid plastic containers for drugs, medical devices, medical food and infant formula; containers shipped out of state; tamper resistant packaging; reduced containers; and containers for which a substantial investment has been made and progress is being made toward achieving the 25% recycling rate;
- * Standards for product and container manufacturer compliance, recordkeeping and reporting, including provisions for small point-of-sale product manufacturers;
- * Requirements for the determination of the rigid plastic container recycling rates, including an aggregate rate for compliance purposes, specific resin type rate for compliance purposes, calendar year aggregate recycling rate, calendar year specified type recycling rate, and product specific recycling rate;
- * Procedures for the protection of trade secrets; and
- * Provisions for enforcement of violations.

The proposed rules do not resolve all of the issues related to implementation of the rigid plastic container law. Several major affected parties do not agree with the proposed rules as they are written. Changes made to the rules subsequent to the public hearing have not satisfied some objections to specific issues related to the proposed rules.

Department Recommendation:

Adoption of the proposed rules as presented in Attachment A


Report Author


Division Administrator


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October 2, 1994

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State of Oregon
Department of Environmental Quality

Memorandum[†]

Date: October 4, 1994

To: Environmental Quality Commission
From: Fred Hansen, Director
Subject: Agenda Item H, October 21, 1994, EQC Meeting

Adoption of Rules to Implement Oregon's Rigid Plastic Container Law

Background

On July 14, 1994 the Director authorized the Waste Management and Cleanup Division to proceed to rulemaking hearings on proposed rules which would implement Oregon's Rigid Plastic Container Law by specifying how rigid plastic containers shall comply with new recycling requirements, beginning January 1, 1995.

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 sent to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action. The mailing was done on July 20 through July 22, 1994.

Public Hearings were held on September 1, 1994, at 10 a.m. in Portland, at 10 a.m. in Bend, and at 2 p.m. in Corvallis with Helen Lottridge, Gerry Preston and Charles Donaldson, respectively, serving as Presiding Officers. The Presiding Officers' Reports (Attachment C) summarize the oral testimony presented at the hearings.

Written comment was received through September 6, 1994. The list of comments received is included as Attachment D.

Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment F.

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

Issue this Proposed Rulemaking Action is Intended to Address

The 1991 Oregon Legislature passed the Rigid Plastic Container Law (the Law) as part of the Oregon Recycling Act (1991 Senate Bill 66). This was a comprehensive Act establishing statewide solid waste reduction goals and rates. It also established minimum content requirements for various commodities including minimum recycling, reuse, or recycled content requirements for rigid plastic containers.

The Rigid Plastic Container Law was subsequently amended by the 1993 Oregon Legislature, adding certain exemptions and specifying that records documenting compliance are to be submitted to the Department only upon request. Additionally, DEQ was directed not to take any enforcement action, audit or request copies of the records kept by a manufacturer until: (1) January 1, 1996; and (2) until DEQ has calculated rigid plastic container recycling rates for calendar year 1995. The requirements go into effect on January 1, 1995.

The proposed rules are intended to clarify the new requirements of the statute and to provide guidance to the regulated community on how to comply with the Law.

Relationship to Federal and Adjacent State Rules

1. **Federal.** The federal government is considering establishing national packaging standards as part of the Resource Conservation and Recovery Act reauthorization process. At this time, there are no federal packaging standards applying specifically to rigid plastic containers. However, federal regulations apply to packaging of various categories of consumer products, including the following:

Federal Food, Drug and Cosmetic Act. Food packaging is regulated as an indirect food additive under this Act. The Food and Drug Administration (FDA) must ensure that the products it regulates are wholesome, safe and effective.

FDA regulates food packaging through the food additive petition process. Manufacturers are required by law to obtain approval from FDA for all the materials used in direct-contact food packages before they can be marketed. The Code of Federal Regulations (CFR) contains all the specific requirements for food packaging materials. In the case of plastic polymers, these regulations do not currently address the source of the material. Thus the FDA does not currently approve or disapprove the use of recycled polymers or plastics for food. In the few cases where FDA has reviewed the use of recycled plastics for food use, the process has resulted in a letter of no objection. Such a letter is not binding, but rather an indication of current enforcement policy.

Cosmetic manufacturers also have a legal obligation to produce safe products (including ingredients and packaging) under this Act. This includes ensuring that contaminants do not migrate from the packaging to the product in a manner that will compromise the safety of the product. There is no "non-objection" or approval process in FDA for cosmetic packaging.

Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The pesticides covered under FIFRA are considered hazardous must be registered. Proposed federal rules would include some aspects of packaging in the regulation of the pesticides. Any modifications to the package would require an amended registration. The proposed regulation would specifically forbid pesticide container reuse. FIFRA labeling requirements specify that pesticide containers are to be disposed of as trash.

Hazardous Materials Transportation Act. Regulates the transportation of hazardous materials including herbicides, insecticides, fungicides and rodenticides. Performance specifications relate to stress, minimum thicknesses, ability to withstand pressure and impact, and extreme temperatures. Most general requirements place independent and additional obligations on the person offering a hazardous material for transportation to ensure that such packaging is compatible with its contents and that no significant chemical reactions between the materials and the contents of the package will occur. The federal Department of Transportation (US DOT) has adopted regulations (49 CFR 41) that prohibit use of post-consumer recycled content in certain packages.

United Nations Transport of Dangerous Goods Code (UN). Containers (e.g., plastic drums and jerricans) used in shipping hazardous materials are also regulated by UN for transportation and storage safety, if shipped out of the U.S.

U.S. Department of Agriculture (USDA). Regulations govern dairy, poultry and meat products. In contrast to FDA, USDA requires food packagers to submit letters of guarantee and limitations from the package manufacturer. The letter must state that the material in the package meets federal regulations and the conditions under which the package can be used.

In the sense that no federal regulations exist which specifically apply to rigid plastic containers (disregarding their contents), Oregon law is more stringent. However, the above federal regulations govern areas not covered by the Oregon Rigid Plastic Container Law, and in that sense Oregon law is less stringent. The issue of federal preemption of state law was raised in public comment. In particular, the FIFRA statute (Section 24(b)) speaks to the "Authority of States," and 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 Attorney General's Office has researched this issue and has provided the Department with written advise that FIFRA, the Food, Drug, and Cosmetic Act, and the federal Department of Transportation's (DOT's) regulations for hazardous materials do not preempt ORS 459A.655. A copy of the Attorney General's memorandum is attached to this staff report as Attachment J. See "Response to Comments", Attachment E, for further discussion of federal requirements.

2. Adjacent States. *Washington.* Washington does not have any packaging laws or standards for rigid plastic containers, therefore Oregon is more stringent. Through a combined effort with the Clean Washington Center, the state is working on promoting markets for recycled plastics.

Idaho. Idaho does not have any packaging laws or standards for rigid plastic containers, therefore Oregon is more stringent.

Nevada. Nevada does not have any packaging laws or standards for rigid plastic containers, therefore Oregon is more stringent.

California. In 1991, California's Legislature passed the Rigid Plastic Packaging Container Act, Senate Bill (SB) 235. The California law and regulations are similar to Oregon's law. But there are significant differences in several key

issues. See chart in "Summary of Significant Public Comment and Changes Proposed in Response," Item 11.

In general, Oregon law and the proposed rules are equivalent to the California regulations. However, Oregon law and regulations are more stringent than California law and regulations regarding several issues of considerable interest to the regulated community. These more stringent areas include exemptions, corporate averaging, source reduction, and point-of-sale product manufactures. On the other hand, the Oregon law is less stringent than California with regard recordkeeping and reporting and recycling rates.

Authority to Address the Issue

ORS 459A.025, ORS 459A.650 through 459A.685; ORS 468.020; ORS 459.995

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

The Department established three Task Forces to assist with rule development for the Rigid Plastic Container Law. The Task Forces, their charges and general membership are:

1. *Implementation Task Force.* Charge: to advise the Department on clarifying terms and definitions, and issues related to implementation of the Law; to help identify how containers will meet the compliance standards for recycled content, etc; and to consider recommendations in a Report to the 1995 Oregon Legislature on the status of plastic recycling programs and possible recommendations for statutory changes. Members: public interest groups, plastic container manufacturers, food processors, recyclers, regional government and members of the public.
2. *Certification, Auditing and Records (CAR) Task Force.* Charge: to advise the Department on requirements for recordkeeping, auditing and reporting for product and container manufacturers; identify the type of information available for reporting; identify information necessary to back up the container manufacturer's Certificate of Compliance; and identify other processes for record retention and auditing. Members: product

manufacturers using rigid plastic containers and manufacturers of rigid plastic containers.

3. *Recycling Rate Task Force.* Charge: to advise the Department in specifying the methodology for calculating the rigid plastic container recycling rate(s) for Oregon. Will reconvene in 1995 to review practical application of the methodology and assist the Department in determining the aggregate recycling rate. Members: representatives of the Oregon plastic recycling system, plastics processors, and interest groups.

The CAR Task Force and the Recycling Rate Task Force consisted of technical and industry specialists to give the Department technical advice on implementing specific parts of the Rigid Plastic Container Law. The Implementation Task Force was larger and had broader representation than the other two Task Forces, as its charge was to recommend overall implementation directions for the Law. There was a great deal of interaction among the Task Forces, including monthly liaison reports from members who served on more than one Task Force.

See Attachment G for a list of the Task Force members and their Chairs.

The Task Forces met approximately once a month from November 1993 through May 1994. The three Task Force Chairs met on June 15, 1994 to consider a final version of the draft rule being prepared to be sent out for public comment. The Implementation Task Force met again on September 14 after the public comment period had closed.

There was general agreement among all Task Force members on most areas of the proposed rule. However, consensus was not reached in every area; on some issues the Implementation Task Force recommended that the Department take alternative language to public hearing. Consequently, the Proposed Rule put forward for public comment contained two sets of alternatives, one set for the definition of "rigid plastic container," and another set for how to calculate whether a container qualifies for the "reduced container" exemption. These issues are discussed in the next section.

At its September 14, 1994 meeting the Implementation Task Force considered new issues raised in public testimony on the proposed rules. In general, Task Force members concurred with the Department's recommended changes to the rule in response to public comment. They noted the concerns of the foodservice industry, but pointed out that point-of-sale containers were one type of container that citizens wanted to have addressed.

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

Oregon's Rigid Plastic Container Law requires all qualifying rigid plastic containers sold in Oregon after January 1, 1995 to meet one of three compliance options, or meet one of five exemption criteria.

The compliance options are:

1. Recycling rate options.
 - a. **Aggregate rate.** There must be an aggregate recycling rate for all rigid plastic containers in Oregon of at least 25 percent.
 - b. **Specified type.** The recycling rate for a specified type of rigid plastic container (e.g., milk jugs; or a type of resin used to manufacture the container) must be at least 25 percent.
 - c. **Product-associated container.** The recycling rate for a product-associated container (e.g., all Brand X detergent bottles) must be at least 25 percent.
2. Recycled content option. The rigid plastic container must be made of a plastic which has 25 percent post-consumer recycled content.
3. Reuse option. The rigid plastic container must be reused or refilled.

Exemptions are:

1. **Medical packaging.** For drugs, medical devices, medical food or infant formula (permanent exemption).
2. **Export packaging.** The packages are shipped outside the state for sale to the final consumer (permanent exemption).
3. **Tamper-resistant parts.** The part of the package providing tamper-resistant seals for public health purposes (permanent exemption).

4. **Reduced container.** The weight of a new container is reduced by 10% as compared to the weight of the container five years earlier (five-year exemption).
5. **"Substantial investment".** All the following conditions must be met: a substantial investment has been made in achieving the 25% rigid plastic container recycling rate; there are viable markets for the material collected; the recycling rate is at least 20% and increasing; and reasonable projections show the material will meet the recycling goal within two years (two year exemption).

The statute does not provide for other exemptions, nor does it give authority to the Commission to grant waivers or extensions.

The intent of the proposed rules taken to public hearing was to clarify the statute and to provide guidance to the regulated community to comply with the Law. The rulemaking proposal presented for public hearing covered the following areas:

1. Policy/Purpose. Sets policy for implementation of the Rigid Plastic Container Law.
2. Definitions. Adds or clarifies definitions necessary for implementation. Clarifies that point-of-sale product packagers (e.g., take-out delis, foodservice industry) using rigid plastic containers qualify as "product manufacturers" and as such are subject to the Law.
3. "Rigid plastic container" definition. Separate rule specifying criteria which must be met for a container to qualify as a "rigid plastic container." Alternatives A and B were put forward for public comment. This definition has implications for all aspects of implementation of the Law, but has special importance in two areas: (1) which containers must comply with the Law; and (2) which containers are to be counted in calculating the rigid plastic container recycling rate. The rulemaking proposal established certain criteria that **any** package would have to meet to qualify as a "rigid plastic container;" a package failing to meet any one of the criteria would not be regulated under the Law. Those criteria are:
 - a. It is designed to hold a product for sale;

- b. It has a volume of not less than eight ounces and not more than five gallons;
- c. It is composed predominantly of plastic resin; and
- d. It is able to maintain its shape, whether empty or full, under normal usage, independent of any product which it contains or other external support.

The above criteria prescribe, in general, the characteristics a package must have to qualify as a "rigid plastic container." However, the Task Forces felt further refinement was needed to clarify whether some other items would be regulated or not. Consensus was not reached in the Task Forces on what the additional criteria should be, and two Alternatives were put forward for public comment. A major issue was whether a rigid plastic container also had to be a "complete package" (i.e. completely contain the product) in order to be regulated under this Law. Alternative A (supported by a majority of the Implementation Task Force) does not require that a rigid plastic container be a "complete package." Alternative B (supported by industry) does require a "complete package." The main differences between the two Alternative definitions are as follows:

	Alt. A	Alt. B
1. Complete package?	Not necessarily. If they meet the other criteria, cookie trays sold inside a paper bag would be regulated, as would domed lids.	Yes. Must be "designed to completely contain a product, under normal usage, without other packaging material except a lid or closure"
2. How is volume determined?	Use of "hierarchy:" By liquid volume stated on the label; or if none, the measured liquid volume of the container.	Manufacturer chooses: either labeled liquid volume, or measured liquid volume.

	Alt. A	Alt. B
3. Rigid plastic tubes?	Regulated if meet other criteria.	Regulated if meet other criteria, but excludes tubes "which can be easily hand folded, flexed, and twisted without damage to the container."
4. Trays with sidewalls?	Regulated if meet other criteria and sidewalls are designed to contain a product in the tray. Would include meat trays.	Regulated if meet other criteria and sidewalls contain a product in the tray "without the use of packaging other than a lid or closure." Excludes meat trays.

4. Exemptions. Clarifies and adds detail to statutory language establishing the five exemptions to the Law.

- a. **"Reduced Container" Exemption.** One of the exemption options is to use a "reduced container" which weighs ten percent less than a container used five years earlier. As a result of the Implementation Task Force's recommendation, the rulemaking proposal presented for public hearing had two Alternatives for calculating the "reduced container" exemption. The statute reads:

A package [container] shall qualify as reduced when the ratio of package weight per unit of product has been reduced by at least 10 percent when compared with the packaging used for the same product by the same packager five years earlier...Exemptions under this paragraph shall be limited to five years, shall not be renewable and shall not be applicable to packages for which the ratio of package weight per unit of product increased after January 1, 1990. (ORS 459A.660(5)(d))

The issue was whether and how products introduced into commerce less than five years previously (and which therefore used no packaging "five years earlier") might qualify for this exemption.

The legislative intent of the exemption was interpreted differently by various Task Force members. Some felt the Legislature had not meant to exclude newly introduced products from taking advantage of the exemption. They argued that it would be a hardship to disallow use of the exemption by new products: it would discourage innovation, and be unfair to those who wanted to comply by using reduced containers for products that had not been on the market for five years. Food processors were especially interested in having this option since they are generally precluded by federal Food and Drug Administration (FDA) regulations from using other compliance options. Other Task Force members felt the exemption was meant to be one-time for products in existence on January 1, 1995.

The Attorney General advised the Department that the timing of the exemption under the statute is not entirely clear; however, the statutory provision is specific that a reduced container must be compared to a container used for the same product by the same packager five years earlier.

The original rulemaking proposal (OAR 340-90-340(5)) included two Alternatives: Alternative A, which followed the Attorney General's advice and requires comparison with a container in existence five years previously; and Alternative B, which would allow the exemption for products not in existence for a full five years. Alternative B would allow comparison with the original container first used by the manufacturer for that product, even if that container had been sold for less than five years. Alternative B was the Implementation Task Force's recommendation prior to advice from the Attorney General.

- b. **"Substantial Investment" Exemption.** Specifies that the effective date of the "substantial investment" exemption is January 1, 1995, and that it is a one-time exemption lasting two years.

5. Compliance Standards. Adds detail to the statutory compliance options, as follows:

- a. **"Recycled content" option** requires that the 25% recycled content be of plastic "recycled material," excluding materials commonly reused within an original manufacturing process.

- b. **"Reuse" option** requires that a rigid plastic container must be used or refilled at least five times.
6. Calculation of rigid plastic container recycling rates. Establishes a formula and standards for calculating the recycling rates, including what "counts" as recycling.
- a. **Rate Methodology.** Establishes that the Department would calculate an aggregate rigid plastic container recycling rate based on its waste composition study and on an annual census of plastics recyclers. Only post-consumer rigid plastic containers would count towards the recycling rate. Requires that the Department publish reports on the methodologies used for the calculations.
 - b. **Pyrolysis.** Specifies that outputs from plastics processing which are fuel products or energy recovery do not count as "recycling" in calculating the recycling rate; only outputs which are recycled into new products count as recycling. This incorporates advice from the Oregon Attorney General's Office (AG) on how any rigid plastic containers undergoing pyrolysis should be factored into the recycling rate.

Pyrolysis involves the heating of plastic material to produce liquid hydrocarbons, carbon black and gas that is used as the energy source for the pyrolysis process. The liquid hydrocarbons can be sold to refineries and petrochemical facilities for conversion into a variety of materials including fuel and monomers for plastic products. The question arose of whether the pyrolysis of rigid plastic containers could count toward the plastics recycling rate. The AG advised the Department that energy recovery is not "recycling," and the Department cannot give recycling credit for energy recovery. However, to the extent that the end product of pyrolysis is not energy recovery but is further processed into plastic feedstock, it could contribute to the recycling rate. The rulemaking proposal incorporated that provision, and was supported by most Implementation Task Force members.

However, representatives of the American Plastics Council (APC) strongly disagreed. The APC argues that pyrolysis constitutes recycling because it creates a new product (liquid hydrocarbons).

The APC filed a request in Marion County for summary judgment that pyrolysis qualifies as "recycling" to prevent the Department from preparing a rule excluding any "energy recovery" products of plastics pyrolysis from the recycling rate. The case was dismissed, with the Marion County Circuit Court ruling that it should not interfere in the Department's administrative process. Once the rules are adopted, the APC may challenge those rules in the Court of Appeals.

This issue has been brought to the Commission's attention before, when petitions containing approximately 26,000 signatures were presented the Department this past spring by OSPIRG. These petitions stated that under Oregon state policy, burning ("energy recovery") is not recycling; and urged the Department to reaffirm that burning by-products of pyrolysis is not recycling.

7. Recordkeeping and Reporting. Sets requirements for documentation to be kept by product and container manufacturers to show compliance with the various options, or exemption from the Law. Records must be submitted to DEQ upon request.
8. Confidential Information. Specifies that records submitted to DEQ to document compliance may be kept confidential if they qualify as "trade secrets" and confidential treatment is requested by the manufacturer.
9. Violations. Spells out actions which violate the Law, and categorizes them as Class II or III violations. The proposed enforcement schedule reduces the impact on small business by establishing a threshold of daily sales of rigid plastic containers (500) to determine whether a violation would be a Class II or a Class III violation. Class III violations are considered less severe, have lower civil penalties and in most cases do not result in a civil penalty. For larger businesses, violations would be Class II and subject to higher civil penalties. False certification of compliance by any container or product manufacturer, however, is a Class II violation. A Class III violation is established for persons who fail to meet resin labeling requirements for rigid plastic containers (ORS 459A.685).

Summary of Significant Public Comment and Changes Proposed in Response

The level of interest in implementation of Oregon's Rigid Plastic Container Law is very high, with 25 persons presenting oral comments and 117 written comments received by the Department. The public is interested in increasing opportunities for recycling plastic. The industry is interested in complying with the Law in ways that will not cause unreasonable economic hardship, loss of competitiveness or removal of products from the Oregon market.

The following were areas which received significant comment, together with the Department's responses. The same numbering system is used as in the "Summary of Rulemaking Proposal" above for ease of reference. Several broad areas of concern not specifically addressed in the rulemaking proposal also received significant comment: implementation date/retroactive enforcement; consistency between Oregon and California regulations; how point-of-sale product manufacturers can comply with the Law; and corporate averaging. Comments on these issues are discussed after the comments relating to the nine areas listed in the "Summary of Rulemaking Proposal." See Attachment E, Evaluation of Public Comments, for a complete summary of all comments received during the comment period and the Department's responses to them.

1. Policy/Purpose. (340-90-310) No significant comments received.
2. Definitions. (340-90-320)
 - a. Definition of "product manufacturer." A number of persons commented that retailers, and especially point-of-sale product manufacturers, should not be included in the definition of "product manufacturer." There are inherent difficulties in such retailers being able to determine whether the containers they use comply with the Law. These are small businesses, and documentation of compliance would be extremely burdensome for them.

PROPOSED CHANGE IN RULE: The Department is not proposing to change the definition. The Department and the Attorney General interpret the statute that point-of-sale product packagers are covered by the Law, and that legislative intent was to include single-service containers. However, the Department is proposing changes in recordkeeping to ease compliance for small businesses (using fewer than 500 rigid plastic containers daily). See Department's response to Item 12 below, Point-of-Sale Product Manufacturers.

3. Definition of "Rigid Plastic Container." (340-90-330)

- a. **Alternative A:** in support. Members of the recycling community and the general public preferred Alternative A, which includes a broader range of rigid plastic containers. This will help keep these items out of landfills. They felt there was no reason why a container must completely contain a product. They also commented that adoption of this Alternative would simplify the waste composition study, as the surveyors would not have to worry about exemptions. The one exception was the "flexible tube" issue. In general, persons in favor of Alternative A supported the language in Alternative B excluding tubes which could be easily bent.

Determination of volume. Advocates of Alternative A said that its procedure to determine volume (using labeled fluid measurement where present) would be the least complicated approach for the waste composition study.

- b. **Alternative B:** in support. Members of the plastics industry and the regulated communities preferred Alternative B, with its concept that the product must be contained in a "complete package" to be covered by the Law. They felt it eliminated ambiguity, in that it excludes items not normally considered containers in and of themselves (e.g., cookie trays which "brace" or support a product, but require additional packaging to be "contained"). They pointed out that a tube which can be flexed is not "rigid" and should not be included; in addition, tubes cannot be adequately cleaned for recycling.

Determination of volume. Advocates of Alternative B noted that labeled measurement is not necessarily the most accurate test for volume (it can vary depending on product density). Manufacturers should have the flexibility to choose either labeled volume or volumetric capacity. Moreover, this would conform to California regulations, ensuring that the same universe of rigid plastic containers is regulated in both states.

- c. **Additional issues.**

Multiple reclosure. Several persons commented that the definition should require a container to be capable of multiple reclosure, as this is an important distinguishing attribute of rigid plastic

containers. It would provide concrete guidance for determining which containers are regulated. It is part of the California definition.

"Storage." A few persons commented that a container should have to normally store a product for at least seven days in order to be regulated (as in California). This would eliminate point-of-sale packagers.

PROPOSED ALTERNATIVE/CHANGE IN RULE: The Department proposes that an amended "Alternative A" be adopted, but with the following changes from the rulemaking proposal presented for public hearing:

Tubes: All tubes would be excluded. All reference to tubes is deleted from the definition of "rigid plastic container." Most tubes are more or less flexible. The Department believes that the confusion created by allowing some "rigid" tubes to be potentially included under the regulation overbalances any benefit from their inclusion.

Determination of volume: (340-90-330(1)(b)) The Department agrees that manufacturers should have the flexibility to choose between using labeled volume and volumetric measurement to determine the volume of a rigid plastic container. This will facilitate a manufacturer's ability for their containers to conform to the Oregon and the California laws. The Implementation Task Force at its September 14, 1994 meeting also supported this approach. The Department does have some concern about this resulting in an identical size container being deemed "regulated" by one manufacturer, but "unregulated" by another. The Department also believes that legislative intent was for five-gallon containers to be covered, and consequently is adding language to that effect to the proposed rule: containers having a labeled liquid volume of five gallons or less but a measured container liquid volume of more than five gallons **must** use the labeled volume. (The Department's waste composition protocol will continue to specify that the labeled volume of a container be used to determine the volume, if present; otherwise, the measured container volume will be used.)

The comments on the two Alternatives were very similar to those put forward and discussed in the Task Force meetings. A majority of the Implementation Task Force supported Alternative A. The Department does not believe that the notion of a "complete container" is necessarily inherent in the law. Alternative A (excluding tubes) also better conforms to the public's perception of a "rigid plastic container." The Department agrees that Alternative A encourages recycling and will facilitate waste sort decisions. Elements of the California definition of "rigid plastic container" are narrower than Oregon's. The Department does not feel that ease in implementation by using a narrow definition justifies the degree of interpretation necessary to achieve it.

4. Exemptions. (OAR 340-90-340)

a. "Reduced Container" Exemption (Calculation) (340-90-340-(5)).

Support of Alternative A. A reduced container is one that has been reduced by 10% over the same container used for the same product five years earlier. Alternative A requires a that there be a comparison with a container in existence five year previously in order to determine whether a 10% reduction has been made. It make no provisions for new containers or containers which have not been on the market for at least five years. Members of the recycling community and the general public preferred Alternative A and did not feel that special provisions were needed for new containers. They remarked that manufacturers already have incentives to reduce containers as much as possible; no further regulatory incentive is needed. Some proponents of Alternative A also commented that container size reduction was not the best solution to the plastic container issue. They felt that the problem with plastic containers is not that they are too heavy, it is that they are not being sufficiently recycled or using recycled content. The Department should not be encouraging container reduction options over recycling or recycled content options.

Support of Alternative B. Members of the plastics industry and the regulated community either preferred Alternative B (allowing the 10% reduction comparison to be made with the original container first used by the manufacturer for that product, even if the container had been sold less than five years), or neither alternative. They

noted that Alternative A precludes products introduced less than five years before the effective date of the Law from using this exemption. Food and cosmetics manufacturers said they particularly need this exemption since their other compliance options are extremely limited or lacking. It would offer incentives for packaging innovations. Alternative B supports source reduction, which follows the State's solid waste management hierarchy. Others pointed out that even Alternative B does not allow for newly introduced products with no predecessor containers. Some allowance should be made for new packages, either by using California language (allowing comparison with comparable packages at the time of introduction) or by a limited-duration waiver for new products and packaging.

PROPOSED ALTERNATIVE: The Department proposes adoption of Alternative A as submitted for public comment. The Attorney General has advised the Department that the statute clearly requires a five-year comparison to calculate whether a package has been "reduced." The issue of compliance by newly introduced containers will be included in the Department's Report to the 1995 Legislature as an issue to be considered.

- b. **"Substantial Investment" Exemption (340-90-340(6)).** See Attachment E, Comment 14; and discussion below of Implementation Date/Retroactive Enforcement.
- c. **Additional Issues.**

FIFRA Exemption. Many industry representatives testified that products required to be registered under FIFRA should be exempted from regulation under the Oregon Law -- and indeed that Congress has preempted state regulation of packaging of these products. They quoted the section of FIFRA which says that states "shall not impose or continue in effect any requirements for labeling or packing in addition to or different from those required" under FIFRA. They noted the federal regulations placed barriers on their compliance with the various options allowed under the Oregon Law. They would be restricted in their efforts to use recycled content, establish recycling programs for these containers, or to reuse the containers.

Exemptions for Cosmetic and Food Products. Many industry representatives presented similar arguments for cosmetic and food products, namely that they are subject to federal FDA and USDA packaging requirements making compliance difficult or impossible, and thus should be exempted from the Oregon Law. Disallowing a broadening of the "reduced container" exemption and corporate averaging worsens the situation for these products, and adds to the argument for an exemption.

US DOT/UN Exemption. Similar arguments were presented by industry representatives for exemption of hazardous materials subject to regulation by US DOT or UN. These regulations disallow most use of recycled content, and preclude use of other compliance options. DOT regulations preempt state regulation of hazardous material shipments.

Other Exemptions. Various other exemptions were proposed, such as an exemption for products which because of "special circumstances" could not meet any of the Oregon compliance options.

NO CHANGE PROPOSED FROM RULE PRESENTED FOR PUBLIC HEARING. The Environmental Quality Commission does not have expressed authority to grant general exemptions from the provisions of the Law. The proposed rule does not provide any exemptions except those specified in ORS 459A.660(5). The Attorney General has advised the Department that the issue of federal preemption (especially under FIFRA, which specifies the language cited above concerning state regulation of packaging of FIFRA-registered products) is not entirely clear. The Oregon Law does not specify use of any particular kind of packaging, but rather establishes a set of compliance criteria, any one of which may be met. Since that is the case, the Department recommends that the rule not include any language acknowledging that there may be federal preemption. The Department understands that these containers should not be collected in general recycling programs, but believes that keeping them subject to regulation under the Law may encourage special recycling programs such as the one for pesticide containers operated by the Oregon Agricultural Chemicals & Fertilizer Association. The issue of whether federally regulated packaging should be exempted from Oregon Law will be included in the Department's report to the 1995 Legislature.

5. Compliance Standards. (OAR 340-90-350 through -370)

A few comments were received on Compliance Standards. Some housekeeping changes are being proposed to respond to several of these (see Attachment E, Comments 16 through 18).

6. Calculation of Rigid Plastic Container Recycling Rates. (OAR 340-90-390)

a. Rate Methodology.

A. Post-consumer plastic. Members of the public and the recycling community supported using only post-consumer plastic containers to calculate the rigid plastic container recycling rate rather than also including manufacturing or industrial scrap plastic. The use of "Post-consumer" to identify the material which will be counted toward the recycling rate is necessary to place the emphasis on the actual recycling of rigid plastic containers which are presently being used and often disposed of by the public and not industrial or manufacturing scrap which is already commonly recycled.

Several members of the regulated community noted that the statute makes no mention of "post-consumer rigid plastic containers," and recommended that term not be used in the rule. This would allow recycling rate credit for more preconsumer plastic which is already being recycled.

NO CHANGE PROPOSED FROM RULE PRESENTED FOR PUBLIC HEARING. The intent of this legislation was to provide the opportunity for the public to recycle plastic and to purchase plastic items made with recycled content.

B. Other comments on rate methodology. Several other comments were received on the rate methodology. These include a concern that plastics recycling data provided voluntarily by plastic recyclers might not be accurate; that there should be more opportunities for the public to comment on or challenge the recycling rate calculated by DEQ; and that DEQ's report should include the potential error associated with estimating the total tons of solid waste disposed of in Oregon.

PROPOSED CHANGE IN RULE. DEQ already has the authority to take action against a recycler if "voluntary" data collection proves problematic. There is no provision for public comment on the aggregate recycling rate methodology or the rate itself. However, the Department will continue working with a task force through the calculation of the 1994 aggregate recycling rate. The rule requires the Department to publish a report on the findings of the recycler census, and a report with the calculated recycling rate including the methodologies used. A provision for discussion of the potential error in estimating waste disposal has been added to the proposed rule.

C. Pyrolysis. Members of the public and the recycling community supported exclusion from the recycling rate of fuel or energy products from pyrolysis. Several members of the regulated community commented that pyrolysis creates a "new product" under the statutory definition of "recycling," keeping plastics out of the wastestream, and felt all pyrolysis products should be included in calculating the recycling rate.

NO CHANGE PROPOSED FROM RULE PRESENTED FOR PUBLIC HEARING. The advice the Department has received from the Attorney General's office is that, under Oregon law, pyrolysis of plastics is not recycling to the extent that the end product of that process is a form of energy. The rule allows outputs from pyrolysis which are recycled into new products not used for energy recovery to be included in calculating the recycling rate.

7. Recordkeeping and Reporting. (OAR 340-90-400 and -410)

Several comments were received from the regulated community, and minor changes have been made in response (see Attachment E, Comments 23 and 24).

8. Confidential Information. (OAR 340-90-420) No significant comments received.

9. Violations and Penalty Structure. (OAR 340-90-430 and 340-12-065) No significant comments received.

10. Implementation Date/Retroactive Enforcement.

The effective date of the Law is January 1, 1995. However the 1993 Legislature directed that the Department may not take any enforcement action until after January 1, 1996 and until the Department calculates the rigid plastic container recycling rate for calendar year 1995. The Director of the Department issued a directive on August 26, 1994, stating that any enforcement actions taken by the Department shall be based solely upon a manufacturer's compliance status beginning January 1, 1996.

Many product manufacturers noted that their ability to comply using recycled content, etc., is severely constrained by federal regulations to which their product packaging is subject, leaving the 25% aggregate recycling rate as their only valid compliance option. Many commenters pointed out a discrepancy between the effective date (or implementation date) of the Law, January 1, 1995, and the date by which the Department will calculate an aggregate rigid plastic container recycling rate for calendar year 1995 (in mid-1996). The regulation requires the product manufacturer to act, on January 1, 1995, as if the rate had been determined. If the rate is not met, the manufacturer may be subject to retroactive enforcement actions for being out of compliance. The dislocation is not only true for 1995, but persists for the duration of the Law, if compliance for one year is based on the recycling rate for that calendar year. Logistics of calculating the rate will require a time period of several months after the end of the year (completing a census of plastics recyclers to submit to the Department the amount of plastics recycled), to collect and compile data, etc. There would be no avoiding a retroactively applied recycling rate, and retroactive enforcement. One commenter noted that "this does not comport with the plain language of the statute."

The statute requires a rigid plastic container to comply with the Law on January 1, 1995. One way to comply is through the aggregate recycling rate: if "rigid plastic containers, in the aggregate, are being recycled in the state at a rate of 25 percent by January 1, 1995." (ORS 459A.655(2)(a)) One commenter suggested that this language envisions fixing a date for calculating a recycling rate in order to allow manufacturers to prospectively determine their compliance with the Law. Implementation of the regulation should be stayed until the Department has calculated the recycling rates so that affected parties can know whether the packaging they are using is in compliance.

The Department has considered the public comments concerning implementation dates, compliance dates and enforcement. The Department believes that a close reading of the statute supports the interpretation that the determination of the recycling rate should be made before manufacturers are required to place into their records their demonstration of compliance. The Department also agrees that requiring manufacturers to choose a compliance method without knowing the recycling rate is not appropriate.

PROPOSED CHANGES IN RULE. In response, the Department is proposing the following:

- a. The Department will determine a "recycling rate for compliance purposes" by January 1, 1995. This determination will be based on best available information concerning rigid plastic container recycling in the aggregate and by specified resin type. A product manufacturer may rely on this rate to comply with the Law, until the Department determines a new "recycling rate for compliance purposes."
- b. If the "recycling rate for compliance purposes" is at least 20% but less than 25%, the Department will use best available information to determine if the statutory criteria have been met for the "substantial investment" exemption for the aggregate or specified resin type recycling rate.
- c. As soon as feasible in 1996, the "aggregate recycling and specified resin type rates for calendar year 1995" will be calculated, pursuant to OAR 340-90-380 and -390. These recycling rates will not be used for compliance, but rather as a partial basis for determining the coming year's "recycling rate for compliance purposes."

The above approach will allow manufacturers to know beforehand if the aggregate or specified resin type recycling rate can be used for compliance purposes after January 1, 1995. The Department believes this is the most fair way to implement the rigid plastic container Law.

11. Consistency between Oregon and California Regulations. Several members of the regulated community commented that the Oregon regulations should be consistent with other states' regulations, and especially those of

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California. They noted that the proposed Oregon regulations differ from California's on several key issues. They also commented that conflicting laws in various states are very burdensome to industries with national distribution; consistency is crucial for interstate commerce. Differences could result in the withdrawal of products in Oregon.

Specific differences mentioned include:

	California	Oregon
Def. "rigid plastic container":	No tubes	No tubes (change from rulemaking proposal)
	No lids, closures	Lids (e.g., domed) if otherwise meet criteria
	Capable of multiple reclosure (excludes trays)	No requirement for multiple reclosure
"Point-of-sale" packagers:	No. Package must store a product for 7 days to be regulated	Yes. Regulated.
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
10% "reduced container" exemption	Compare with product's container 5 yrs ago	Compare with product's container 5 yrs ago
	Or, if new product, compare with similar product whose container is not source-reduced	(New product can't use exemption; must have container 5 yrs ago with which to compare)
	Permanent exemption	Five-year exemption
New products	1-year compliance waiver	Must comply at introduction

	California	Oregon
Corporate averaging	Mfr can average across product lines & compliance options to comply	Law does not provide for averaging
Recordkeeping	Keep records 2 years	Keep records 3 years

PROPOSED CHANGES IN RULE. Although the California and Oregon laws have similarities, the two laws differ in specific detail. Those differences lead to major differences in administrative rules. The California law allows for provisions such as one-year waivers, permanent exemption for reduced containers, exclusion of containers not storing the product for more than seven days, and corporate averaging. These provisions are lacking in the Oregon Law, so those suggested changes have not been incorporated into the proposed rule. Task Force members supported having Oregon requirements be consistent with California's whenever possible to facilitate compliance for product manufacturers selling in both states. Statutory differences between the two states' laws do not always permit consistency. Where legally possible and where they do not result in a weakening of the intent of the Oregon Law, the Department has sought consistency with the California rules. As a result of public comment, the Department is changing two provisions of the definition of "rigid plastic container" for greater consistency with California's (see Item 3, Definition of "Rigid Plastic Container" above).

12. Point-of-sale Product Manufacturers. The foodservice, grocery, and plastics industries submitted extensive comments on the difficulty or impossibility of compliance with the Law by point-of-sale packagers (foodservice industry, take-out foods, etc.). They noted that there are inherent differences between the generic containers normally used by the foodservice industry and other regulated rigid plastic containers. The former are generally purchased from distributors, so there is usually no relationship between the packager and the container manufacturer. Therefore recordkeeping to document compliance becomes impossible. Some commented that the Legislature had not intended to cover point-of-sale packagers as "product manufacturers;" they do not "fabricate" anything, as implied by the term "manufacture." The Department needs to examine the obstacles to compliance for point-of-sale packagers; they should be exempt.

PROPOSED CHANGES IN RULE. The Department recognizes that small point-of-sale packagers may have few resources to implement the Law, and that recordkeeping provisions may be burdensome. The enforcement schedule in the rulemaking proposal presented for public hearing made some allowance for small manufacturers. This reduces the impact on small businesses by establishing a threshold of daily sales of rigid plastic containers (500) to determine whether a violation would be a Class II or a Class III violation. Class III violations are considered less severe, have lower civil penalties and in most cases do not result in a civil penalty.

The Department further proposes to reduce recordkeeping requirements for these small product manufacturers. The proposed rule specifies that a product manufacturer selling fewer than 500 rigid plastic containers per day is not required to keep records of container compliance beyond quantity, brand name, product number, and source of purchase (340-90-400(7)).

13. Corporate Averaging. Corporate averaging would allow a firm to average across product lines (and perhaps across compliance options) to achieve compliance. It was most often mentioned in conjunction with the recycled content compliance option. Corporate averaging would allow a manufacturer to use more than 25 percent recycled content in containers where that was possible, in order to "average out" for those containers (e.g. food, cosmetics) which cannot use recycled content.

Comments were received from the general public, the recycling community, and some manufacturers in opposition to corporate averaging. They noted that corporate averaging tends to give large manufacturers with many product lines an unfair advantage over smaller manufacturers who may have only food lines and therefore could not take advantage of averaging. Doubt was expressed as to whether corporate averaging would produce better markets for post-consumer recycled plastics in Oregon.

Many industry representatives commented that corporate averaging was essential for them to comply. They said it provides maximum flexibility for a manufacturer to use whatever compliance method achieves the greatest gains at least risk and cost. Several companies noted that they can't use other compliance options, but do have the capability of using more than 25 percent recycled content in certain containers. They said that

this would encourage the use of post-consumer resins. Some commented that corporate averaging should be allowed at both the product manufacturer and container manufacturer level.

NO CHANGE PROPOSED FROM RULE PRESENTED FOR PUBLIC HEARING. Corporate averaging was discussed by the three Task Forces. The Task Forces did not come to agreement on a recommendation to include corporate averaging. The national and local manufacturers have strong, opposing, feelings on this issue. The Oregon Law does not specify "averaging" as a method of calculating compliance; neither does it specifically preclude the EQC from allowing corporate averaging to calculate compliance.

The Department has not found an application of corporate averaging which would ensure equity for both large national and small local manufacturers. Therefore no change is recommended from the earlier proposed rule, which made no provision for corporate averaging.

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

1. Regulated community:
 - o On January 1, 1995 product manufacturers must comply with the Law. They will have to begin keeping records beginning March 1, 1995 to document compliance. Container manufacturers will have to supply Certificates of Compliance upon request of the product manufacturer.
2. Department:
 - o Inform the regulated community about the requirements of the Law through press releases and contacts with trade associations. (Beginning after rule adoption, November 1994)
 - o Continue administering its FY 94-95 waste composition study, including special activities to gain additional data concerning disposal amounts of rigid plastic containers. (May 1994 through June 1995)

- o Determine a "recycling rate for compliance purposes" for rigid plastic containers by January 1, 1995. (Beginning immediately after rule adoption.)
- o If the "recycling rate for compliance purposes" is between 20% and 25%, use best available information to determine if the statutory criteria for the "substantial investment" exemption for the aggregate recycling rate have been met.
- o Prepare a Report to the 1995 Legislature on the status of plastic recycling programs and possible recommendations for statutory changes, after consultation with the Implementation Task Force. (By January 1, 1995)
- o Develop and administer a recycling census of rigid plastic container brokers and processors. (Annually, beginning in early 1995)
- o Calculate an aggregate recycling rate for rigid plastic containers for calendar year 1995. (By mid-1996)

Recommendation for Commission Action

It is recommended that the Commission adopt the rules and rule amendments regarding implementation of Oregon's Rigid Plastic Container Law as presented in Attachment A of the Department Staff Report.

Attachments

- A. Rule and Rule Amendments Proposed for Adoption
- B. Supporting Procedural Documentation:
 - 1. Legal Notice of Hearing
 - 2. Public Notice of Hearing (Chance to Comment)
 - 3. Rulemaking Statements (Statement of Need)
 - 4. Fiscal and Economic Impact Statement
 - 5. Land Use Evaluation Statement
- C. Presiding Officers' Reports on Public Hearing
- D. List of Written and Oral Comments Received
- E. Department's Evaluation of Public Comment

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- F. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
- G. Task Forces Membership and Summary of Recommendations
- H. Rule Implementation Plan
- I. ORS 459A.650 through 459A.685, Rigid Plastics Container Law
- J. Attorney General's Memorandum regarding federal preemption

Reference Documents (available upon request)

Written Comments Received (listed in Attachment D)
California Administrative Rules, Rigid Plastic Packaging Container Law

Approved:

Section:

E Pat Vernon (mp)

Division:

Mary Wahl

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: September 20, 1994

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ATTACHMENT - A

Rules Proposed for Adoption

The following new language is added to OAR 340 Division 90

OAR 340-90-310 PURPOSE

- (1) The following administrative rules, OAR 340-90-320 through 430, are intended to establish the minimum requirements for the implementation of the Oregon Rigid Plastic Container Recycling Law, ORS 459A.650 through 680. The Commission's purposes in adopting these rules are to:
- (a) Reduce the amount of rigid plastic containers being disposed of in Oregon;
 - (b) Increase the reuse or recycling of rigid plastic containers that would otherwise be disposed of;
 - (c) Increase the use of recycled material in the manufacture of rigid plastic containers.

OAR 340-90-320 DEFINITIONS

As used in OAR 340-90-310 through 430 unless otherwise specified:

- (1) "Container manufacturer" means the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon. A "container manufacturer" is the same as a "package manufacturer" as defined in ORS 459A.650(2).
- (2) "Container Manufacturer's Certificate of Compliance" means the certificate provided by the container manufacturer to a product manufacturer which describes the records which the container manufacturer has available to document that a rigid plastic container or containers are in compliance with OAR 340-90-350 (1)(a), (1)(b)(A), or (1)(b)(B).
- (3) "Container/product ratio" means the ratio of the weight of a rigid plastic container to the units of product in the container.
- (4) "Department" means the Department of Environmental Quality.
- (5) "Drug" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, including the following:
- (a) Articles recognized in the official *United States Pharmacopoeia*, official *Homeopathic Pharmacopoeia of the United States*, or official *National Formulary*, or any supplement to any of them; and

- 1 (b) Articles intended for use in the diagnosis, cure, mitigation, treatment,
2 or prevention of disease in man or other animals; and
3
4 (c) Articles (other than food) intended to affect the structure or any
5 function of the body of man or other animals; and
6
7 (d) Articles intended for use as a component of any article specified in
8 clauses (a), (b), or (c) of this section.
9

10 Drugs include nonprescription or over-the-counter drugs regulated pursuant
11 to the federal Food, Drug and Cosmetic Act (21 U.S.C. 321)
12

13 (6) "FDA" means federal Food and Drug Administration.
14

15 (7) "FD&C Act" means federal Food, Drug and Cosmetic Act (21 U.S.C. 321).
16

17 (8) "Infant formula" has the meaning given by the federal Food, Drug and
18 Cosmetic Act (21 U.S.C. 321(f)), and is food which purports to be for
19 special dietary use solely as food for infants because it simulates human milk
20 or is suitable as a complete or partial substitute for human milk.
21

22 (9) "Medical device" means an instrument, apparatus, implement, machine,
23 contrivance, implant, in vitro reagent, or other similar or related article,
24 including a component, part or accessory, which is:
25

26 (a) Recognized in the *National Formulary, United States Pharmacopoeia*,
27 or any supplement thereto, and intended:
28

29 (A) For use in the diagnosis, cure, mitigation, treatment, or
30 prevention of disease in man or other animals; or
31

32 (B) To affect the structure or any function of the body of man or
33 other animals which does not achieve its primary intended
34 purpose through chemical action within or on the body of man
35 or other animals; and is
36

37 (b) Not dependent upon being metabolized for the achievement of any of
38 its principal intended purposes.
39

40 (10) "Medical food" has the meaning given by the federal Food, Drug, and
41 Cosmetic Act (21 U.S.C. 321) and pertinent regulations and includes the
42 following:
43

44 (a) A product formulated to be consumed or administered internally under
45 the supervision of a physician; and
46

47 (b) A product intended for specific dietary management of a disease or
48 condition for which distinctive nutritional requirements, based on

1 recognized scientific principles, are established by medical evaluation.

2
3 For purposes of these rules, medical food is food that is consumed or
4 directly placed in the stomach or intestine through a tube, or other food
5 which is used to manage a disease or medical condition, or food labeled
6 "may be used as the sole source of nutrition" or "may be used as the sole
7 item of the diet". Food for which popular dietary claims are made, such as
8 "low fat" or "low sodium," is not medical food.

9
10 (11) "Post-consumer rigid plastic container" means a rigid plastic container that
11 would otherwise be destined for solid waste disposal, having completed its
12 intended end-use and product lifecycle. Rigid plastic containers which held
13 obsolete or unsold products shall be considered post-consumer rigid plastic
14 containers when used as a feedstock for new products other than fuel or
15 energy.

16
17 (12) "Product-associated container" means a brand-specific rigid plastic container
18 line, which may have one or more sizes, shapes or designs and which is
19 used in conjunction with a particular, generic product line. A "product-
20 associated container" is the same as a "product-associated package" as
21 defined in ORS 459A.650(3).

22
23 (13) "Product manufacturer" means the producer or generator of a packaged
24 product that is offered for sale in Oregon in a rigid plastic container.

25
26 (a) For purposes of these rules "product manufacturer" includes all
27 subsidiaries and affiliates.

28
29 (b) Identification of the product manufacturer, for purposes of these rules,
30 shall be determined by the following hierarchy:

31
32 (A) When the name of the entity that manufactured the product
33 held by the container is stated on the container label, then that
34 entity shall be considered the product manufacturer;

35
36 (B) When the container label does not state the entity that
37 manufactured the product held by the container, but the
38 container label does state the distributor of the container, then
39 the distributor shall be considered the product manufacturer;

40
41 (C) When the container label does not state either the entity that
42 manufactured the product held by the container or the
43 distributor of the container, but the container label states the
44 importer of the container, then the importer shall be considered
45 the product manufacturer;

46
47 (D) When the container does not have a label or the label does not
48 state the entity that manufactured the product held by the

1 container, or the distributor of the container, or the importer of
2 the container, or the container is filled at the point of sale and
3 no other manufacturer distributor or importer is identified on the
4 label, then the store that sells the product held by the container
5 shall be considered the product manufacturer.
6

7 (14) "Product manufacturer's Report of Compliance" means the report provided
8 by a product manufacturer to the Department which documents compliance
9 of a rigid plastic container or containers with requirements of OAR 340-90-
10 350 or exemption from those requirements as set out in OAR 340-90-330.
11

12 (15) "Recycled content" means that portion of a package's weight that is
13 composed of recycled material, as determined by a material balance
14 approach that calculates total recycled material input as a percentage of total
15 material input in the manufacture of the package.
16

17 (16) "Recycled in Oregon" means generated in Oregon as plastic from post-
18 consumer rigid plastic containers and collected, processed and eventually
19 manufactured into another product, other than fuel or energy, either in
20 Oregon or outside the state.
21

22 (17) "Recycled material" means a material that would otherwise be destined for
23 solid waste disposal, having completed its intended end use or product life
24 cycle. Recycled material does not include materials and by-products
25 generated from, and commonly reused within, an original manufacturing and
26 fabrication process.
27

28 (18) "Recycling rate" means the level, stated as a percentage, at which post-
29 consumer rigid plastic containers are recycled in Oregon. The rigid plastic
30 container recycling rate is determined by dividing the weight of plastic from
31 post-consumer rigid plastic containers recycled in Oregon by the combined
32 weight of plastic from both post-consumer rigid plastic containers recycled
33 and those disposed of in Oregon.
34

35 (19) "Reduced package" means a rigid plastic container which has a
36 container/product ratio which is at least ten percent less than the
37 container/product ratio for the same product by the same product
38 manufacturer five years earlier, as provided in OAR 340-90-330(5).
39

40 (20) "Replacement product" means a product which is used to refill a rigid plastic
41 container. Replacement product must be the same as or similar to the
42 original product in the container.
43

44 (21) "Reused container" means either a refillable or reusable container which is
45 refilled by the product manufacturer or reused by the consumer and is used
46 at least five times with the same or a similar product.
47

1 OAR 340-90-330 RIGID PLASTIC CONTAINERS

2
3 (1) A rigid plastic container is a plastic bottle, jar, cup, tub, pail, "clamshell"
4 container, or other plastic container which meets the following criteria:

5
6 (a) Is designed to hold a product for sale;

7
8 (b) Has a volume of not less than eight fluid ounces and not more than
9 five gallons. The volume of the container shall be determined using
10 one of the following methods:

11
12 (A) For a container which is labeled in liquid measure, the labeled
13 volume; or

14
15 (B) The measured liquid volume of the container; and

16
17 (C) For containers which have a labeled product liquid volume of
18 five gallons or less and a measured container liquid volume of
19 more than five gallons the labeled product volume shall used.

20
21 (c) Is composed predominantly of plastic resin;

22
23 (d) Is able to maintain its shape, whether empty or full, under normal
24 usage, independent of any product which it contains or other external
25 support.

26
27 (2) The following containers are also rigid plastic containers if they meet the
28 criteria set forth in Section (1) of this rule:

29
30 (a) Plastic boxes, baskets, crates, and flower pots which are sold
31 containing a product;

32
33 (b) Plastic trays which have sidewalls designed to contain a product in the
34 tray.

35
36 (3) The determination of whether a container meets the definition of rigid plastic
37 container shall be based solely upon the characteristics of the plastic
38 container itself at the time of determination and not upon any material used
39 as packaging for a rigid plastic container or for packaging of individual
40 products within a rigid plastic container.

41
42 (4) Lids and caps are not considered to be part of a rigid plastic container except
43 when they meet one of the following criteria:

44
45 (a) Are designed to be permanently attached to a rigid plastic container;
46 or

47
3 (b) Independently meet the criteria set forth in Section (1) of this rule.

1 (5) The following packaging items shall not be considered part of a rigid plastic
2 container:

3
4 (a) Labels;

5
6 (b) Those parts of the whole package or of the rigid plastic container for
7 which the principal purpose is to provide a tamper resistant seal. This
8 does not include portions of a rigid plastic container which have a
9 principal purpose other than providing a tamper resistant seal; and,

10
11 (c) A bag, film, or flexible inner or outer wrap which is used to cover or
12 contain a product or a rigid plastic container.
13
14

15 OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

16
17 (1) Rigid plastic containers which meet one of the sets of criteria in sections (2)
18 through (6) of this rule are exempt from the requirements of OAR 340-90-
19 350 through -370.
20

21 (2) The product in the rigid plastic container is one of the following:

22
23 (a) A "drug" as defined in OAR 340-90-320(5);

24
25 (b) A "medical device" as defined in OAR 340-90-320(9);

26
27 (c) "Medical food" as defined in OAR 340-90-320(10); or,

28
29 (d) "Infant formula" as defined in OAR 340-90-320(8).
30

31 (3) The rigid plastic container and product are shipped out of Oregon before they
32 are sold to the final consumer.
33

34 (4) The packaging is necessary to provide a tamper-resistant seal for public
35 health purposes.

36
37 (a) For the purposes of OAR 340-90-310 through 430, packaging which
38 provides a tamper-resistant seal is one of the following:

39
40 (A) A separate device associated with a rigid plastic container
41 which resists tampering with the product in the container or
42 exposes when an attempt to tamper with a product has
43 occurred, such devices include but are not limited to tape, film,
44 foil, and tamper-resistant caps and lids; or

45
46 (B) A portion of a rigid plastic package which is designed to work
47 with a device described in paragraph (A) of this section or
48 which independently resists tampering with the product in the

1 container or exposes when an attempt to tamper with a product
2 has occurred.

3
4 (b) A complete rigid plastic container shall not be considered "necessary
5 to provide a tamper-resistant seal" and shall not be exempt under the
6 provisions of this rule.

7
8 (5) The container is a reduced container.

9
10 (a) A container is a reduced container when the container/product ratio
11 has been reduced by at least ten percent when compared with the
12 container used for the same product by the same product
13 manufacturer five years earlier.

14
15 (A) For a container which has been changed to a reduced container
16 after January 1, 1990 and before January 1, 1995:

17
18 (i) Comparison shall be made to the container/product ratio
19 of the equivalent container sold five years earlier;

20
21 (ii) The exemption shall start on January 1, 1995; and shall
22 run until January 1, 2000.

23
24 (B) For a container which has been changed to a reduced container
25 on or after January 1, 1995:

26
27 (i) Comparison shall be made to the container/product ratio
28 of the equivalent container sold five years earlier;

29
30 (ii) The exemption shall start on the date the reduced
31 container was first used by the product manufacturer and
32 shall run for five years.

33
34 (b) A reduction in container/product ratio may not be achieved by
35 substituting plastic for a different material for a substantial part of the
36 container.

37
38 (A) Different material means a material other than plastic, including
39 but not limited to glass, metal, wood, or paper.

40
41 (B) Use of different plastic resins or combinations of plastic resins
42 is not use of a different material.

43
44 (c) For the purposes of calculating the container/product ratio, a unit of
45 product is one of the following:

46
47 (A) A unit of weight of product;

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- (B) A unit of volume of product; or
- (C) A unit of product use.
 - (i) To qualify as a "unit of product," a "unit of product use" must be clearly stated on the container or in other product use instructions.
 - (ii) Some examples of units of product use include the number of "standard applications", "servings", or other generally accepted units of product use.
- (d) A reduced container is not exempt from OAR 340-90-350 through -370 if the Department finds that changes made in the original container adversely impact the potential for the container to be recycled or to contain recycled content.
- (e) A reduced container is not exempt from OAR 340-90-350 through -370 if the container/product ratio for the original container was increased after January 1, 1990.
- (f) For purposes of receiving an exemption under this section, a concentrated form of a product shall be considered to be the "same product by the same product manufacturer" if it:
 - (A) Has the same product line name; and
 - (B) Is intended for the same use.
- (6) (a) There has been a substantial investment in achieving the recycling rate. To meet the "substantial investment" exemption, all of the following provisions must be met:
 - (A) A substantial investment has been made in achieving the recycling rate;
 - (B) There is a demonstrated viable market for the material from which the container is made;
 - (C) The relevant recycling rate for calendar year 1995 is at least 20%;
 - (D) The recycling rates for the rigid plastic containers for the previous two years show evidence of increasing; and
 - (E) Reasonable projections indicate that the rigid plastic containers will meet the 25 percent recycling rate by January 1, 1997.

- 1 (b) The exemption provided under the provisions of ORS 459A.660(5)(e)
2 shall be a one time exemption with an effective date of January 1,
3 1995 to December 31, 1996.
4
5 (c) The Department shall, before January 1, 1995, determine if the
6 conditions for the "substantial investment exemption" for rigid plastic
7 containers, in the aggregate, have been met.
8
9

10 **OAR 340-90-350 COMPLIANCE STANDARDS**

- 11
12 (1) Except as provided in OAR 340-90-340, by January 1, 1995 any rigid plastic
13 container sold, offered for sale, or used in association with the sale or offer
14 for sale of products in Oregon shall comply with one of the following:
15
16 (a) Have at least 25 percent recycled content;
17
18 (b) Be made of plastic that is being recycled in Oregon at a rate of at least
19 25 percent by meeting one of the following criteria:
20
21 (A) It is a rigid plastic container and rigid plastic containers, in the
22 aggregate, are being recycled in Oregon at a rate of at least 25
23 percent by January 1, 1995;
24
25 (B) It is a specified type of rigid plastic container and that specified
26 type of rigid plastic container, in the aggregate, is being
27 recycled in Oregon at a rate of at least 25 percent by January
28 1, 1995; or
29
30 (C) It is a product-associated container and that class of containers,
31 in the aggregate, is being recycled in Oregon at a rate of at
32 least 25 percent by January 1, 1995.
33
34 (c) Be used at least five times for the same or a substantially similar use.
35
36 (2) Individual rigid plastic containers sold in Oregon after January 1, 1995 but
37 manufactured by a container manufacturer or filled by a product
38 manufacturer prior to January 1, 1995 are not required to meet the
39 compliance standards listed above. A product manufacturer must be able to
40 document that the containers were filled prior to January 1, 1995.
41
42

43 **OAR 340-90-360 RECYCLED CONTENT COMPLIANCE**

- 44
45 (1) A rigid plastic container shall have at least 25 percent recycled content by
46 January 1, 1995 to comply with OAR 340-90-350(1)(a).
47
48 (2) (a) A container manufacturer shall determine the recycled content of an

1 individual rigid plastic container as being the same as the calculated
2 recycled content for all the same type of rigid plastic containers
3 manufactured during the same time period, within a one year period,
4 as determined by the container manufacturer, with the same input
5 ratio of recycled material to total plastic.
6

- 7 (b) The recycled content of a rigid plastic container is calculated by
8 dividing the weight of recycled material used in the production of the
9 container by the total weight of plastic material used to produce the
10 container. The result of that calculation is a percentage, which is the
11 recycled content.
12

13 Note: Stated as a formula this is:

$$\frac{\text{Recycled Material}}{\text{Total Plastic Material}} \times 100 = \text{Recycled Content}$$

14
15
16
17
18
19 **OAR 340-90-370 RECYCLING RATE COMPLIANCE**
20

21 A rigid plastic container may comply with OAR 340-90-350(1)(b) by meeting one
22 of the following criteria:
23

- 24 (1) The aggregate recycling rate for compliance purposes in Oregon for all rigid
25 plastic containers, as calculated pursuant to OAR 340-90-380(2), is at least
26 25 percent.
- 27
28 (2) It is a specified type of rigid plastic container and the recycling rate in
29 Oregon for that type of container, in the aggregate, is at least 25 percent.
30
- 31 (a) A manufacturer using this recycling rate option may designate the
32 type of rigid plastic containers on which the recycling rate will be
33 based. This becomes the specified-type. A specified-type may be
34 designated using any one or combination of the following
35 characteristics:
36
- 37 (A) Type of plastic resin used to manufacture the container, for
38 example HDPE, natural HDPE, colored HDPE, PETE, PVC;
39
- 40 (B) Shape and design of the container, for example all bottles, all
41 tubs, all gallon jugs, all buckets;
42
- 43 (C) Use of the container, for example milk bottles, non-milk dairy
44 containers, household chemical containers, or other generic
45 product lines;
46
- 47 (D) Other specified characteristics of the container.
48

- 1 (b) The characteristics used to identify a specified type of rigid plastic
2 container shall not exclude or limit it to an individual product-
3 associated container.
4
5 (3) (a) It is a product-associated rigid plastic container and the recycling rate
6 in Oregon for that type of container, in the aggregate, is at least 25
7 percent.
8
9 (b) A product manufacturer using this recycling rate option may designate
10 the product-associated rigid plastic container on which the recycling
11 rate will be based. This becomes the product-associated rigid plastic
12 container. A product-associated rigid plastic container may be
13 designated by the following single or combination of characteristics
14 but must be limited to a specific brand and generic product line:
15
16 (A) The brand of product in the container (Example: all Brand X
17 products or all Brand Y products);
18
19 (B) The brand and type of product in the container (Example: Brand
20 X dish soap or Brand Y cooking oil);
21
22 (C) The brand and type of container (Example: all Brand X gallon
23 jugs, or all Brand Y jars);
24
25 (D) The brand and resin type of the container (Example: all Brand X
26 PETE containers, or all Brand Y HDPE containers);
27
28 (E) Other specific characteristics or combination of characteristics
29 which are brand specific.
30
31 (4) A manufacturer choosing the options described in sections (2) or (3) of this
32 rule may rely upon disposal or recycling data generated by the Department,
33 where available. Manufacturers using other data to calculate a recycling rate
34 must be able to document that such data were generated by a methodology
35 acceptable to the Department and are verifiable.
36
37

38 OAR 340-90-380 RECYCLING RATE CALCULATION

- 39
40 (1) The recycling rate for rigid plastic containers shall be calculated as one of
41 the following:
42
43 (a) Aggregate or specified resin type recycling rate for compliance
44 purposes;
45
46 (b) Calendar year aggregate recycling rate;
47
3 (c) Specified type rate, or;

- 1 (d) Product-associated rate.
2
3 (2) Recycling rate for compliance purposes.
4
5 (a) Aggregate recycling rate for compliance purposes.
6
7 (A) The Department shall determine a recycling rate for rigid plastic
8 containers, in the aggregate, for compliance purposes by
9 January 1, 1995 and each year there after.
10
11 (B) The aggregate recycling rate for compliance purposes shall be
12 based in part on the most recent calendar year recycling rate
13 and in part on other information which reflects or indicates the
14 level of rigid plastic container recycling. When determining the
15 recycling rate for compliance purposes for years prior to the
16 calculation of the calendar year recycling rate, the Department
17 will use the best available recycling rate information in lieu of a
18 calendar year recycling rate.
19
20 (b) Specified resin type recycling rate for compliance purposes
21
22 (A) The Department shall determine a specified resin type recycling
23 rate for compliance purposes for rigid plastic containers made
24 from each of the plastic resin types identified in ORS 459A.680
25 by January 1, 1995 and each year there after.
26
27 (B) The specified resin type recycling rate for compliance purposes
28 shall be based in part on the most recent calendar year
29 recycling rate and in part on other information which reflects or
30 indicates the level of rigid plastic container recycling. When
31 determining the recycling rate for compliance purposes for years
32 prior to the calculation of the calendar year recycling rate, the
33 Department will use the best available recycling rate information
34 in lieu of a calendar year recycling rate.
35
36 (3) Calendar year aggregate recycling rate.
37
38 (a) The calendar year aggregate recycling rate for rigid plastic containers
39 shall be calculated by the Department and includes all rigid plastic
40 containers including those exempted by OAR 340-90-340 (2), (4), (5)
41 and (6) from meeting compliance standards.
42
43 (b) The calendar year recycling rate for rigid plastic containers in the
44 aggregate shall be determined as a percentage by dividing the
45 aggregate numerator by the aggregate denominator. The numbers in
46 both the numerator and denominator of this calculation shall be
47 collected and/or adjusted to represent the same calendar year.

1 (c) The elements of the formula to calculate the calendar year aggregate
2 recycling rate for post-consumer rigid plastic containers in Oregon are:

3
4 (A) The aggregate numerator, expressed in tons.

5
6 (i) The numerator shall be calculated as the total weight of
7 post-consumer rigid plastic containers recycled in Oregon.

8
9 (ii) In addition to the Department's census of material
10 recovery rates, the Department may use as the basis for
11 determining the total weight of post-consumer rigid
12 plastic containers recycled in Oregon an annual recycling
13 census of all parties directly involved in brokering,
14 processing, or recycling post-consumer rigid plastic
15 containers from Oregon. Monthly forms may be provided
16 by the Department for record keeping purposes only.
17 Census respondents will be asked to calculate and
18 submit:

19
20 (I) The total amount of post-consumer rigid plastic
21 received from Oregon sources which is rigid plastic
22 containers as defined in OAR 340-90-330;

23
24 (II) The percentage of (I) that is lost due to removal of
25 contaminated, non-plastic, and non-recyclable
26 material; and

27
28 (III) Any other information the Department may require
29 to accurately determine the recycling tonnages.

30
31 (iii) Procedures to conduct the census shall be designed and
32 implemented relating to:

33
34 (I) Developing and maintaining a comprehensive list of
35 handlers and reclaimers;

36
37 (II) Obtaining data from handlers and reclaimers,
38 including the use of monthly and annual record
39 keeping and reporting forms;

40
41 (III) Reconciling variances in reported data;

42
43 (IV) Maintaining quality control in data collection and
44 analysis; and

45
46 (V) Adjusting data to produce estimates of the amount
47 of plastic from post-consumer rigid plastic
48 containers by controlling for contamination,

1 including moisture, organic matter and other non-
2 plastic materials.

3
4 (iv) The Department shall publish a report on the findings of
5 the census, methodologies used and information
6 regarding potential errors.

7
8 (B) The aggregate denominator, expressed in tons.

9
10 (i) The denominator shall be calculated as the sum of the
11 total weight of post-consumer rigid plastic containers
12 recycled in Oregon (the numerator) plus the total weight
13 of post-consumer rigid plastic containers disposed of in
14 Oregon. The total weight of post-consumer rigid plastic
15 containers disposed of in Oregon shall be calculated by
16 multiplying the estimated percent of municipal solid
17 waste which is post-consumer rigid plastic containers
18 times total tons of municipal solid waste disposed in
19 Oregon.

20
21 (ii) The total tons of municipal solid waste disposed in
22 Oregon is derived from information collected under the
23 provisions of ORS 459A.010 (4)(d).

24
25 (iii) A composition study of solid waste disposed of in Oregon
26 shall be used as the basis for estimating the percent of
27 disposed solid waste which is post-consumer rigid plastic
28 containers. Adjustments to a previous composition study
29 may be used as a substitute for a new composition
30 study.

31
32 Note: Stated as a formula, this is:

33
34
$$\frac{\text{Aggregate Numerator}}{\text{Aggregate Denominator}} \times 100 = \text{Calendar Year Aggregate Recycling Rate}$$

35
36
37 (d) The calendar year aggregate rigid plastic container recycling rate will
38 be determined by the Department annually on a calendar year basis
39 beginning with 1995 and published in a report which includes a
40 discussion of potential errors associated with calculation of the total
41 tons of municipal solid waste disposed of in Oregon, information on
42 the recycling and disposal data collection and analysis methodologies
43 and margin of error for the percent composition of rigid plastic
44 containers.

45
46 (4) Specified type recycling rate. The recycling rate for a specified type of rigid
47 plastic container as calculated by the Department shall be determined as a
48 percentage by dividing the specified type numerator by the specified type

1 denominator. The numbers in both the numerator and denominator of this
2 calculation shall be collected and/or adjusted to represent the same calendar
3 year.

4
5 (a) The elements of the formula to calculate the specified type recycling
6 rate for rigid plastic containers in Oregon are:

7
8 (A) The specified type of post-consumer rigid plastic container
9 numerator shall be calculated as the total of the specific type of
10 post-consumer rigid plastic containers recycled in Oregon,
11 expressed in tons.

12
13 (B) The specified type of post-consumer rigid plastic container
14 denominator, expressed in tons.

15
16 (i) The denominator shall be calculated by one of the
17 following methods:

18
19 (I) As the sum of the weight of the specified type of
20 post-consumer rigid plastic containers recycled in
21 Oregon plus the total weight of the specified type
22 of rigid plastic containers disposed of in Oregon; or

23
24 (II) The total weight of the specified type of post-
25 consumer rigid plastic containers sold in Oregon.

26
27 (ii) If the weight of the specified type of post-consumer rigid
28 plastic containers disposed of is used to calculate the
29 denominator, a composition study of solid waste
30 disposed of in Oregon shall be used as the basis for
31 determining the weight disposed of.

32
33 Note: Stated as a formula, this is:

34
35
$$\frac{\text{Specified Type Numerator}}{\text{Specified Type Denominator}} \times 100 = \text{Specified Type Recycling Rate}$$

36
37
38 (b) Any person calculating the recycling rate of a specified type of post-
39 consumer rigid plastic container may rely upon disposal or recycling
40 data generated by the Department. Persons using other data to
41 calculate a recycling rate must be able to document that such data
42 were generated by a methodology acceptable to the Department and
43 are verifiable.

44
45 (c) Adjustment to data collected by the recycling survey and composition
46 study identified in paragraphs (3)(c)(A)(ii) and (3)(c)(B)(ii) of this rule
47 respectively shall be made only by use of a methodology acceptable to
48 the Department.

1 (d) Data collected on a national basis may be used to determine the post-
2 consumer rigid plastic container recycling rate in Oregon if it can be
3 shown how these data are either typical of or can be adjusted to
4 accurately represent conditions in Oregon.

5
6 (5) Product-associated recycling rate. The recycling rate for a product-
7 associated rigid plastic container as calculated by the Department shall be
8 determined as a percentage by dividing the product-associated numerator by
9 the product-associated denominator. The numbers in both the numerator
10 and denominator of this calculation shall be collected and/or adjusted to
11 represent the same calendar year.

12
13 (a) The elements of the formula to calculate the product-associated
14 recycling rate for rigid plastic containers in Oregon are:

15
16 (A) The numerator shall be calculated as the total weight of
17 product-associated post-consumer rigid plastic containers
18 recycled in Oregon, expressed in tons.

19
20 (B) The product-associated post-consumer rigid plastic container
21 denominator, expressed in tons. The denominator shall be the
22 total weight of the product-associated rigid plastic containers
23 sold in Oregon.

24
25 Note: Stated as a formula, this is:

26
27
$$\frac{\text{Product-associated Numerator}}{\text{Product-associated Denominator}} \times 100 = \text{Product-associated Recycling Rate}$$

28
29
30 (6) In cases where the Department calculates the aggregate recycling rate for
31 compliance purposes for post-consumer rigid plastic containers, a product
32 manufacturer or container manufacturer shall rely on the Department's rate
33 calculation when claiming that a container or containers comply with OAR
34 340-90-350(1)(b)(A). In cases where the Department calculates the
35 recycling rate for specified types of or product-associated post-consumer
36 rigid plastic containers, a product manufacturer or container manufacturer
37 may rely on the Department's rate calculation when claiming that a container
38 or containers comply with OAR 340-90-350(1)(b)(B) or (1)(b)(C).

39
40 (7) In cases where a manufacturer calculates the recycling rate for specified
41 types of or product-associated post-consumer rigid plastic containers, a
42 product manufacturer may rely upon disposal or recycling data generated by
43 the Department, where available. Manufacturers using other data to
44 calculate a recycling rate must be able to document that such data were
45 generated by a methodology acceptable to the Department and are verifiable.

46
47 (8) Calculation of a recycling rate shall include only those outputs from
48 processing rigid plastic containers which are recycled into new products.

1 When a processing technology results in a combination of outputs, some of
2 which are recycled into new products and others of which are fuel products,
3 or energy recovery, the recycling rate shall not include any portion of the
4 output which is a fuel product, is used to produce fuel products, or is
5 otherwise used for energy recovery.
6
7

8 OAR 340-90-390 WASTE COMPOSITION

9

- 10 (1) A waste composition study undertaken by the Department shall consist of a
11 representative, statistically valid sampling of Oregon's municipal solid waste.
12 A protocol of standards and procedures shall be designed which relate to:
13
14 (a) Development of a representative sampling plan;
15
16 (b) Application of the definition of a rigid plastic container in OAR 340-90-
17 330 when identifying and categorizing rigid plastic containers in the
18 field;
19
20 (c) Maintenance of quality control, including training and auditing;
21
22 (d) Performing sampling, including but not limited to sample selection,
23 sorting, weighing; and
24
25 (e) Field data adjustments for contamination including moisture, food and
26 other non-plastic materials.
- 27 (2) The Department shall report the findings of the waste composition study, the
28 methodologies used and information regarding potential error.
29
30
31

32 OAR 340-90-400 RESPONSIBILITIES OF A PRODUCT MANUFACTURER

33

- 34 (1) A product manufacturer shall be able to document that a rigid plastic
35 container or containers are in compliance with either the requirements of
36 OAR 340-90-350 or with one of the exemptions set out in OAR 340-90-340.
37
- 38 (2) A product manufacturer's documentation that a rigid plastic container or
39 containers are in compliance with the provisions of OAR 340-90-350 shall
40 include, at a minimum, the following information:
41
42 (a) Recycled content. For each container which is in compliance with
43 OAR 340-90-350(1)(a):
44
45 (A) A description of the container, including its resin type, and
46 product; and
47
48 (B) A copy of the container manufacturer's Certificate of
49

1 Compliance from each manufacturer who supplied that
2 container.

3
4 (b) Aggregate recycling rate. For containers which are in compliance with
5 the aggregate recycling rate requirement, OAR 340-90-350(1)(b)(A), a
6 product manufacturer shall rely upon the rigid plastic container
7 aggregate recycling rate for compliance purposes established by the
8 Department as the sole documentation necessary to show that a rigid
9 plastic container complies with this requirement.

10
11 (c) Other recycling rates. For containers which are in compliance with
12 the specified type container recycling rate requirement, OAR 340-90-
13 350(1)(b)(B) or the product-associated container recycling rate
14 requirement, OAR 340-90-350(1)(b)(C):

15
16 (A) A description of the container and product;

17
18 (B) Identification of the specified type or product-associated
19 criteria;

20
21 (C) Documentation of the recycling rate for the type of container
22 pursuant to OAR 340-90-380(4) or (5);

23
24 (D) Where the Department or the container manufacturer has
25 calculated a recycling rate for a specified type or product-
26 associated rigid plastic container, the product manufacturer may
27 rely upon that rate to show that the container complies with the
28 recycling rate requirements.

29
30 (d) Reuse and refill. For containers which are in compliance with the
31 reuse requirements, OAR 340-90-350(1)(c):

32
33 (A) A description of the container and product; and

34
35 (B) Documentation of the number of times the containers are
36 refilled or reused.

37
38 (i) The number of times a refillable container is reused is
39 determined by review of the product manufacturer's
40 records which show the following information for a
41 uniform period of time:

42
43 (I) The number of returned containers actually refilled;

44
45 (II) The number of new containers added to the total
46 number of containers used in the product
47 manufacturer's refillable container program; and

1 (III) The total number of containers filled as first use
2 containers.

3
4 (ii) The number of times a reusable container is reused is
5 determined by review of the product manufacturer's
6 records which show the following information for a
7 uniform period of time:

8
9 (I) The amount of product sold in the original
10 container or the number of original containers sold;
11 and

12
13 (II) The amount of replacement product sold or the
14 number of refill units of replacement product sold.

15
16 (iii) A container shall be considered to be used at least five
17 times if it is part of a refillable system or reusable
18 container system which has an average refill or reuse rate
19 for that container of at least four.
20

21 (3) A product manufacturer's records which document that a rigid plastic
22 container or containers are exempt from the requirements of OAR 340-90-
23 350 through -370 shall include the following information:

24
25 (a) Drugs, medical devices, medical food, and infant formula. For
26 containers which are exempt under the provisions of OAR 340-90-340
27 (2):

28 (A) A description which clearly identifies the container;

29 (B) An identification of which of the four product types will be
30 placed in the container;

31 (C) For drugs:

32 (i) An FDA letter of approval;

33
34 (ii) Documentation of consistency between the over-the-
35 counter drug claims and FDA requirements, e.g.
36 appropriate references to the FDA Final Monograph or
37 Tentative Final Monograph under which the drug is
38 marked; or

39 (iii) Other definitive evidence that the product meets the FDA
40 definition of a drug.

41 (D) For medical devices:
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(i) Documentation that the device is intended to be used for diagnosis, cure, or prevention of disease or other definitive evidence that the product meets the FDA definition of a medical device under the FD&C Act (21 U.S.C. 321 (h) and following).

(E) For medical food:

(i) Documentation that the product meets the definition of medical food as defined in the FD&C Act, 1988 and is intended to be used as a medical food;

(ii) Other definitive evidence that the product meets the FDA definition of medical food; or

(iii) Documentation that the product may be labeled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet".

(F) For infant formula:

(i) Documentation that the product meets the definition of infant formula as set forth in the FD&C Act and is being sold for use as infant formula; or

(ii) Other definitive evidence that the product meets the FDA definition of infant formula.

(b) Shipment out of Oregon. No documentation is required for containers which are exempt under the provisions of OAR 340-90-340 (3);

(c) Reduced containers. For containers which are exempt under the provisions of OAR 340-90-340(5):

(A) Descriptions, including container resin type, which clearly identify:

(i) The original container before reduction; and

(ii) The reduced container;

(B) An identification of the "unit of product" pursuant to OAR 340-90-340(5)(c) being used to develop the container/product ratio

(C) A statement of the container/product ratio and description of how it was calculated for:

(i) The original container before reduction; and

- 1 (ii) The reduced container.
2
3 (d) Substantial Investment. For containers which are exempt under the
4 provisions of OAR 340-90-340 (6):
5
6 (A) Identification of the class of containers and the type of
7 recycling rate for which the exemption is being claimed;
8
9 (B) Documentation of the following:
10
11 (i) A substantial investment has been made in achieving the
12 recycling rate;
13
14 (ii) There is a demonstrated viable market for the material
15 from which the container is made;
16
17 (iii) The relevant recycling rate for calendar year 1995 is at
18 least 20%;
19
20 (iv) The recycling rates for the rigid plastic containers for the
21 previous two years show evidence of increasing; and
22
23 (v) Reasonable projections indicate that the rigid plastic
24 containers will meet the 25 percent recycling rate by
25 January 1, 1997.
26
27 (C) A product manufacturer may rely upon the Department's
28 determination of compliance with the requirements of this
29 exemption for rigid plastic containers in the aggregate or for
30 rigid plastic containers of specified resin type.
31
32 (4) Product Manufacturer's Report of Compliance.
33
34 (a) Upon the request of the Department, a product manufacturer shall
35 make a Report of Compliance available to the Department.
36
37 (b) A product manufacturer's Report of Compliance shall be submitted on
38 forms provided by the Department and shall contain the following
39 specific information:
40
41 (A) The product manufacturer's
42
43 (i) Name,
44
45 (ii) Address, and
46
47 (iii) Name, title, address and phone number of an official
48 company representative;

1 (B) A description of the container for which compliance or
2 exemption is claimed; and

3
4 (C) A description of the product manufacturer's records
5 documenting compliance or exemption.

6
7 (c) A product manufacturer shall provide information requested by the
8 Department in accordance with the following procedure and time
9 schedule:

10
11 (A) The product manufacturer shall provide a Report of Compliance
12 to the Department within 60 days of the date of receipt of a
13 Department request for the report.

14
15 (B) If the Department finds the Report to be incomplete, the
16 Department may request the missing materials from the official
17 company representative. The product manufacturer shall
18 provide missing materials from a Report of Compliance to the
19 Department within 30 days of the date of receipt of a
20 Department request for the missing materials.

21
22 (C) After it has reviewed the Report of Compliance, the Department
23 may request that the product manufacturer provide all or part of
24 the documentation described in a Report of Compliance, other
25 records, additional information kept by the product
26 manufacturer which is the basis for those records or any other
27 information deemed necessary to determine compliance with
28 the law. The product manufacturer shall provide the records or
29 other material requested to the Department within 45 days of
30 the date of receipt of a Department request for the records.

31
32 (5) (a) A product manufacturer may request an extension of the time period
33 to submit materials requested by the Department. Such a request for
34 extension must be in writing and received by the Department prior to
35 the due date of the original Department request. The request for
36 extension shall:

37
38 (A) Provide the product manufacturer's name and address;

39
40 (B) Provide the name, title, address, and phone number of an
41 official company representative;

42
43 (C) State a specific length for the requested extension, not to
44 exceed 60 days; and

45
46 (D) Show good reason for the extension.

47
48 (b) Based upon the information provided in the request for extension, the

1 Department may grant the extension, deny the extension or grant an
2 extension for a lesser period of time.

- 3
- 4 (6) Records which document compliance with the requirements of OAR 340-90-
5 350 or exemption under the provisions of OAR 340-90-340 shall be
6 maintained and available for audit by the Department for a period of at least
7 three years after the year for which compliance is documented.
- 8
- 9 (7) The Report of Compliance for a product manufacturer which can
10 demonstrate that it sell less than 500 rigid plastic containers per day shall
11 consist of the quantity, brand name, product number, if any, and source of
12 purchase of rigid plastic containers. These small product manufacturers are
13 not required to keep other records of container compliance.
- 14
- 15 (8) Failure of a product manufacturer to provide a Report of Compliance or
16 additional materials requested by the Department and within the schedule set
17 out in this rule shall be considered a violation of these rules.
- 18
- 19

20 OAR 340-90-410 RESPONSIBILITIES OF A CONTAINER MANUFACTURER

21

- 22 (1) A container manufacturer shall be able to document that a rigid plastic
23 container or containers are in compliance with the requirements of OAR 340-
24 90-350(1)(a), (1)(b)(A), or (1)(b)(B). These records shall include at a
25 minimum, the following information:
- 26
- 27 (a) Recycled content. For each container which is in compliance with
28 OAR 340-90-350(1)(a):
- 29
- 30 (A) A description of the container including its resin type;
- 31
- 32 (B) Documentation of the recycled content of the type of container
33 including:
- 34
- 35 (i) The total weight of plastic used to manufacture that type
36 of rigid plastic container during the time period when the
37 container was made; and
- 38
- 39 (ii) The weight of recycled material used to manufacture that
40 type of rigid plastic container during the same time
41 period, with in a one year period, as determined by the
42 container manufacturer.
- 43
- 44 (b) Aggregate recycling rate. For containers which are in compliance with
45 the aggregate recycling rate requirement, OAR 340-90-350(1)(b)(A), a
46 container manufacturer shall rely upon the rigid plastic container
47 aggregate recycling rate for compliance purposes established by the
8 Department as the sole documentation necessary to show that a rigid

1 plastic container complies with this requirement, OAR 340-90-
2 350(1)(b)(A).
3

4 (c) Specified type recycling rate. For containers which are in compliance
5 with the specified type recycling rate requirement, OAR 340-90-
6 350(1)(b)(B):
7

8 (A) A description of the container;

9 (B) Identification of the specified type;

10 (C) Documentation of the recycling rate for the type of container
11 pursuant to OAR 340-90-380(4); and
12

13 (D) Where the Department has calculated a recycling rate for a
14 specified type of container, the container manufacturer may rely
15 upon the Department's rate to show that the container complies
16 with the rate requirements.
17
18

19
20 (2) Container manufacturer's Certificate of Compliance.
21

22 (a) A container manufacturer shall make a Certificate of Compliance
23 available to:
24

25 (A) Any product manufacturer who uses containers from that
26 container manufacturer and makes products in those containers
27 available for sale in Oregon; and
28

29 (B) The Department, upon request, only if not otherwise available
30 from the product manufacturer.
31

32 (b) A container manufacturer's Certificate of Compliance shall contain the
33 following information:
34

35 (A) The container manufacturer's

36 (i) Name,

37 (ii) Address, and
38

39 (iii) Name, title, address and phone number of an official
40 representative;
41

42 (B) Description of the container or containers for which compliance
43 or exemption is claimed; and
44

45 (C) A description of the container manufacturer's records
46 documenting compliance.
47
48

1 (c) If after review of the container manufacturer's certificate of
2 compliance the Department determines that the information provided
3 in the certificate is not adequate to document that a container or
4 containers are in compliance with OAR 340-90-350 through 370, the
5 Department may:

6
7 (A) Request that the product manufacturer provide all or part of the
8 documentation described in a Certificate of Compliance, other
9 records, or additional information kept by the container
10 manufacturer which is the basis for those records and any other
11 information deemed necessary to determine compliance with
12 the law. Within 15 days of this request, the product
13 manufacturer shall notify the Department whether it will provide
14 the requested information or if the Department shall request it
15 directly from the container manufacturer. If the product
16 manufacturer notifies the Department it will satisfy the request,
17 the records or other material requested shall be provided to the
18 Department within 45 days of the date of the product
19 manufacturer's notification.
20

21 The Department, at its discretion, may audit the container
22 manufacturer directly for purposes of determining compliance
23 with these rules.
24

25 (B) If the product manufacturer cannot provide adequate
26 documentation or other information requested by the
27 Department within the time frame in (A) above, then the
28 Department may request such information directly from the
29 container manufacturer.
30

31 (d) A container manufacturer shall provide information requested by the
32 Department in accordance with the following procedure and time
33 schedule:
34

35 (A) The container manufacturer shall provide a Certificate of
36 Compliance to the Department within 60 days of the date of
37 receipt of a Department request for the Certificate.
38

39 (B) If the Department finds the Certificate to be incomplete, the
40 Department may request the missing materials from the official
41 company representative. The container manufacturer shall
42 provide missing materials from a Certificate of Compliance to
43 the Department within 30 days of the date of receipt of a
44 Department request for the Certificate.
45

46 (C) After it has reviewed the Certificate of Compliance, the
47 Department may request that the container manufacturer
48 provide all or part of the documentation described in a
49

1 Certificate of Compliance, other records, or additional
2 information kept by the container manufacturer which is the
3 basis for those records and any other information deemed
4 necessary to determine compliance with the law. The container
5 manufacturer shall provide the records or other material
6 requested to the Department within 45 days of the date of
7 receipt of a request for the records.
8

9 (3) (a) A container manufacturer may request an extension of the time period
10 to submit materials requested by the Department. Such a request for
11 extension must be in writing and be received by the Department prior
12 to the due date of the Department's original request. The request for
13 extension shall:

14 (A) Provide the container manufacturer's name and address;

15 (B) Provide the name, title, address, and phone number of an
16 official company representative;

17 (C) State a specific length for the requested extension, not to
18 exceed 60 days; and

19 (D) Show good reason for the extension.
20

21 (b) Based upon the information provided in the request for extension, the
22 Department may grant the extension, deny the extension, or grant an
23 extension for a lesser period of time.
24

25 /
26 (4) Records which document compliance with the requirements of OAR 340-90-
27 350 or exemption under the provisions of OAR 340-90-340 shall be
28 maintained and available for audit by the Department for a period of at least
29 three years after the year for which compliance is documented.
30

31 (5) Failure of a container manufacturer to provide the following shall be
32 considered a violation of these rules:
33

34 (a) A Certificate of Compliance to a product manufacturer; or

35 (b) A Certificate of Compliance or additional materials to the Department
36 as requested and within the schedule set out in this rule.
37

38
39
40
41
42
43 OAR 340-90-420 CONFIDENTIAL INFORMATION PROCEDURE
44

45 (1) Records provided to the Department shall not be disclosed to the public by
46 the Department if:
47

48 (a) The records contain trade secrets as defined in ORS 192.501(2) or
49

1 ORS 646.461(2);
2

3 (b) The records, or the applicable portions thereof, are clearly identified as
4 trade secrets; and

5
6 (c) The person claiming trade secret status for specific information has
7 provided substantiation as to why the material is a trade secret.
8

9 (2) (a) The Department shall notify the person who requests confidentiality if
10 a request is received to disclose those records. The notice shall be
11 delivered at least 15 days before the Department discloses any of the
12 records, shall include a copy of any written request or a summary of
13 any oral request for disclosure, and state how the Department intends
14 to respond to the request.
15

16 (b) If a product or container manufacturer wishes to defend their trade
17 secret claim, they must respond with a written justification for the
18 basis of their trade secrets claim. Such a justification shall be
19 delivered to the Department within 15 days of the Department's
20 notice of a request to disclose those records.
21

22 (3) (a) The Department will notify the product manufacturer of any
23 information requested directly from the container manufacturer.
24

25 (b) Upon request from the product manufacturer, the Department will
26 make available to the product manufacturer copies of records received
27 from the container manufacturer concerning that product
28 manufacturer, except as provided in section (2) of this rule, so that
29 the product manufacturer may identify which of the records, if any,
30 contain trade secrets of the product manufacturer.
31

32 (c) If the product manufacturer complies with section (1) of this rule with
33 respect to the records of a container manufacturer, the Department
34 shall follow the provisions in Section (2) of this rule if it receives any
35 request to disclose those records.
36
37

38 **OAR 340-90-430 VIOLATIONS**

39
40 Violations of these rules shall be punishable as provided in ORS Chapter
41 459.995(1)(a) and pursuant to OAR 340-12-042 and -065.
42
43

44 **OAR 340-12-065 is modified to read:**

45 **Solid Waste Management Classification of Violations**

46 **340-12-065** Violations pertaining to the management, recovery and disposal of
47 solid waste shall be classified as follows:
48

1 (1) Class One:
2

- 3 (a) Violation of a Commission or Department Order;
4
5 (b) Establishing, expanding, maintaining or operating a disposal site
6 without first obtaining a permit;
7
8 (c) Accepting solid waste for disposal in a permitted solid waste unit or
9 facility that has been expanded in area or capacity without first
10 submitting plans to the Department and obtaining Department
11 approval;
12
13 (d) Violation of the freeboard limit which results in the actual overflow of
14 a sewage sludge or leachate lagoon;
15
16 (e) Violation of the landfill methane gas concentration standards;
17
18 (f) Violation of any federal or state drinking water standard in an aquifer
19 beyond the solid waste boundary of the landfill, or an alternative
20 boundary specified by the Department;
21
22 (g) Violation of a permit-specific groundwater concentration limit, as
23 defined in OAR 340-40-030(3) at the permit-specific groundwater
24 concentration compliance point, as defined in OAR 340-40-030(2)(e);
25
26 (h) Failure to perform the groundwater monitoring action requirements
27 specified in OAR 340-40-030 (5), when a significant increase (for pH,
28 increase or decrease) in the value of a groundwater monitoring
29 parameter is detected.
30
31 (i) Impairment of the beneficial uses(s) of an aquifer beyond the solid
32 waste boundary or an alternative boundary specified by the
33 Department;
34
35 (j) Deviation from the approved facility plans which results in an actual
36 safety hazard, public health hazard or damage to the environment;
37
38 (k) Failure to properly construct and maintain groundwater, surface water,
39 gas or leachate collection, treatment, disposal and monitoring facilities
40 in accordance with the facility permit, the facility environmental
41 monitoring plan, or Department rules;
42
43 (l) Failure to collect, analyze and report groundwater, surface water or
44 leachate quality data in accordance with the facility permit, the facility
45 environmental monitoring plan, or Department rules;
46
47 (m) Violation of a compliance schedule contained in a solid waste disposal
or closure permit;
8

- 1 (n) Failure to provide access to premises or records when required by law,
2 rule, permit or order;
3
4 (o) Knowingly disposing, or accepting for disposal, used oil, in single
5 quantities exceeding 50 gallons, or lead acid batteries;
6
7 (p) Accepting, handling, treating or disposing of clean-up materials
8 contaminated by hazardous substances by a landfill in violation of the
9 facility permit and plans as approved by the Department or the
10 provisions of OAR 340-61-060.
11
12 (q) Accepting for disposal infectious waste not treated in accordance with
13 laws and Department rules;
14
15 (r) Accepting for treatment, storage or disposal wastes defined as
16 hazardous under ORS 466.005, et seq, or wastes from another state
17 which are hazardous under the laws of that state without specific
18 approval from the Department;
19
20 (s) Mixing for disposal or disposing of principal recyclable material that
21 has been properly prepared and source separated for recycling;
22
23 (t) Any violation related to the management, recovery and disposal of
24 solid waste which causes major harm or poses a major risk of harm to
25 public health or the environment.

26
27
28 (2) Class Two:

- 29 (a) Violation of a condition or term of a Letter of Authorization;
30
31 (b) Knowingly accepting for disposal or disposing of a material banned
32 from land disposal under ORS 459.247, except those materials
33 specified as Class I violations.
34
35 (c) Failure of a permitted landfill, solid waste incinerator or a municipal
36 solid waste compost facility operator or a metropolitan service district
37 to report amount of solid waste disposed in accordance with the laws
38 and rules of the Department;
39
40 (d) Failure to report weight and type of material recovered or processed
41 from the solid waste stream in accordance with the laws and rules of
42 the Department;
43
44 (e) Failure of a disposal site to obtain certification for recycling programs
45 in accordance with the laws and rules of the Department prior to
46 accepting solid waste for disposal;
47
48 (f) Acceptance of solid waste by a permitted disposal site from a person

1 that does not have an approved solid waste reduction program in
2 accordance with the laws and rules of the Department;

3
4 (g) Failure to comply with any solid waste permit requirement pertaining
5 to permanent household hazardous waste collection facility
6 operations;

7
8 (h) Failure to comply with landfill cover requirements, including but not
9 limited to daily, intermediate, and final covers, and limitation of
10 working face size;

11
12 (i) Failure to comply with any plan approved by the Department;

13
14 (j) Failure to submit a permit renewal application prior to the expiration
15 date of the existing permit in accordance with the laws and rules of
16 the Department;

17
18 **(k) Selling or offering for sale by a product manufacturer a rigid plastic**
19 **container in violation of ORS 459A.655 through 680, or any rules**
20 **adopted pursuant thereto unless the product manufacturer can**
21 **demonstrate that they sell less than 500 rigid plastic containers per**
22 **day, in which case the violation shall be a Class Three;**

23
24 **(l) Failure by a product or container manufacturer to maintain or provide**
25 **records as required by ORS 459A.660, or any rules adopted pursuant**
26 **thereto unless the manufacturer can demonstrate that they sell less**
27 **than 500 rigid plastic containers per day in which case the violation**
28 **shall be a Class Three;**

29
30 **(m) Falsely certifying by a product or container manufacturer a rigid plastic**
31 **container as meeting the requirements of ORS 459A.655 through**
32 **680, or any rules adopted thereto;**

33
34 ~~(k)~~ Any violation related to solid waste, solid waste reduction, or any
35 violation of a solid waste permit not otherwise classified in these
36 rules.

37
38 (3) Class Three:

39
40 (a) Failure to post required signs;

41
42 (b) Failure to control litter;

43
44 **(c) Manufacturing, selling or offering for sale any rigid plastic container**
45 **without complying with the labeling requirements as set forth in ORS**
46 **459A.675 to 680, or any rules adopted pursuant thereto.**

47

Attachment B1

NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality Waste Management and Cleanup Division
OAR Chapter 340

DATE:	TIME:	LOCATION:
9/1/94	10 am-1 pm and 2 pm-6 pm	Auditorium, Second Floor Portland Building 1120 S.W. 5th Portland, Oregon
9/1/94	2 pm	Meeting room, main floor Corvallis Library 645 N.W. Monroe Corvallis, Oregon
9/1/94	10 am	Cascade Natural Gas Conference Room 334 N.E. Hawthorne Bend, Oregon

HEARINGS OFFICER(s): Helen Lottridge, Charles W. Donaldson, Gerry Preston

STATUTORY AUTHORITY: ORS 459A.025, ORS 459A.650 through .685; ORS 468.020

ADOPT: OAR 340-90-310, et seq.

AMEND: OAR 340-12

REPEAL:

- This hearing notice is the initial notice given for this rulemaking action.
- This hearing was requested by interested persons after a previous rulemaking notice.
- Auxiliary aids for persons with disabilities are available upon advance request.

SUMMARY:

The proposed new rules would implement the Rigid Plastic Container Law, specifying how product manufacturers who use and container manufacturers who produce rigid plastic containers shall comply with new recycling, recycled content or reuse requirements going into effect on January 1, 1995. The rules specify that "product manufacturer" includes point-of-state packagers such as delicatessens. The rules would set compliance and exemption standards, methodologies for calculating rigid plastic container recycling rates, recordkeeping requirements, reporting responsibilities and enforcement provisions. The

point-of-state packagers such as delicatessens. The rules would set compliance and exemption standards, methodologies for calculating rigid plastic container recycling rates, recordkeeping requirements, reporting responsibilities and enforcement provisions. The rules would also establish classes of violations of the Rigid Plastic Container Law, and for labeling requirements for rigid plastic containers, under OAR 340 Division 12.

LAST DATE FOR COMMENT: 5 p.m. September 6, 1994

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

AGENCY RULES COORDINATOR:

Chris Rich (503) 229-6775

AGENCY CONTACT FOR THIS PROPOSAL:

Deanna Mueller-Crispin

ADDRESS:

Waste Management and Cleanup Division

811 S. W. 6th Avenue

Portland, Oregon 97204

TELEPHONE:

(503) 229-5808

or Toll Free 1-800-452-4011

Interested persons may comment on the proposed rules orally or in writing at the hearing. Written comments will also be considered if received by the date indicated above.

Deanna Mueller-Crispin
Signature

7/12/94
Date

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Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

Rulemaking Proposal - Implementing Oregon's Rigid Plastic Container Law

Date Issued:	July 22, 1994
Public Hearings:	September 1, 1994 (3 hearings)
Comments Due:	September 6, 1994

WHO IS AFFECTED:

Product manufacturers (persons who produce or generate a packaged product that is sold or offered for sale in Oregon in a rigid plastic container); and container manufacturers (persons who produce or generate a rigid plastic container used for a packaged product that is sold or offered for sale in Oregon). This includes manufacturers of foods, beverages, personal care products, household and commercial chemicals, pesticides, automotive accessories, consumer commodities and any other product sold in Oregon in a rigid plastic container holding at least eight ounces and not more than five gallons. Point-of-sale packagers such as take-out food services, street vendors, etc., who use rigid plastic containers are also subject to the law. Retailers such as grocery stores are also affected, as the law could influence the kinds of products available. The general public is affected in a similar manner.

WHAT IS PROPOSED:

Oregon's Rigid Plastic Container Law requires that any rigid plastic container sold or offered for sale in Oregon must comply with one of the recycling, recycled content or reuse options 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.

WHAT ARE THE HIGHLIGHTS:

- o Definitions. The proposed rule has alternative definitions of "rigid plastic container," Alternative A and Alternative B (OAR 340-90-330). Under Alternative A, a rigid plastic container does not have to be a "complete package" to be subject to the law. Alternative



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

11/1/86

FOR FURTHER INFORMATION: - 1 -

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

B specifies that a rigid plastic container must be "designed to completely contain a product...without other packaging material except a lid or closure." Alternative B would exclude such containers as plastic cookie trays and domed lids from regulation. The Department invites comment on the two Alternatives.

- o "Reduced container" exemption. A container which weighs ten percent less than a container used five years previously may receive a five-year exemption from the law. The proposed rule also contains alternatives for calculating the exemption (OAR 340-90-340(5)). Alternative A requires comparison with a container in existence five years previously. Alternative B would allow a new product not in existence five years previously to meet the exemption if its container were reduced ten percent from the original container used whenever the product was first introduced. The Department invites comment on the two Alternatives.
- o Point-of-sale packagers. Point-of-sale packagers such as delicatessens are included in the statutory definition of "product manufacturer" and thus subject to the law.
- o Recycling rates. Establishes a formula and standards for calculating rigid plastic container recycling rates. Specifies that in order to count as recycling, the rigid plastic container must be recycled into a new product. Energy recovery or fuel products do not count as "recycling." Only post-consumer rigid plastic containers may count in the recycling rate.
- o Recordkeeping. Specifies that the compliance of rigid plastic containers and recordkeeping are primarily the responsibility of "product manufacturers."
- o Enforcement. Establishes classes of violations in the Department's enforcement structure. Most violations of the Rigid Plastic Container Law are designated Class II, except for businesses with daily sales of fewer than 500 rigid plastic containers. Violations for those small businesses would be Class III, which are considered less severe and have lower civil penalties.

**HOW TO
COMMENT:**

Public Hearings to provide information and receive public comment are scheduled as follows:

Place: Auditorium, Second Floor
Portland Building
1120 S.W. 5th Avenue
Portland, Oregon
Date: September 1, 1994
Time: 10 a.m. to 1 p.m.; 2 p.m. to 6 p.m.

Place: Cascade Natural Gas Conference Room
334 N.E. Hawthorne
Bend, Oregon
Date: September 1, 1994
Time: 10 a.m.

Place: Meeting room, main floor
Corvallis Library
645 N.W. Monroe
Corvallis, Oregon
Date: September 1, 1994
Time: 2 p.m.

Written comments must be received by 5:00 p.m. on September 6, 1994 at the following address:

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

A staff report including a copy of the Proposed Rule is attached. Additional copies of the staff report or the Proposed Rule may be obtained from the Department by calling the Waste Management and Cleanup Division at 229-5965 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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Attachment B3

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Implementing Oregon's Rigid Plastic Container Law

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 459A.025, ORS 459A.650 through .685; ORS 468.020

2. Need for the Rule

Oregon's Rigid Plastic Container Law sets requirements for recycled content, recycling or reuse of rigid plastic containers, beginning January 1, 1995. Product manufacturers using and container manufactures producing rigid plastic containers are subject to the law. The proposed rules set compliance and exemption standards, methodologies for calculating rigid plastic container recycling rates, recordkeeping requirements, reporting responsibilities and enforcement provisions. The rules are necessary to clarify definitions and general procedures in the statute, and in some cases to clarify ambiguities in the statute. The rules also establish classes of violations of the Rigid Plastic Container Law, and for labeling requirements for rigid plastic containers, which are needed for Department enforcement.

3. Principal Documents Relied Upon in this Rulemaking

1. ORS 459A
2. DEQ staff papers prepared for meetings of three Rigid Plastic Container Task Forces (TFs) (Implementation TF, Recycling Rate TF, and Certification, Auditing and Records TF)
3. Meeting notes from the Rigid Plastic Container Task Forces

4. Conceptual Plan to Implement the Rigid Plastic Packaging Container Act, California Integrated Waste Management Board, March 31, 1993
5. Draft rules, Rigid Plastic Packaging Container Act; California Integrated Waste Management Board, June 10, 1994

These documents are available for review during normal business hours at the Department's Headquarters office, 811 S.W. 6th Avenue, Portland, Oregon.

4. Advisory Committee Involvement

In November, 1993 the Department established three Task Forces to assist with rule development for the Rigid Plastic Container Law. These were the *Implementation Task Force* (members: public interest groups, plastic container manufacturers, food processors, recyclers, regional government and the public); the *Certification, Auditing and Records Task Force* (members: product manufacturers using rigid plastic containers, manufacturers of rigid plastic containers); and the *Recycling Rate Task Force* (members: representatives of the Oregon plastic recycling system, plastics processors, and public interest group). The Task Forces generally met once a month from November through May 1994 to consider and make recommendations on such issues as definitions, compliance standards, recordkeeping and recycling methodologies. The three Task Force Chairs met in an additional drafting session in June 1994.

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Attachment B4

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Implementing Rigid Plastic container Law

Fiscal and Economic Impact Statement

Introduction

The proposed rules implement Oregon's Rigid Plastic Container Law (the "Law"), ORS 459A.650 - .685, originally passed in 1991 and amended in 1993. The fiscal and economic impacts flow from the statutory requirements, not from the implementing regulations. Exceptions are those cases where regulations are necessary to interpret the statute or where the statute could be implemented in various ways and the rule specifies a single way to comply. Examples include: requiring that only plastic from **post-consumer** rigid plastic containers (RPCs) may count as "recycled" in calculating the RPC recycling rate (effect: excludes manufacturing scrap and defective never-filled RPCs, and tends to lower the recycling rate, but by no more than some tenths of a percent, according to some sources); and some definitions (e.g. "rigid plastic container").

Oregon's Rigid Plastic Container Recycling Law affects all RPCs sold or offered for sale in Oregon. A RPC has a relatively inflexible shape with a minimum capacity of eight ounces and a maximum capacity of five gallons, and is designed to hold a product for sale. As of January 1, 1995, all RPCs must comply with recycled content, recycling rate or reuse requirements, or qualify for one of the exemptions. Drugs, medical devices, medical food and infant formula are exempt, as are RPC packages exported from the state for sale to the final consumer. Two other exemptions function more like "compliance options" (see discussion on p. 10).

The main burden of compliance falls to "product manufacturers," persons who produce or generate a packaged product that is sold or offered for sale in Oregon in a RPC. They must ensure that all RPCs they use comply with the law or qualify for an exemption. They must keep records for three years documenting compliance or exemption, and submit these to the Department of Environmental Quality (DEQ, Department) on request.

"Package [or 'container'] manufacturers," persons who produce or generate a RPC for a packaged product that is sold or offered for sale in Oregon, also must meet requirements. They must provide certification that the RPC complies with the law, to product manufacturers relying on such options as recycled content or use of a particular resin. They must also keep records for three years documenting compliance and submit these to DEQ on request.

Product manufacturers range from multi-national manufacturing corporations through "house brand" manufacturers (e.g. Fred Meyer) to point-of-sale packagers such as the espresso cart on the corner using plastic cups. Container manufacturers range from firms manufacturing RPCs in numerous locations and selling in all 50 states to local plastics manufacturers who may sell in Oregon and a few other states.

First, compliance options and associated costs are discussed. Positive economic benefits are discussed on page 15, and economic effects of alternative rule language are discussed on page 16. Then an overview is given of how various entities are affected economically.

Compliance Options

Oregon's Rigid Plastic Container Law is an "options" law. It does not require that everyone comply in the same manner, but offers several avenues for compliance: recycling rate of 25 percent for RPCs, a recycling rate of 25 percent for a "specified type" of RPC, a recycling rate of 25 percent for a product-associated RPC, 25 percent recycled content, or reusing the RPC four times after the initial use. Two exemptions are similar to compliance options (reducing the container's weight by 10 percent; making a "substantial investment" in the recycling rate). For this reason, the fiscal impact of the Law will vary depending on the compliance options chosen by individual members of the regulated community. In developing this fiscal and economic impact statement, DEQ has attempted to examine a range of costs associated with the various compliance options. Following is a list of the Options, with a brief discussion of the actions associated with each of them, who must conduct these actions ("actors"), and their costs. Actions and costs of changing molds and of recordkeeping are listed after the Options, as they apply to more than one Option.

1. Recycling Rate Options.

- a. **Aggregate Recycling Rate Option.** There must be an aggregate recycling rate for all rigid plastic containers in Oregon of at least 25 percent.

Associated actions. There are markets for recycled plastic containers if separated by resin type. Oregon has limited sorting capacity to make this separation. RPCs other than milk jugs are in general not

included in curbside recycling programs. The current plastics recycling infrastructure in Oregon must be increased statewide (but particularly in major metropolitan areas) through the creation of sorting and processing facilities, a corresponding increase in collection capacity (adding plastics to curbside recycling, and increasing depots and other drop-off programs), and transportation to processors and end use markets. There may be a need to reconsider or restructure the way curbside plastic collection works in the Metro area to achieve efficiencies regionwide (i.e. to route all plastics directly to the proposed plastics recovery facility). A public information campaign is an important element to encourage participation. The aggregate recycling rate must be calculated annually by the Department, including an annual recycling census of all parties involved in brokering, processing or recycling RPCs in Oregon.

Actors. Private industry including both small and large businesses (e.g. trade associations, plastic brokers and processors, garbage collectors, retailers selling products in RPCs), local governments, volunteer recycling groups, DEQ (calculates the aggregate recycling rate through a biennial waste composition study and an annual recycling census). There are approximately 100 curbside recycling programs in Oregon with about 400 collection trucks. Participation by all actors other than DEQ is voluntary, but essential if the 25 percent recycling rate is to be met.

Costs. The Department has estimated that in 1992 about 38,000 tons of RPCs were generated in Oregon, with 7,000 tons "recovered," for a "recovery rate"¹ of about 19%. The Department estimates that an additional 2,500 to 3,000 tons of RPCs need to be recycled to meet the 25 percent "aggregate recycling rate." The Department has not estimated the costs involved in setting up a comprehensive statewide program to achieve the recycling rate. However, there is information on the various components necessary to such a program. There is also information on the incremental costs of adding recycling of plastic bottles to an existing curbside program. Component costs include:

¹ A "recovery rate" is not the same as a "recycling rate." The RPC "recovery rate" estimated for 1992 was based on data collected for different purposes, and includes assumptions about what percent of plastics "recovered" meet the statutory definition of RPC. This estimated 1992 RPC "recovery rate" may either be lesser or greater than a RPC "recycling rate."

- o Cost of equipment to operate a plastics recovery facility to process 1,000 tons (using one shift) to 3,000 tons of RPCs/year (equipment to automatically sort plastic bottles by resin type and color; balebreaker; singulator; balers; conveyors; grinder/granulator; air classification system): \$750,000 - \$1 million
- o Market guarantees and/or subsidies for transportation for collected RPCs (for 3 years until system stabilizes) for some part of the incremental RPC tonnage needed: \$.02 to \$.05/lb.
- o Sorting equipment to automatically sort out polyvinyl chloride (PVC) RPCs -- a contaminant -- from PET RPCs: \$100,000
- o Freight costs: \$.01 to \$.05/lb., depending on distance
- o Balers for more efficient transportation from recycle depots to processors or recovery facility: \$8,000 - \$20,000 each
- o Compactors (same purpose as balers): \$15,000 - \$30,000 each
- o Conveyor system, tilting table, granulator and balers for processors (Goodwill): \$50,000 - 100,000 each
- o On-board compactors for garbage trucks to handle plastics: \$3,500 per truck
- o Cost to plastic brokers and processors of keeping records and responding to Department recycling census: \$200 a year.

Incremental costs of adding all plastic bottles to existing curbside program (from West Linn, Oregon, pilot program; 2 trucks, serving 4,870 households, metal & plastics compacted together²):

o	Gross cost/year for plastics recycling	\$3,988
o	Net cost/year for plastics recycling	\$2,067
o	Net cost per ton of plastics collected:	\$182
o	Net cost per household per year:	\$1.07

² Cost and Recovery for Curbside Recycling Collection of All Plastic Bottles in West Linn, Oregon, Steve Engel, Waste Matters Consulting, Portland Oregon, 9/12/92.

Overall costs of recycling plastics have been estimated as follows³:

o	Cost of collection:	\$400 - 800/ton
o	Cost of processing:	\$64 - 295/ton
o	Revenue from sales:	\$60 - 200/ton
o	Net cost of recycling:	\$264 - 1035/ton

- b. **Specified Type Recycling Rate Option.** The recycling rate for a specified type of RPCs (e.g. milk jugs; or a type of resin used to manufacture the container, e.g. HDPE) must be at least 25 percent. There are two approaches for compliance with this option: 1) establishing a recycling program to recycle 25 percent of a "specified type;" or 2) using a RPC made of a resin which is being recycled at a 25 percent rate in Oregon.

Associated actions.

1) Recycling program. A product manufacturer who chooses this approach would establish a recycling program for a specified type of RPC including increased collection (of the "specified type" sorted out of the wastestream), storage and processing capacity for the collected material, and transportation to end-use markets. Again, a public information component is needed to ensure participation. An example is the Oregon Agricultural Chemical and Fertilizer Association's recycling effort for agricultural chemical plastic (and metal) containers. They have a portable chipper which they set up in several locations in spring and fall where farmers bring their pesticide containers. The containers are chipped and sent directly to end-use markets. A similar program in Mississippi collects about 30 percent of the plastic agricultural pesticide containers (up to 50-gallon drums) sold in the state (565,000 lbs in 1993). An entity choosing this option would have to keep records and calculate the specified type recycling rate pursuant to Department rules.

Actors. Private industry (e.g. product manufacturer, trade association, distributor, retailer), garbage haulers, local governments, volunteer recycling groups.

³ Advantage Glass!, Henry S. Cole and Kenneth A Brown, September 15, 1993 (sponsored by the Glass Packaging Institute).

Costs. Costs of various program components would be similar to costs listed under 1.a., except the program would target the "specified type" of container, not all RPCs. Overall costs would depend on the scale of the project. The Mississippi pesticide container collection program originally charged counties \$.10/lb to collect, grind and remove the RPCs. The cost of calculating the recycling rate might involve one to three months of consultant time (\$25,000 - 250,000). Or, if a methodology other than a waste composition/survey was used (such as sales data), this calculation might be considerably cheaper (\$2,000 -5,000).

2) Resin. This approach would involve switching to RPCs made of a resin being recycled at a 25 percent rate in Oregon. Currently the only resin qualifying is PET, the principal resin used for plastic beverage containers subject to Oregon's bottle bill (estimated Oregon PET recovery rate for 1992: 58%). HDPE (resin used for plastic milk jugs) may be fairly close to qualifying (its recycling rate is currently not known). In some cases standard configuration RPCs might be available in alternate qualifying resins, for example PET to replace polystyrene. In other cases (including product manufacturer custom specifications), use of a different resin (e.g. PET) would require different blow molding, thermoforming and injection molding equipment and techniques. See p. 12 for discussion of typical actions involved in mold changes. Such changes would also involve testing of the newly formulated RPC by both the container and product manufacturers. The product manufacturer would have to calculate the recycling rate in Oregon for any resin other than PET. The container manufacturer would have to provide a Certificate of Compliance to the product manufacturer for the qualifying RPC, and keep substantiating records for three years.

Actors. Container manufacturer, product manufacturer.

Costs. Costs of mold changes and associated testing, etc., are discussed on p. 13. Virgin PET (#1) is a more expensive resin than other resins which it might replace (\$.60-.70/lb., vs. \$.40/lb for #6, polystyrene). In addition, PET is relatively less stable than polystyrene, so a PET container would have to be 50-100% thicker to provide the same performance. This could result in a 75 percent increase in raw material costs to

substitute a PET RPC for one made of polystyrene. Virgin HDPE resin is less expensive (\$.32-.35/lb).

The Society of the Plastics Industry, Inc. (SPI) has estimated the cost to convert all RPCs to PET (and possibly HDPE), by their member container manufacturers. The costs are for changing that segment of the national industry output which is shipped into the western region. The costs are for compliance with the Oregon law only, and do not count any compliance costs due to the similar California requirements. The estimated costs are:

- Capital cost (machinery & equipment):	\$100 - \$150 million
- Amortized over 5 years:	\$20 - \$30 mil/year
- <u>Additional cost of PET/HDPE material:</u>	<u>\$50 - \$70 mil/year</u>
Total cost of industry conversion to resin recycled at 25% rate for Oregon:	\$70 - \$100 mil/year

Cost of calculating a recycling rate for a resin other than PET would be of the same magnitude as calculating a "specified type" recycling rate. (See 1.b.1) Recordkeeping costs for the container manufacturer would be negligible, as resin type must be included on the RPC label in any case.

- c. **Product-associated Container Recycling Rate Option.** The recycling rate for a product-associated container (e.g. all Brand X detergent bottles) must be at least 25 percent.

Associated actions. This is a brand-specific option, so the product manufacturer of the brand-name product would take the lead. Actions would include several of those considered under the aggregate recycling rate option (1.a.), except such a program would not use curbside collection. A product manufacturer could either set up collection areas in retail outlets, or possibly at special depots, for the specific container being targeted (c.f. used oil bottle recycling program set up by Chevron at gas stations). The product manufacturer would have to calculate and then keep records documenting the recycling rate.

Actors. Product manufacturer, potentially also distributors and retailers, with transportation and processing capacity likely provided (perhaps through subcontracting) by the product manufacturer.

Costs. Some of the costs of the individual components of a recycling program for a product-associated container would be similar to those under the aggregate recycling rate (i.a.). Costs would include managing the program, training personnel, storage of the RPCs collected, possibly compaction or baling, transportation to a processor or end user, and promotion of the program. Costs would depend on the type of RPC collected and the magnitude of the program; a program with fewer collection points would be less expensive than one with many collection points. The Chevron program included 70 dealers from Vancouver, Washington to Eugene. Upfront costs were \$80,000 for containers to hold the oil bottles (two containers per station), plastic liners, some equipment to the processor, etc. Continuing costs are \$45 a month from each dealer to the processor to pick up and process the collected bottles. The processor keeps any proceeds from the sale of the processed bottles. This program collects 6 - 7,000 pounds of oil bottles per month.

2. **Recycled Content Option.** The RPC must be made of a plastic which has 25 percent recycled content.

Associated actions. A product manufacturer orders RPCs with a minimum of 25 percent recycled content from a container manufacturer. The container manufacturer may have to change molds and/or production procedures to incorporate the recycled resin. Testing will be needed for product compatibility and ability to meet federal transportation requirements. If the product is regulated by the federal Food and Drug Administration (FDA), there are special considerations. For example, recycled resin may not be allowed to come in contact with the product (food, cosmetics). Special procedures may be required (e.g. layering of a recycled resin and a virgin resin, where the latter is in contact with the product). Production of multi-layer containers requires new equipment and machinery not available throughout the industry. A different amount of resin may be required to obtain the same container performance. The product manufacturer must test the container together with its contents for FDA-regulated products. The container manufacturer has to provide a Certificate of Compliance to the product manufacturer for the qualifying RPC, and keep substantiating records.

Actors. Product manufacturer, container manufacturer.

Costs. See costs associated with mold changes, p. 13. Estimated total costs to container manufacturer to obtain an FDA no-objection letter: \$500,000. This would result in a 20% to 30% cost increase for the container (e.g. a 1 cent increase over a base cost of 3.5 cents for a 12 oz. RPC, or over a 4.5 cent base cost for a 20 oz. RPC). Some container manufacturers reported

recycled resin was more expensive than virgin ("consistently 15-20% higher than virgin," including freight; and "\$.02/lb more"). They expected costs to rise with increased demand for recycled resin. A concern was also expressed that there is not enough post-consumer resin (PCR) available nationally due to a lack of recycling programs, or that it could be obtained only by transporting PCRs over long distances.

Virgin HDPE price was reported between \$.325 and \$.347/lb in April, vs. \$.18 to \$.295 for natural recycled HDPE, or \$.135 to \$.24/lb (colored recycled HDPE).⁴ Container manufacturers reported that using PCR increases the processing time (and cost) since the molds can't be run as fast; and that there are frequent rejections. In some cases molds would have to be retooled to accept recycled content, or instream equipment modified. Pigmentation of recycled is a concern; additional pigment may need to be added.

Other container manufacturers said that there was no increased cost for recycled content; that there is parity, or recycled resin is selling at 5 to 10% below virgin.

The SPI has estimated the cost to convert all RPCs to recycled content by their member container manufacturers. Conversion to multi-layer containers is assumed for food packaging. The other assumptions in calculating these costs are the same as for use of resins being recycled at a 25% rate in Oregon (see p. 7). The estimated costs are:

- Capital cost (machinery & equipment):	\$50 - \$75 million
- Amortized over 5 years:	\$10 - \$15 mil/year
- <u>Additional cost of recycled resin</u>	<u>\$35 - \$45 mil/year</u>
Total cost of industry conversion to 25% recycled content for Oregon:	\$45 - \$60 mil/year

3. **Reuse Option.** The rigid plastic container must be reused or refilled four times after the initial use.

Associated actions. The product manufacturer would establish a "reuse" or "refill" program. A "reuse" program involves selling an original container, which is refilled by the customer with the same or a similar replacement product. This may include providing a product in bulk at the point of sale, which product is intended to be placed in the original container by the consumer. A reuse program would involve developing the containers for the

⁴ Plastics News, April 1994.

original and replacement product, and advertising to promote the program. An example of a reuse program is where the original container is a sturdy detergent bottle with a spout. Replacement product might be sold in pouches and be filled into the original container before use. The product manufacturer would have to keep records tracking the amount of product sold in the original RPC and the amount of product refills sold. In a "refill" program the product manufacturer refills the original container with the product (such as bottles for bottled water which are picked up for reuse by the product manufacturer or his representative, where bottles are reused for several years, providing up to 70 uses per container). The container must be designed for reuse, and an infrastructure put in place to collect the used RPC for refilling.

Actors. Product manufacturer, possibly also distributor or retailer.

Costs. A "reuse" program would entail costs in designing the original and refill containers, but these costs would not necessarily exceed "normal" costs of container design at the scheduled time a mold change is due. A reusable container might have to be sturdier (more expensive) than a single-use RPC. There would be continuing costs to promote the program, but this advertising (and the program itself) would promote customer product loyalty, and might not exceed normal advertising costs. A "refill" program where the empty containers are automatically picked up with delivery of new product (e.g. bottled water) may be less expensive than providing new containers (new 5-gallon water bottles cost \$7-8 each). Refill programs for other types of RPCs could be as much as an estimated \$3.5 million a year to collect, return to one central manufacturing facility, clean and refill the RPCs (multinational chemical company).

4. **Exemptions (requiring action on part of exempted manufacturer):**

- a. **Reduced Container Exemption.** The weight of a new container is reduced by 10% as compared to the weight of the container five years earlier. Five-year exemption.

Associated actions. The product manufacturer must obtain or have developed a reduced container. Molds will need to be changed to produce the reduced containers, and manufacturing procedures modified (see discussion of mold changes on p. 12). Changes include new blow molding, thermoforming and injection molding equipment and techniques. The ease of change depends on the manufacturing process (easier for sheets, hard for molded containers). Advertising may be needed to alert the public to the changes. The product manufacturer must calculate the weight reduction needed to meet the

exemption (comparing each container with its counterpart five years earlier), and keep records documenting the reduction in weight for each type of RPC they sell in Oregon.

Actors. Product manufacturer, container manufacturer.

Costs. Since these involve mold changes, see that section on p. 12. Cost savings may also be realized with reduced containers, since at least 10 percent less packaging material is being used. In some cases these cost savings may be offset by plastic material conversions or significant design changes and associated equal or higher material costs. See p. 14 for discussion of recordkeeping costs.

The SPI has estimated the cost to convert all RPCs to 10 percent reduced containers by their member container manufacturers. The costs assume redesign of all containers to provide the same strength with less weight, a significant research effort. The other assumptions in calculating these costs are the same as for use of resins being recycled at a 25% rate in Oregon (see p. 7). The estimated costs are:

- Rough estimate of light weight research:	\$50 - \$100 million
- Capital cost (machinery & equipment):	\$75 - \$100 million
- Research amortized over 5 years:	\$10 - \$20 mil/year
<u>- Equipment amortized over 5 years:</u>	<u>\$15 - \$20 mil/year</u>
Total cost of industry conversion to 10% reduced containers for Oregon:	\$25 - \$40 mil/year

- b. **"Substantial Investment" Exemption.** All the following conditions must be met: a substantial investment has been made in achieving the 25 percent RPC recycling rate; there are viable markets for the material collected; the recycling rate is at least 20% and increasing; reasonable projections show the material will meet the recycling rate within two years. One-time exemption for two years ending January 1, 1997.

Associated actions. This exemption is for a "good faith" effort towards achieving the aggregate RPC recycling rate. Actions to realize that option are listed above under 1.a.

Actors. For the infrastructure to achieve the recycling rate, same actors as in 1.a above. A "substantial investment" could be made by any one or several of the actors with a stake in attaining the rate, either in their own business or as initial grants, subsidies, market

support, etc. to the entities necessary to establishing the plastics recycling infrastructure.

Costs. See 1.a. above.

5. **Switching to alternative packaging material:** If a product manufacturer cannot find an appropriate compliance Option or meet an exemption -- and does not choose to risk relying on the aggregate RPC recycling rate being achieved -- they may decide to switch to a packaging material other than plastic. Alternate packaging materials might include cardboard, plastic-coated paper, glass or metal. Switching might require development of new packaging, and would require changing manufacturing production and shipping procedures. The container manufacturer might want to advertise the package change.

Costs: Foil containers (e.g. trays) are reportedly twice as expensive as plastic. DEQ found the following cost ranges for plastic vs. paper containers (mostly from Portland-area distributors):

Article	Plastic Cost, each	Paper Cost, each
Boxes Large	\$.18 - .28 (clear clamshell, 9.5" x 9.37" x 1.25")	\$.26 (take-out box, 9x9x3")
Medium	\$.18 - .20 (clear clamshell, 9x8x1.25")	\$.24 (take-out box, 9x5x4")
Small	\$.08 (clear clamshell, 5.25"x5.25"x1.25")	\$.015 (sandwich box) - \$.21 (take-out box, 8x5x3.5")
Cups 16 oz. ("large")	\$.07	\$.02 - .06
12 oz.	\$.06	\$.03

New molds and packages: General activities involved in development. The useful life of a package mold can be 8 to 10 years, although manufacturers may change more often for a variety of reasons, including new product development. The new container changes must be designed, tested (for package integrity, tolerances, etc.) and implemented. Design engineering includes such activities as developing blueprints and models. Laboratory testing for the new container includes stability,

functionality, shelf life, and chemical compatibility. Production tool qualification testing is carried out. For configuration changes beyond a given tolerance, the product manufacturer's production procedures may need to be modified or replaced, and changes made in manufacturing equipment to label, fill and package products (such as conveyors, starwheels and case-packagers). Equipment manufacturer service personnel are usually required to conduct or oversee such equipment modifications. Secondary packaging may also need to be modified (e.g. shipping containers), again requiring revision of specifications. When container changes are completed, there may be market introduction activities such as advertising.

Costs associated with changing molds and packages. Manufacturers have submitted the following costs^{5,6}:

- o Write-off expenses for molds which must be replaced before the end of their useful life (to comply with the Oregon Law): varies with age and number of molds, but can run into several million dollars per product line.
- o Research and development to certify that new (source-reduced) containers meet compatibility criteria and regulatory requirements. Cost range (large manufacturers): \$50,000 - 165,000 per product line, up to \$2 million for total companywide changes. Medium-sized container manufacturer: cost per test (to apply for FDA approval for recycled content), a minimum of \$100,000.
- o The cost to change molds varies depending on the package design and the method of package manufacture (e.g. injection molded, thermoformed, blowmolded), age and composition of the mold. The

⁵ For product manufacturers that sell nationwide, these costs may represent the cost of compliance not only in Oregon but also in other states such as California. Therefore they represent costs of changing **all** RPCs sold by the company. In some cases there may be only one plant which produces the RPCs for a product; in other cases the product manufacturer cannot control the ultimate destination of the product, so must ensure that each package manufactured meets requirements in every state in which it is sold.

⁶ Mold-changing costs have also been estimated nationwide for alteration of the Society of the Plastics Industry, Inc. (SPI) code ("chasing arrows" triangle and resin #). If molds had to be completely changed out, the cost was estimated to be about \$80 million industry-wide. By continuing to use the triangle, molds could instead be modified at a cost of \$20 million. This change would not, however, involve testing as the only change would be in the label (not structural or material), so the cost presumably does not include any amount for testing. (Source: The NRC Connection, May/June 1994)

costs to change an individual mold cavity range from \$100 to over \$2,500 per cavity. One mold set may contain from 4 to 64 cavities per mold, resulting in a per-mold set cost of from \$400 to \$160,000. An average cost to change a mold for a container manufacturer is \$150,000, with a high end of \$300,000.

- o The number of mold changes (mold sets and mold cavities) needed per product line (e.g. cooking oil, liquid detergent) depends on the sales volume and number of product varieties of a product sold in an individual package size. For a nationwide product manufacturer, the costs to change molds for a particular product line could range from \$20,000 (small volume product) to a high of \$1.7 million.
- o Capital equipment costs (for product manufacturers) to modify or replace equipment to fill, label, etc. reconfigured RPCs: range of costs, from \$10,000 per package where dimensional changes are not significant, to \$ 3 million for a representative product line for a large manufacturer, to a companywide total of \$10 million (multinational chemical company).
- o Additional costs (unquantified) for chemical customers to change their processing equipment to accommodate new chemical containers.
- o The cost of new molds is directly proportional to the number of molds that need to be changed. Large, multinational product manufacturers might have from 650 to several thousands of different RPCs. A small or medium-sized Oregon product manufacturer might have from a couple to six. Further, a product manufacturer might choose different compliance Options for different containers.
- o Container manufacturer's process development equipment (for recycled content): \$250,000.
- o Legal fees involved in seeking FDA approval for recycled content: \$50,000.

General recordkeeping activities and costs. All RPC container and product manufacturers will incur some additional recordkeeping costs, unless they rely on the aggregate recycling rate. Records must be kept to demonstrate compliance with or exemption from the Law. This will range from requesting a Certificate of Compliance from a container manufacturer, to setting up computer tracking systems (up to \$250,000) and associated staff time for data entry and to maintain the system (up to \$300,000/year). Container manufacturers normally track the resins they use; a medium-sized manufacturer might incur additional annual recordkeeping costs of

\$3 - 5,000; providing a Certificate of Compliance to customers could cost up to \$5,000 a year. A significant expense in recordkeeping for manufacturers who also sell in California will be ensuring that the recordkeeping system is compatible with both the Oregon and California regulations (e.g. California allows corporate averaging across RPC product lines to achieve compliance, Oregon does not). A relatively small container manufacturer reported an estimated 5 to 10 percent increase in recordkeeping and reporting costs.

Positive Economic Impacts

Implementation of Oregon's Rigid Plastic Container Law will provide several potential economic benefits. These benefits are described below and are quantified, where possible.

As discussed above (1.a.), additional collection, processing and manufacturing of recycled plastic material are all necessary to meet the 25 percent aggregate RPC recycling rate. As a consequence the Department anticipates the expansion of existing recycling businesses and the start up of new businesses in Oregon. In addition, this growth in the plastics materials recovery industry is expected to create new employment opportunities.

1. Investment in plastics recycling infrastructure. As a direct result of the RPC Law, investment in Oregon's plastic recycling infrastructure is expected to increase. The Department is now starting to see such investment by the American Plastics Council (APC) and its members. For example, APC plans to pay for construction and operation of a plastics recovery facility (estimated \$1 million investment); has provided Oregon processors with equipment; and is guaranteeing a price for collected rigid plastic containers for up to three years. These benefits go directly to Oregon processors and recyclers. Much of the collection and processing equipment being purchased (i.e. balers, crushers, compactors, etc.) is manufactured in Oregon or the Northwest. An increase in transportation services is also likely to occur to accommodate the increased collection and processing of RPCs. As the law goes into effect, other companies may invest in plastics recycling infrastructure, either overall or for their particular containers or products.

Investments in small center local collection and processing recycling centers are also expected to increase. For example, the BRING recycling facility and Goodwill Industries in Eugene have recently expanded their operations to process additional plastic containers. RecycleWorks recently reopened a facility in Portland, which accepts a variety of materials including plastics, with financial assistance from the APC.

2. Jobs created in plastics collection programs and plastic recovery facilities. Jobs will be created through the above-referenced investments. In general, recovery and

recycling create more jobs than landfilling and incineration. Preparing recyclable materials for end markets creates about five times as many jobs as incineration and nine times as many jobs as landfill operations.⁷

3. New markets for collection waste plastic containers. The APC has guaranteed markets for collected rigid plastic containers in Oregon for up to three years. As the law goes into effect in 1995, other companies may make their own investment in markets. There is potential for the Law to create local markets for containers. For example, recent new uses of post-consumer plastic containers in the Northwest include recycled content pallets and recycled content futons.

4. New markets for recycled plastic resin. Businesses such as Procter & Gamble and Kraft General Foods, and trade groups such as the National Food Processors Association and Grocery Manufacturers of America, have invested in using post-consumer containers in their packaging or are investing in research and development of recycled content use in RPCs. Several other companies are developing containers made with recycled plastic, including Dolco Packaging (recycled content polystyrene foam) and Ultra-Pac (recycled content polyethyleneterephthalate) packaging.

5. Avoided landfill costs. The U.S. Environmental Protection Agency has estimated that by the year 2000, plastics will be half of all municipal solid waste. Since RPCs (as well as other plastic) are a growing portion of packaging and of the waste stream, keeping at least 25% of RPCs out of landfills will avoid landfill costs.

The Clean Washington Center completed an extensive study in 1993 that compared the costs of recycling to those of disposal in four cities in Washington. For all four cities, they concluded that recycling costs (which included revenues from materials sales) were less than disposal costs.

6. "Costs" on one side may be "benefits" on another. It should also be pointed out that the "costs" listed for actions such as mold changes, gaining FDA approval, etc. are expenses for the regulated community (RPC product or container manufacturers), but these expenditures benefit other sectors of the economy: chemists, tool and dye manufacturers, consultants, lawyers, etc.

Alternative Rule Language and Its Effects

The proposed rule includes two areas where alternatives are put forward for public comment. In both areas, the alternatives have different fiscal and economic impacts, as discussed below.

⁷ February 1993 Press release, Institute for Local Self-Reliance, Washington, DC.

1. *Definition of "rigid plastic container."* The first area is the definition of "rigid plastic container." The Alternative A definition was supported by a majority of the Department's Implementation Task Force; it does not require a RPC to be a "complete package" in order to be regulated by the Law. Industry worked with the Department to develop Alternative B; it states that a container must be "designed to completely contain a product, under normal usage, without other packaging material except a lid or closure." Alternative B excludes some types of containers from regulation that would be regulated under Alternative A, for example plastic cookie trays sold inside paper bags, domed lids and shampoo tubes.

Therefore, the fiscal impact of the Alternative A definition would be greater for product manufacturers who sell those products since they would have to comply with the Law. Additional costs would vary by compliance Option (see "*Cost*" sections). The Department estimates that this difference affects less than 5 percent of RPCs sold in Oregon, but the fiscal impact could be significant for product manufacturers producing those goods.

2. *Determination of "reduced container."* The second area concerns how a RPC may qualify for the "reduced container" exemption. Statute requires a 10 percent reduction in package weight when compared to package weight five years earlier. Alternative A requires comparison with a container in existence five years previously. Alternative B would allow the exemption to be used by products not in existence for a full five years; the comparison would be a 10 percent reduction over the container's weight when the package was first introduced in commerce. The "reduced container" exemption may be the only option available to most food processors, as federal regulations don't allow food to be packaged in plastic containers with recycled content.⁸ Industry has pointed out that the five-year comparison precludes other products that have not been on the market for five years from using this route, and prevents the introduction of new products in "reduced containers".

The fiscal impacts of Alternative A are higher than those of Alternative B, as products that otherwise might use reduced containers would have to use another compliance option, or be taken off the Oregon market (or never introduced). The Department cannot estimate how many products have not been on the market for five years that might otherwise be able to use this exemption, but there may be several hundreds or even thousands. The Department estimates that 300 new products packaged in RPCs are normally introduced into the Oregon market annually; perhaps half of these are food products. The cost of using a reduced container might not be

⁸ Product manufacturers may go through a process for RPCs using recycled resins to receive an FDA "no objection" letter. However, approval procedures are costly, requiring lengthy testing.

less than the cost of another compliance option (mold changes may be required, etc.); the issue voiced by food processors is rather that, because of FDA regulations, they cannot use another Option, and thus will be forced out of the market.

General Public

While not directly subject to the provisions of the Law, the general public will be affected in the following ways:

- o Increased opportunity to recycle plastics. Many members of the public have sought opportunities to recycle plastics. The new Law is resulting in more plastics recycling depots, and may lead to additional curbside pickup of plastics. Currently some areas offer curbside pickup of plastic milk jugs. Eugene has recently started curbside pickup of all rigid plastic containers. According to the plastics industry, curbside pickup of mixed plastic bottles could cost an average household an additional \$0.15 a month. The West Linn pilot program had a comparable annual cost estimate: \$1.07/household.
- o Any increased costs incurred by container or product manufacturers in complying with the various Options are likely to be passed along to the public buying products in RPCs, raising the cost of the consumer good. Estimated increased cost per package: 1 to 5 cents.
- o Disappearance of some products from the Oregon market. According to product manufacturers, some companies may decide not to sell some or all of their RPC-packaged lines in Oregon if compliance proves too expensive.
- o Delay or failure of some new products to be introduced into the Oregon market. Food processors especially have noted that Alternative A for the "reduced container" exemption (requirement that there be a RPC in existence five years earlier from which to gage the package reduction) will inhibit introduction of new products. Other compliance Options (e.g. recycled content) may not be feasible for food processors.

The general public will benefit from increased job opportunities due to plastic recycling and associated economic activities.

Small Business

Affected persons: Small businesses affected by the Law include Oregon's RPC container manufacturers (10-12 firms, all but three of which have under 150 employees) and other out-of-state container manufacturers whose containers are used

for products sold in Oregon; point-of-sale packagers in the foodservice and other industries; grocery stores; delicatessens; garbage haulers; recycling operations; plastic brokers and processors; and small product manufacturers using RPCs (e.g. food processors, nurseries); and distributors of RPCs.

Fiscal impacts:

For product and container manufacturers, fiscal impacts will depend on the number of RPCs used or manufactured and the compliance (or exemption) Option(s) chosen.

The foodservice industry (point-of-sale packagers) includes many small businesses (convenience stores, take-out food vendors, street and stadium vendors, cafeterias, etc.). Sales of plastic point-of-sale foodservice containers in Oregon are estimated at \$12 million a year. The Law impacts these companies and their distributors. Compliance will be difficult for them as they often do not purchase RPCs directly from the manufacturer. They may be forced to switch to containers composed of different materials. (See "Switching to Alternative Packaging Material," p. 12.)

Small business will likely be the beneficiary of many of the infrastructure investments in plastics recycling. (See "Positive Economic Impacts," p. 15.) Implementation of the Law may be more costly to recycling businesses than beneficial, depending on markets.

Violations of the Law are subject to civil penalties of up to \$10,000 per day. The proposed rule reduces the impact on small business by establishing a threshold of daily sales of RPCs (500) to determine whether a violation would be a Class III instead of a Class II violation. Class III violations are considered less severe, have a lower maximum civil penalty in DEQ's enforcement matrix, and normally do not trigger a civil penalty. The Department believes most take-out businesses are under the 500 daily sale threshold.

Some small businesses such as small food manufacturers which have to meet FDA requirements may find it impossible to comply with the Law if the aggregate RPC recycling rate is not met. In those cases the result could be ceasing to sell in Oregon, or not selling certain product lines in Oregon for which complying RPCs cannot be found (or produced, in the case of a container manufacturer). If costs of compliance (or of switching material) causes a product to become relatively more expensive than competing products, the result could be loss of market share. If the Oregon market represents a substantial part of the company's business, it could result in the company ceasing to manufacture certain product lines or even going out of business.

Large Business

Affected persons: Container manufacturers; product manufacturers (including food processors; manufacturers of cosmetics and personal care products, consumer goods, household and commercial chemicals [pesticides, etc.], automotive products); retail stores (who may also be point-of-sale packagers).

Fiscal impacts:

As with small businesses, fiscal impacts for product and container manufacturers will depend on the number of RPCs used or manufactured and the compliance (or exemption) Option(s) chosen.

Effects noted above for small businesses (such as food manufacturers) which cannot comply with the Law also hold true for large businesses, if the 25 percent RPC aggregate recycling rate is not met.

Local Governments

As consumers of products in RPCs, local governments would be affected in the same ways as the general public. As providers of solid waste services, local governments will need to be involved in developing the RPC recycling infrastructure. Less plastic will be landfilled as progress is made towards achieving the 25 percent RPC recycling rate. As RPCs are diverted from landfills, the life of the landfill will be extended; however this effect will be minor, since RPCs are a small part of the wastestream (1.37 percent by weight). If RPCs are added to recycling programs administered by local governments, any additional costs of such programs will either be passed on to households in higher garbage collection fees or paid out of the local tax base. (For costs in one locality, see p. 4.)

State Agencies

The Department of Environmental Quality is the implementing agency. DEQ must do the following: prepare a report to the 1995 Legislature on implementation of this program; provide outreach and technical assistance to container and product manufacturers and other potentially affected entities on how to comply with the Law; provide public information on the program, which is one of two in the country and has received national attention (development of Fact Sheets, etc); beginning in 1995, conduct an annual census of all parties involved in brokering, processing or recycling post-consumer RPCs in Oregon; contract for a biennial waste composition study including a special sort to determine the amount of RPCs being disposed of (includes developing protocols to ensure accuracy, special training for field personnel, etc.); use the preceding information to calculate an annual RPC aggregate recycling rate; determine that recycling rate methodologies submitted by product manufacturers are

acceptable; if the 25 percent RPC aggregate recycling rate is not achieved, perform compliance and enforcement activities beginning in 1996; carry out future rulemaking to incorporate any changes from the 1995 Legislature. Advisory committees will be involved with some of those tasks (e.g. calculating the 1995 aggregate recycling rate). The following Table shows the estimated full time equivalent employees (FTE) needed to implement the program, and associated costs (includes all costs including benefits, services and supplies, capital outlay, etc.).

Fiscal Year	FTE Required	Cost
Second half, FY 94-95 (6 mo.)	1.3	\$100,023
Biennium 95-97:		\$532,319
FY 95-96	4.4	
FY 96-97 (assumes 25% recycling rate not met)	3.8	
Bien 97-99: (assumes 25% recycling rate met)	.93	\$119,294

Revenues: None (loss of solid waste disposal and permit fees for RPCs diverted from landfill disposal; 5,000 tons = \$6,200/yr)

Expenses: In above table, plus \$40,000 in Professional Services per biennium for increased solid waste composition survey costs (base cost of waste comp study: \$150,000 - \$250,000); in addition to above staff, costs of designing, administering and developing a recordkeeping system for the annual RPC recycling census (est. \$5,000)

Other Agencies. The Economic Development Department (EDD) staffs the Oregon Recycling Market Development Council whose charge is to develop markets for recycled materials. As a result of the Law going into effect, EDD may experience greater activity. No increased staff projected. The state Department of Agriculture may have increased contacts from food processors who are also "product manufacturers" as they search for ways to comply with the RPC Law and meet Department of Agriculture regulations for certain foods.

Assumptions

- 1,000 product manufacturers sell in Oregon (not including point-of-sale).
- Each product manufacturer has an average of 15 different types of RPC sold in Oregon for which it must comply (not including point-of-sale).
- 300 new types of products sold in RPCs are introduced annually in Oregon.
- 10,000 foodservice establishments fill point-of-sale foodservice containers in Oregon; DEQ estimates one-third of them use RPCs.
- 31,000 tons of RPCs were landfilled in 1992.
- FDA-regulated products comprise at least one-half and possibly as much as two-thirds of the RPC wastestream in Oregon.

There are 168 plastic businesses in Oregon with 4,200 employees, doing \$500 million a year business (American Plastics Council).

The average family generates 30 lbs/year of plastic bottles (in a "non-bottle bill" state) (APC).

The average West Linn family generated 26 lbs of plastic containers/yr, and separated out 14.8 lbs/yr for curbside recycling (West Linn Study).

90 percent of the RPC packaging used in Oregon is manufactured elsewhere.

Currently 90% of plastics collected by some Oregon recyclers is exported.

For product manufacturers selling their products nationwide, most products are sold in Oregon.

All plastics constitute 7.75 percent by weight of the waste disposed of in Oregon, or about 20 percent by volume.

rpchrg.fis
7/12/94

Attachment B5

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Implementing Oregon's Rigid Plastic Container Law

Land Use Evaluation Statement

1. Explain the purpose of the proposed rules.

The proposed rules would implement Oregon's Rigid Plastic Container Law, specifying how product manufacturers who use and container manufacturers who produce rigid plastic containers are to comply with new recycling, recycled content or reuse requirements going into effect January 1, 1995. The rules would set compliance and exemption standards, methodologies for calculating rigid plastic container recycling rates, recordkeeping requirements, reporting responsibilities and enforcement provisions. The rules would also establish classes of violations of the Law under OAR 340 Division 12.

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

Yes ___ No X

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

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

Yes ___ No ___ (if no, explain):

c. If no, apply the following criteria to the proposed rules.

Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

1. Specifically referenced in the statewide planning goals; or
2. Reasonably expected to have significant effects on
 - a. resources, objectives or areas identified in the statewide planning goals, or
 - b. present or future land uses identified in acknowledged comprehensive plans.

In applying criterion 2. above, two guidelines should be applied to assess land use significance:

- The land use responsibilities of a program/rule/action that involves more than one agency, are considered the responsibilities of the agency with primary authority.
- A determination of land use significance must consider the Department's mandate to protect public health and safety and the environment.

In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.

The Department has considered the criteria and has determined that the proposed rules have no significant impact on local land use. The rules implement requirements for recycling rigid plastic containers which will lead to fewer such containers being landfilled. They could also encourage siting of additional plastics recovery facilities (plastics material resorting facilities). Plastic potentially diverted from landfills comprises a very small percentage of total municipal solid waste. The Department estimates that about 38,000 tons of rigid plastic containers were generated in Oregon in 1992 and that 31,000 tons were landfilled. The landfilled rigid plastic containers represent 1.37% of total municipal solid waste landfilled. If the Law's recycling rate for rigid plastic containers is met, and 25% of rigid plastic containers are diverted from landfilling, this would result in the diversion of a total of about 10,000 tons of plastics annually.

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.

Deanna Muller-Pigg
Division

Robert C. G.
Intergovernmental Coord.

7/8/94
Date

Attachment C

State of Oregon
Department of Environmental Quality

Memorandum

Date: Sept. 6, 1994

To: Environmental Quality Commission
From: Helen Lottridge
Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: Sept. 1, 1994, beginning at 10:00 AM
Hearing Location: Portland, Oregon

Title of Proposal: Implementing Oregon's Rigid Plastic Container Law

The rulemaking hearing on the above titled proposal was convened at 10:05 AM. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

70 people were in attendance, 20 people signed up to give testimony.

Prior to receiving testimony, William Bree, DEQ staff, briefly explained the specific rulemaking proposal and the reason for the proposal.

People were then called to testify in the order of receipt of witness registration forms and presented testimony as noted below. Written testimony submitted for the record has been included with other written testimony.

David Martin, American Pet Products Manufacturers Association, Inc.: He indicated that the statute and regulations need to be modified. Requested that this body recommend to the legislature that the rules be more in line with California's regulations because the current rules are difficult for manufacturers. He supported definition alternative B and the reduction alternative B. Stated that there should be a FIFRA exemption. And indicated that DEQ should not regulate containers until one year after the rate is calculated.

Robin Pavlich, Southland Corporation: She believes the legislature did not intend small chains such as 7-11 to be defined as a product manufacturer, we are not. The reporting requirements are extremely cumbersome for small stores open 7 days a week, we are not equipped to comply. The waste stream these containers reflect is small - 1%.

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September 6, 1994
Presiding Officer's Report on
September 1, 1994 Rulemaking Hearing
Page 2

Compliance for 7-11 in Oregon is a burden, in Washington it is not. Customers will travel to Washington to shop. She believes these rules are anti small business. We are concerned about the health factor; when food comes into direct contact with recycled product there may be an e-coli problem.

Lee Barrett, City of Portland: Currently the City of Portland with its curbside program can only pick up #2 milk jugs. We recently sent out a survey to 50,000 people and found there was a lot of stress with the public because they cannot recycle more plastics. Ultimately the City hopes more plastic will be recycled curbside. The City supports definition alternative A.

Steve McCoid, Association of Oregon Food Industries: OFI is a nonprofit organization that supports recycling programs, bottle bill, etc. Our industry was a pioneer in recycling programs. The grocery industry does not have the ability to control the mandated recycling rate or have the ability to influence either packaging decisions or the development of the market by large companies. OFI's major concern is the compliance rate; if not met, grocery stores lose the ability to sell thousands of products. It will create a situation where Oregon grocers will not be able to compete. The public will travel to Washington to purchase products. Many retailers will be seriously impacted by these rules. Grocers are subject to rules, delis and bakeries supply the best packaging and give the consumers the ability to choose. These containers are generic in nature, the manufacturer doesn't know what the containers will hold. We cannot comply with the rules and suggest two things: 1) Follow the California rules on point-of-sale, and 2) postpone law until rate is calculated accurately. OFI supports definition alternative B and reduction exemptions alterative B. It makes no sense that new packages cannot get exemptions and they should be able to use the same exemptions. The rules should clearly state that the retailer is not subject to enforcement for non-point-of-sale items.

Larry McIntyre, AJP Northwest: We have developed a polystyrene recycling program. We offer recycling of material in the Portland area. There is no allowance for this program to count under brand-specific recycling rate. Identifying a specific brand doesn't work because our program is not brand-name specific. We collect and recycle all polystyrene products which we sell.

Dave Aho, Indipak: Indipak is a thermoform manufacturing company that makes custom thermoformed packaging; we cannot buy post-consumer sheets. Can't buy raw material. Supports definition alterative B.

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September 1, 1994 Rulemaking Hearing
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Godfrey Sluder, L&F Products: The proposed rules leave many points unresolved. L&F make a variety of products including cosmetics and "Baby Wipes." For some products they will not use recycled content. The recycling rate option is not for the manufacturer, recommend a full exemption for FDA packaging. There should be an exemption for DOT/UN regulated packages. Failure to allow companies to corporate average is disappointing. Allowing corporate averaging will help the companies to focus on using recycled materials. Provides all companies flexibility to comply with the law. Doesn't benefit everybody. Supports reduction alternative B. Plastic containers are eligible for a 5-year exemption. We support definition alternative B. More options to stimulate manufacturer to develop new packaging which are recyclable. California has recognized the need for post-consumer resin. Definition alternative B is more consistent with California including language which incorporates the idea of a resealable closure. There should be a FIFRA exemption. Records should be kept only two years, not three.

Catherine Beckley, Cosmetic, Toiletry & Fragrance Association: The proposed regulation affects hair and personal care products sold in Oregon. CFTA supports definition alternative B. Tubes are not rigid containers. Rules should allow corporate averaging. Many of the companies will not comply with the law. Averaging does not offer an easy way out for manufacturers. EQC should recognize the need for averaging. Packaging laws address both issues. DEQ should look at other states before making any decisions. Neither reduction alternative A or B is good for the reduction exemption, however B is better. Oregon should take another look at the California law and rules.

Gene Tappan, Reckitt and Coleman: R&C makes household specialty products. The following points are covered in my written comments. The tamper-evident packaging exemption in the rules is appreciated. Regret that source reduction option has a time limit. Suggest corporate averaging styled after California. Ask to clarify the ambiguity in the enforcement dates.

Christopher Taylor, OSPIRG: Pleased with the draft rules. Maintain the original legislation of SB66. Request for exemptions and extensions are not a surprise. Supports definition alternative A. If this rule is not adopted it will encourage manufactures to layer more plastic in the packaging. Oppose definition alternative B, this encourages more waste. Support reduced container alternative A, does not support any broadening of the exemption. Problem with rigid plastic containers is not their weight, but volume. Plastics have a long way to go to reach recycling rate of other materials. Intent of the

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law was to bring them up to 25%. Opposed to the one-time exemption for new packaging. After 1995 containers should be made to be recycled. Don't make it more difficult to recycle. Corporate averaging is not supported. Small businesses won't be able to comply. Work remains to be done to the procedure for the exemption, hopefully the Department will use the public for comment. Support the draft rules regarding pyrolysis. Weakening of Oregon's law not acceptable. California does not have to be our model. Post-consumer rigid plastic containers are the only type of plastic that should count as post-consumer.

Geoffrey Lavear, Oregon Recycled Markets Development Council: The overwhelming importance is to keep it simple, many players in this picture. If the rules are clear, concise and simple we will get compliance especially from the public. They will understand which containers are recyclable or not. Supports definition alternative B. Cleanliness is an issue the rules should address. Final comment relates to new products and packaging and give incentive for that production.

Patty Enneking, American Plastics Council: A key element towards making a clear rule is coming up with one that is easy for everyone to understand. Supports definition alternative B. It is clear because it defines what a plastic container is. Cleanliness in recycled product is important, tubes would be difficult to clean and prepare for recycling.

Bridget Flanagan, Safeway: Retailers are concerned about the Oregon Rigid Plastic Container Law. Ambiguity makes it virtually impossible for any retailer to comply. Doesn't affect other states, only Oregon. Retailers are considered a product manufacturer if they fill a cookie container, cake container, etc. This makes extra costs because they will need auditors, record keepers, etc. The uncertainty makes it difficult for the point-of-sale packager. Market displays will be impacted. Retailers won't know which will be regulated. Supports definition alternative B. This is the better not the best of the two. Plastic containers are preferable. Point-of-sale packagers simply put the product in container to help the customer get the product home. Question is will the container protect from contaminants? Food safety and integrity are an issue. The majority of consumers store products in the original container. Changing the container to anything less will greatly affect the market. Food safety and the people of Oregon cannot be compromised. The advantages of plastic containers cannot be ignored. This will take food safety back ten years, with Salmonella, Hepatitis, E-coli. Rigid plastic containers are purchased by Safeway from over 65 manufacturers. Safeway contacted

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several manufacturers to see how they were going to deal with Oregon's law, then they will determine how it will be handled. The law and rules will impact business and costs. Which plastics will be used is a question. Proposed fines are a problem. The fines do not address the problem. Need regulatory relief now.

Dan Colegrove, Grocery Manufacturers of America: Supports definition alternative B, it provides more opportunities for manufacturers. Alt A will make it hard for cosmetic companies. Supports reduction alternative B, believes the exemption of products taking advantage of source reduction is a plus for landfill issues. Make rigid plastic container law functional. This alternative as a compliance option creates an incentive for new and innovative packaging. GMA is committed to reducing packaging. There should be FDA, FIFRA, and DOT exemptions.

Dennis Griesing, Soap and Detergent Association: Represents soaps and detergents, both domestic and industrial. Supports definition alternative B with further refinement to provide for capability of multiple closure. Does not support reduction alternative A or B. Rules should consider practical effects. Need to restore the primacy of source reduction. Reduction should be a compliance option. Substitute the California approach. Essential to source reduce. There are potentially fiscal impacts as well; it eliminates capital and tax costs. Reward companies that source reduce. Corporate averaging must be addressed. Needs a FIFRA, DOT/UN exemption.

Tim Mowry, Dolco Packaging: Submitted detailed written comment. Inherent differences make it impossible for product manufacturers to comply. One option for food processors and manufacturers. Point-of-sale parties get third-party containers, don't know where they get them from and don't have a direct relationship with manufacturers of containers. Generic stock isn't associated with processor. Manufacturers must consider health and safety issues with using recycled content. Aggregate rate will be impossible. Individual companies cannot meet the aggregate rate. Food containers should be excluded from the law.

Jeff Gage, Gage Industries: Gage Industries is trying ways to use plastic recycled materials. Have invested a million dollars. Various sections of the rules affect each other. First, concern about substantial investment, sections specifies December 1996 date; manufacturers should have until the 1997 rates are calculated. Reference to "post-consumer rigid plastic container" should be removed. The pyrolysis discussion should be removed from the "recycled in Oregon" section. DEQ is under no obligation to pay

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attention to AG advice. Two-year extension, substantial investment definition, for post consumer rigid plastic containers is taking a combination of recycling material and recycled container. Lids and domes should not be rigid plastic containers. Recycled definition is inappropriate and should be stricken. Supports definition alternative B. DEQ doesn't have to calculate the rate. Recycled content is not likely, economical, or technically feasible. The term "production run" should not be used, see records section for reference to time frame. With regard to recycling rates, what rights do we have to disagree? People should have a list of DEQ's published rates. Cannot disagree without some evidence. We should be able to challenge adjustment methods.

Keith Atkins, Union Carbide and Oregon Recycled Markets Development Council: Draft affects customers, reclaimers of plastics. PET is in short supply, prices going up even pigmented bottles are now getting in short supply. Plastic recycling plants cannot get enough feedstock. As an industry, recycling is needed. Reclamation business major effort to reduce costs at the chain from curbside to sorting then to fabricators, etc. Those costs have to be curbed to make cost competitive with those that use virgin materials. Support definition alternative B. There is no point paying for transport of material that will in time be thrown out or encouraging people to put a number of things out for recycling which will be contaminated. We have enough problems with bottles, tubes would make it tougher. Union carbide has a very active program with FDA applications. If successful, a letter from FDA of non-objection says they can play in the game. Union carbide very careful to participate in a wide scale food application where the package fabricator is the product manufacturer but there is still a concern over liability for recycled containers.

Karie Oakes, Private citizen: very concerned about all the plastic wasted. Has participated in curbside and Thriftway plastic recycling. We need better markets for recycled plastic. We need more support for plastic recycling. We need more use of post-consumer plastic. Supports definition alternative A. Supports no corporate averaging. Wants more substantial investment in full markets. Wants more post-consumer containers. Resents being "held hostage" by retailers.

Jessica Oaks, Girl Scout: Participates in Thriftway recycling program. There is a problem with no numbers on the lids. Lots of people use the Thriftway program but more should. They fill 45 "Very Big" bags at one store.

The following people handed in written comments but did not present oral testimony:

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Robin M. Gentz, Clorox Corp.

This testimony has been included with other written testimony.

There was no further testimony and the hearing was closed at 6:00 PM.

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State of Oregon
Department of Environmental Quality

Memorandum

Date: September 1, 1994

To: Environmental Quality Commission

From: Gerry T. Preston *GP*

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: September 1, 1994, beginning at 10:00
Hearing Location: 334 NE Hawthorne St., Bend, Oregon

Title of Proposal: Implementing Oregon's Rigid Plastic Container Law

The rulemaking hearing on the above titled proposal was convened at 10:30 a.m.. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

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

Prior to receiving testimony, Bob Danko briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

Michele McKay
Central Oregon Environmental Center
16 NW Kansas, Bend, OR 97701

Ms. Michele McKay is co-director of the Central Oregon Environmental Center. She works directly with households in the community about environmental issues and notes that recycling is foremost on everyone's mind and that the most common concern is over plastics recycling. People want to learn how to recycle plastics but are confused with the number system, and are generally angry and disgruntled because they can't recycle most plastics. Then they learn that when they do recycle plastics that plastics just end up being stored and not recycled. The public has an interest in recycling and she feels that recycling needs to be simple for them. Plastics recycling is hard enough to understand and the issues of what is and isn't rigid or is and isn't a container become an incredible burden for the public which simply just wants to recycle plastic. Throwing obstacles in the public's way as to what meets a certain definition is the wrong way to go, plastics recycling needs to be simple and streamlined. Her perception of the people

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she talks to is that they have very little sympathy for the plastics industry. That the plastics industry hasn't put much effort into doing the right thing and to working with the public. Ms. McKay submitted no written testimony.

Paula Kinzer
Bend Recycling Team
P.O. Box 849
Bend, OR 97709

Ms. Paula Kinzer is a member of the Bend Recycling Team (BRT). The BRT has been encouraged by the American Plastic Council's efforts to work with the public and the recycling industry. However, BRT is discouraged with some of the exemptions which are being sought. BRT supports Alternative A definition of a rigid plastic container and supports Alternative A for the reduced container. BRT feels that even though a container weighs less it should still be recycled. BRT does not support the idea of an expanded substantial investment exemption beyond one time. BRT does not support the Corporate Averaging idea. They feel using post-consumer plastics is important and would like to see that part of the law remain the same.

Bend Recycling Team is asked at least three times a day as to when they will be recycling more plastics - the public wants to recycle all plastics and they are confused by the numbering system.

BRT feels that we should be reducing the use of plastic and one idea would be to utilize a central distributing and sterilizing center for reusable deli containers. But since we're not at that stage in waste reduction, these containers should be recycled.

BRT feels that having the law in place has helped raise awareness of manufactures. Manufacturers are having to look at the long-term responsibility of their products. For Oregon to pass this law and to keep it as stringent as possible will send a strong message.

The law was written with the plastic industries involvement and they agreed to all of it in the beginning, consequently there is nothing in the law that warrants change until we've given it a try. We need to stick to what was written in the law.

No written comments were submitted at the hearing.
There was no further testimony and the hearing was closed at 11:00 a.m..

Enclosure: Cassette tape "Public Hearing, 9-1-94, Rigid Plastic Container Rules"

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 7, '94

To: Environmental Quality Commission

From: Charles W. Donaldson, Manager
Western Region Solid Waste

Subject: Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: 9/1/94, beginning at 2 p.m.
Hearing Location: Meeting room, main floor
Corvallis Library
645 N.W. Monroe
Corvallis, OR

Title of Proposal: Implementing Oregon's Rigid Plastic Container Law

The rulemaking hearing on the above titled proposal was convened at 2 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.

Fourteen people were in attendance, three people signed up to give testimony.

Prior to receiving testimony, Deanna Mueller-Crispin briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

Evan Manuel, Citizen activist
P.O. Box 2189, Corvallis, OR 97339

Mr. Manuel supported the more inclusive rule language which would require more plastic to be recycled. He felt recycling goals indicated in the rules (25%) were attainable and DEQ should push for higher recycled content in the future. He agreed with DEQ that pyrolysis is not recycling. He also felt Oregon's laws will complement those in place in California. Finally, he advocated for a deposit on a rigid plastic containers.

Written evidence was not submitted for the record.

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**Tony Kingsbury, Dow Chemical Company
5022 Redfern Circle, Midland, MI 48642**

Mr. Kingsbury commented on the two alternatives in the rule. On page A-5 & A-6, under 340-90-330 (1) & (2) "Rigid Plastic Containers", he supported the Alternative B language indicating the language in Alternative B is more specific and would eliminate gray areas in Alternative A. On page A-9, under 340-90-340 (5) "Exempt Rigid Plastic Containers" he supported Alternative B indicating it clarifies language for new products and would not cause a competitive disadvantage for new products produced after 1990, as he felt Alternative A would. On page A-22 - A-27, under 340-90-400 "Responsibilities of a Product Manufacturer", he was concerned that point-of-sale packagers (fast food restaurants, deli's, convenience stores, etc.) will not be able to deal with requirements of the law and felt DEQ should adopt language to help point of sale folks cope. Point of sale packagers purchase generic packaging and records or knowledge of 1990 status will be difficult. Product to weight ratios will be difficult to get a handle on.

Written notes were submitted for the record.

**Kathy Bengtson, President and Founder of Diet Light Weight Loss System
P.O. Box 629, Lebanon, OR 97355**

She is opposed to the law because it would have a significant impact on her business. She feels because of the nature of the food items her company produces the law as currently written would force her to send all business out of state.

A letter was submitted for the record.

The following people handed in written comments but did not present oral testimony:

None

There was no further testimony and the hearing was closed at 2:30 p.m..

corhrg.rpc

ATTACHMENT D

RIGID PLASTIC CONTAINER RULES INDEX OF WRITTEN AND ORAL COMMENTS RECEIVED DURING PUBLIC REVIEW

A summary of all written and oral comments received on the Proposed Rules is contained in Attachment E, together with Department responses. The following persons submitted written comments on the Proposed Rules:

1. OSPIRG, 1536 SE 11th, Portland, OR 97214. July 25, 1994.
2. Heath Nunes, 8124 SE Lake Rd. #55, Milwaukie, OR 97267. August 21, 1994.
3. Tiffany Dean (no address). August 3, 1994. August 21, 1994.
4. Gerald Bullock Jr. (no address). August 5, 1994.
5. Kathryn M. Mayfield (no address). August 5, 1994.
6. Peter Geiser, 97 NW Shasta Pl., Bend, OR 97701. August 10, 1994.
7. Robert T. Seeley, Manager Packaging & Engineering, Olin Chemicals, P.O. Box 1355, Stamford, CT 06904-1355. August 8, 1994.
8. Jeanne Roy, Chair, Recycling Advocates, 2420 SW Boundary Street, Portland, OR 97201. August 12, 1994.
9. David E. Ritter, Regulatory Affairs Manager, Kiwi Brands Inc., 447 Old Swede Road, Douglassville, PA 19518-1239. August 15, 1994.
10. Ken Hagen and Dick Wanderscheid, City of Ashland, City Hall, Ashland, OR 97520. August 15, 1994.
11. Anne Crews, Manager, Corporate Affairs, Mary Kay Cosmetics, Inc., 8787 Stemmons Freeway, Dallas, TX 75247-3794. August 15, 1994.
12. C. H. Thompson, Regional Sales Manager, Premier Plastics, 635 East 15th St., Tacoma, WA 98421. August 23, 1994.
13. Jane E. Lavey, Manager of State Legislative Affairs, International Sanitary Supply Assoc. Inc., 7373 North Lincoln Avenue, Lincolnwood, IL 60646-1799. August 22, 1994.

14. Gordon J. Naff, Secretary/Treasurer, Highland Plastics Inc., 965 North Fair Oaks Avenue, Pasadena, CA 91103. August 22, 1994.
15. William B. Warren, Controller, Highland Plastics Inc., 965 North Fair Oaks Avenue, Pasadena, CA 91103. August 22, 1994.
16. Joe Kuehn, President, Plastic Ingenuity Inc., 1017 Park St., Cross Plains, Wisc. 53528. August 22, 1994.
17. James N. Mason, President, Superfos Packaging Inc., North American Container, Allegany County Industrial Park, 11301 Superfos Drive, S.E., Cumberland, MD 21502. August 22, 1994.
18. Lawrence D. Boyle, Senior Vice President, Sealright Co., Inc., 7101 College Boulevard, Overland Park, KS 66210. August 22, 1994.
19. Nanci Kenly, 1454 SE 57th, Portland, OR 97215. August 26, 1994.
20. Jennifer M. Davis, 826 SE Franklin, Portland, OR 97202. August 26, 1994.
21. _____, 7570 SW Westgate Way, Portland, OR 97225. August 26, 1994.
22. Kevin Celluia (?) (no address). August 26, 1994.
23. Kelton J. Reid, 2103 SE 32nd Ave., Portland, OR 97214. August 26, 1994.
24. Mark Williamson (no address). August 26, 1994.
25. David A. Ruchir (?), 3550 SW Beaverton-Hillsdale, Portland, OR 97221. August 26, 1994.
26. Anthony Giovannone, President, Sencorp Systems Inc., P.O. Box 6001, Hyannis, MA 02601. August 26, 1994.
27. Eric Navickas, 711 Faith St., Ashland, OR 97520. August 29, 1994.
28. Amanda Lewis, 929 SE 16th Ave., Apt 1, Portland, OR 97214. August 29, 1994.
29. Jennifer Wright, 4822 N. Vanderbilt, Portland, OR 97203. August 29, 1994.
30. Jeannie Ulrich, 1536 SE 11th Ave., Portland, OR 97214. August 29, 1994.
31. Adam Miller, 2090 Roosevelt #9, Eugene, OR 97402. August 29, 1994.

32. Maren Souders, 1415 SW Custer Dr. #7, Portland, OR 97219. August 29, 1994.
33. Elizabeth Spiegel (?), 530 NW Hermosa, Portland, OR 97210. August 29, 1994.
34. Rebecca Sweet, 3947 SE Main St., Portland, OR 97214. August 29, 1994.
35. Maud Macrory, 1657 Wilson Court, Eugene, OR 97402. August 29, 1994.
36. Jeana Frazzini, 1618 NE Couch, Portland, OR 97232. August 29, 1994.
37. Lorrin Finch, 1297 SE 40th, Hillsboro, OR 97124. August 29, 1994.
38. Nicole Swanson (no address). August 29, 1994.
39. Ray Steinfeld, Jr., Chief Executive Officer, Steinfeld's Products Company, 10001 N. Rivergate Blvd., Portland, OR 97203-6596. August 29, 1994.
40. Anthony C. Mack, Vice President, Development & Quality, Fabri-Kal Corp., Plastics Place, Kalamazoo, MI 49001. August 29, 1994.
41. Deborah Becker, Vice President, Environmental Policy, Kraft General Foods, Three Lakes Drive, Northfield, IL 60093. August 29, 1994.
42. David Martin, Esq., Director of Legislative Services, General Counsel, American Pet Products Manufacturers Assoc. Inc., 511 Harwood Building, Scarsdale, NY 10583. August 30, 1994.
43. Jennifer A. Snyder, Environmental Specialist, Mattel, Inc., Office of Corporate Environmental Affairs, 333 Continental Blvd., M/S M1-1520, El Segundo, CA 90245. September 1, 1994.
44. Bob Stoddart, Mission Packaging Inc., Recycling Markets Development Council, 8005 SW Hunziker Street, Tigard, OR 97223. September 1, 1994.
45. Frank DeVore, Tri-Plas Inc., 1755 East Acacia Street, Ontario, CA 91761. September 1, 1994.
46. Dianne M. Boss, Resource Recycling Specialist, Kodak Environmental Services, 1669 Lake Ave., Rochester, N.Y. 14652. September 1, 1994.
47. Robin M. Gentz, Senior Government Relations Representative, The Clorox Company, P.O. Box 24305, Oakland, CA 94623-1305. September 1, 1994 (Portland public hearing).

48. Tim Mowry, Foodservice & Packaging Institute, 1901 North Moore Street, Suite 1111, Arlington, VA 22209. September 1, 1994 (Portland public hearing).
49. The Soap and Detergent Association, 475 Park Avenue South, New York, N.Y. 10016. September 1, 1994 (Portland public hearing).
50. Bridget A. Flanagan, Public Affairs Director, Safeway Inc., P.O. Box 523, Clackamas, OR 97015. September 1, 1994 (Portland public hearing).
51. Gene F. Tappan, Senior Regulatory Affairs Specialist, Reckitt & Colman, P.O. Box 943, Wayne, N.J. 07474-0943. September 1, 1994 (Portland public hearing).
52. Southland Corporation. September 1, 1994 (Portland public hearing).
53. Kathy Bengtson, President, Diet Light, Inc., P.O. Box 629, Lebanon, OR 97355. September 2, 1994.
54. Filomena King, Regulatory Affairs Specialist, Block Drug Company, Inc., 257 Cornelison Avenue, Jersey City, N.J. 07302-3198. September 2, 1994.
55. Kevin J. Kraushaar, Director of State Government Relations, Nonprescription Drug Manufacturers Association, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036. September 2, 1994.
56. Ana Maria Capestany, 3650 SE Knight, Portland, OR 97202. September 2, 1994.
57. Dennis Kelly, State Government Relations Manager, Ciba-Geigy Corporation, 5510 Birdcage St., Ste. 110, Citrus Heights, CA 95610-7620. September 2, 1994.
58. D.M.I., Box 769, W.S.O., 97761-0505. September 2, 1994.
59. Lorraine Luciano, 32871 NW Sunset Dr., Scappoose, OR 97056. September 2, 1994.
60. J. Gerald Tarr, Group Manager, Environmental Packaging, Campbell Soup Company, World Headquarters, Camden, N.J. 08103-1799. September 2, 1994.
61. R. Jerry Johnson, Executive Director, Polystyrene Packaging Council, 1025 Connecticut Ave., NW, Suite 515, Washington, DC 20036. September 2, 1994.
62. John McDonald, Director Environmental Affairs, Continental Plastic Containers, Inc., P.O. Box 5410, Norwalk, CT 06856. September 2, 1994.
63. Margaret Thornton, 12024 SE Beckman Ave., Milwaukie, OR 97222. September 2, 1994.

64. A. Allan Noe, State Affairs Director, National Agricultural Chemicals Association, 1156 Fifteenth Street N.W. Suite 400, Washington, D.C. 20005. September 2, 1994.
65. American Plastics Council, 1275 K Street NW, Suite 400, Washington, DC 20005. September 2, 1994.
66. Todd Van Gordon and Joseph T. Norris, Colgate-Palmolive Co., 300 Park Avenue, New York, NY 10022-7499. September 1, 1994.
67. Bob Martin, Solid Waste Director, Metro, 600 Northeast Grand Avenue, Portland, OR 97232-2736. September 6, 1994.
68. Eileen Geddings, Regulation & Standards Manager, Chef Francisco, 1400 Cross Street, Eugene, OR 97402. September 6, 1994.
69. Julie Davis, 1547 SE 32nd Ave., Portland, OR 97214; and George Wornum, 3051 S.E. Alder, Portland, OR 97214. September 6, 1994.
70. Cheri Unger, President; Eileen Adee, Recycling Chair; League of Women Voters of Oregon, Candalaria Mall, 2659 Commercial S.E., Suite 220, Salem, OR 97302. September 6, 1994.
71. Nan McNatt, 790 E. Elmore, Lebanon, OR 97355. September 6, 1994.
72. Cathy Ellis, Oregon. September 6, 1994.
73. John Bohlinger, Division Manager, Core-Mark International, 13551 S.E. Johnson Road, Portland, OR 97222. September 6, 1994.
74. W. Keith Atkins, Director, Solid Waste Management, Union Carbide Corp., 39 Old Ridgebury Road, Danbury, CT 06817-0001. September 6, 1994.
75. Tamsin Ettefagh, Senior Salesperson, KW Plastics Recycling Division, P.O. Drawer 707, Troy, Alabama 36081. September 6, 1994.
76. Kimberlee A. Vollbrecht, Regional Manager, Procter & Gamble, State & Local Government Relations, 1 Procter & Gamble Plaza, Cincinnati, Ohio 45202-3315. September 6, 1994.
77. Marla M. Donahue, Vice President, Public Affairs; Laura L. Snyder, Director of Government Relations; Foodservice & Packaging Institute, Inc., 1901 North Moore St., Suite 1111, Arlington, VA 22209. September 6, 1994.
78. Channing W. Riggs, Nestle USA, Inc., 1133 Connecticut Ave., Suite 310, Washington,

DC 20036. September 6, 1994 (5:02 p.m.).

79. Paul McLaughlin, President and CEO, The Butcher Company, 120 Bartlett St., Marlborough, MA 01752-3013. September 6, 1994 (5:10 p.m.).
80. Larry McIntyre, President, AJP Northwest, 1120 S.E. Morrison St., Portland, OR 97214. September 6, 1994.
81. Jennifer Ryder Fox, Director, Regulatory and Environmental Affairs, Western Agricultural Chemicals Assoc., 3835 N. Freeway Blvd., Suite 140, Sacramento, CA 95834. September 6, 1994.
82. M.R. Imbler, President & CEO, Berry Plastics Corp., P.O. Box 959, Evansville, Indiana 47706-0959. September 6, 1994.
83. Bryan L. Stuart, Government Affairs Manager, Western Region, DowElanco, Western Regional Office, 3835 North Freeway Boulevard, Suite 240, Sacramento, CA 95834. September 6, 1994.
84. Terry L. Witt, Executive Director, Oregonians for Food and Shelter, 567 Union Street N.E., Salem, OR 97301. September 6, 1994.
85. Sarosh J.H. Manekshaw, Director, Environmental, Safety and Health Affairs; Pennzoil Company, Pennzoil Place, P.O. Box 2967, Houston, Texas 77252-2967. September 6, 1994.
86. Allen R. Kidd, Vice President, Western Region, Elm Packaging Co., 2300 Raymer Ave., Fullerton, CA 92633. September 6, 1994.
87. Frank Plescia, Manager, Government Affairs, Monsanto, The Agricultural Group, 2240 Douglas Blvd., Suite 260, Roseville, CA 95661. September 6, 1994.
88. John Priesing, President & CEO; Earl V. Lind, Corporate Technical Manager; Russell Stanley Corp., 230 Half Mile Road, Red Bank, NJ 07701. September 6, 1994.
89. Bruce McElwain, Sales Representative, Quintex Corporation. September 6, 1994.
90. Fred Degiorgio, Regulatory & Environmental Issues Manager, DuPont Agricultural Products, Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038. September 6, 1994.
91. Deborah L. Neale, for The Geon Company; Neale & Associates, 33709 Lakeshore Boulevard, Lakeline, Ohio 44095. September 6, 1994.

92. Gregg F. Olsen, Recycling Product Manager, Ropak Corp., 660 S. State College Blvd., Fullerton, CA 92631-5138. September 6, 1994.
93. Roger L. Smith, Packaging Engineer, Castrol North America, Automotive Division, 240 Centennial Ave., Piscataway, NJ 08854. September 6, 1994.
94. F. H. Brewer, Director of Government Relations, S.C. Johnson & Son, Inc., 1525 Howe St., Racine, WI 53403-5011. September 6, 1994.
95. Dirk C. Bloemendaal, Counsel, Corporate Government Affairs; Mike Schmidt, Director Package Engineering R&D, Amway Corporation, 7575 Fulton St. East, Ada, MI 49355-0001. September 6, 1994.
96. Jayna L. Mull, Manager, Market Development, Automotive, Sunbeam Plastics, 3245 Kansas Road, Evansville, IN 47711-9611. September 6, 1994.
97. Ryan J. Kelly, General Manager, Griffin Bros. Inc., P.O. Box 42194, Portland, OR 97242-0194. September 6, 1994.
98. Catherine Beckley, Legal & Regulatory Counsel, The Cosmetic, Toiletry, and Fragrance Assoc., 1101 17th St, N.W., Suite 300, Washington, DC 20036-4702. September 6, 1994.
99. Laurel A. Nelson, Director & Counsel, State Government Affairs, National Food Processors Assoc., 1401 New York Ave., N.W., Washington, D.C. 20005. September 6, 1994.
100. Carolyn S. Hesse, McDermott, Will & Emery (for the Solo Cup Company), 227 West Monroe St., Chicago, IL 60606-5096. September 6, 1994.
101. W. Grant Watkinson, President, Paulsen & Roles Laboratories, P.O. Box 12107, Portland, OR 97212. September 6, 1994.
102. Gerald J. Claes, Director, Environmental Programs, Graham Packaging Co., P.O. Box 2618, York, PA 17405-2618. September 6, 1994.
103. Associated Oregon Industries, P.O. Box 12519, Salem, OR 97309-0519. September 6, 1994.
104. Rob Guttridge, Association of Oregon Recyclers. September 6, 1994.
105. Richard Kosesan, Executive Director, Oregon Agricultural Chemicals & Fertilizers Assoc., 1270 Chemeketa St., N.E., Salem, OR 97301. September 6, 1994.

106. William C. "Chris" Girard, Jr., President/CEO, Plaid Pantries, Inc., 10025 S.W. Allen Blvd., Beaverton, OR 97005. September 6, 1994.
107. John L. Matthews, Recycling Coordinator, Garten Foundation, P.O. Box 17485, Salem, OR 97305. September 6, 1994.
108. Alan C. Jones, President and CEO, United Grocers, P.O. Box 22187, Portland, OR 97269-2187. September 6, 1994.
109. Connie Kirby, Manager, Scientific and Technical Affairs, Northwest Food Processors Assoc. September 6, 1994.
110. Dan Colegrove, Manager of State Affairs, Grocery Manufacturers of America, 915 L Street, Suite 1110, Sacramento, CA 95814. September 6, 1994.
111. John McKernan, Vice President of Engineering and New Product Development, Setco Inc., P.O. Box 68008, Anaheim, CA 92817-0808. September 6, 1994.
112. Bruce Holser, Recycling/Environmental Specialist, Letica Corp., P.O. Box 5005, Rochester, Michigan 48308-5005. September 6, 1994.
113. H. Richard Landis, CEO & Brd. Chmn, Landis Plastics Inc., P.O. Box 189, Chicago Ridge, IL 60415. September 7, 1994.
114. Steven McCoid, President, Assoc. of Oregon Food Industries Inc., P.O. Box 12847, Salem, OR 97309. September 7, 1994.
115. Jo Ann Golia, Manager Product Safety & Regulatory Affairs, Chesebrough-Pond's USA Co., Research Laboratories, Trumbull Corporate Park, Trumbull, CT 06611. September 2, 1994.
116. James E. Hiltner, Manager of Recycling, Owens-Brockway. September 6, 1994.
119. Tony Kingsbury (employee of Dow Chemical), 5022 Redfern Cir., Midland, MI 48642. September 1, 1994.
125. Judi L'Italien, Manager, Recycling Plans & Programs, Mobil Chemical Company, Commercial Recycling Group, 3225 Gallows Road, Fairfax, VA, 22037-0001. September 1, 1994. (Original document lost in Department mail, facsimile received September 26, 1994 submitted into hearing record.)

WRITTEN COMMENTS RECEIVED AFTER END OF COMMENT PERIOD:
(Comments not included in summary in Attachment E)

117. Mike Gross, P.O. Box 768, Cascadia, OR 97329. September 8, 1994.

118. Max Brittingham, Executive Director, Oregon Refuse & Recycling Association, P.O. Box 2186, Salem, OR 97308-2186. September 9, 1994.
120. Robert L. Langert, Director of Environmental Affairs, McDonald's Corp., Kroc Dr., Oak Brook, IL 60521. September 12, 1994.
121. Joshua Berger (Environmental Coordinator for McMenamins Pubs & Breweries), P.O. Box 69031, Portland, OR 97201. September 12, 1994.
122. Lotte Streisinger, 2075 Harris St., Eugene, OR 97405. September 15, 1994.
123. Jude Hobbs, 1661 Willamette Str., Eugene, OR 97401. September 20, 1994.
124. David Kanies, President, The Ramsey Company, 24020 South Frampton Avenue, Harbor City, CA 90710-2102. September 20, 1994.

ORAL TESTIMONY. The following persons presented oral testimony at the public hearings:

Portland:

200. David Martin, American Pet Products Manufacturers Assoc. Inc. [written testimony #42].
201. Robin Pavlich, Southland Corp. [written testimony #52]
202. Lee Barrett, City of Portland.
203. Steve McCoid, Association of Oregon Food Industries [written testimony #114]
204. Larry McIntyre, AJP Northwest [written testimony #80]
205. Dave Aho, Indipak.
206. Godfrey Sluder, L&F Products.
207. Catherine Beckley, The Cosmetic, Toiletry & Fragrance Assoc. [written testimony #98]
208. Gene Tappan, Reckitt & Coleman [written testimony #51]
209. Christopher Taylor, OSPIRG [written testimony #1]
210. Geoffrey Lavear, Oregon Recycled Markets Development Council.

211. Patty Enneking, American Plastics Council [APC written testimony #65]
212. Bridget Flanagan, Safeway [written testimony #50]
213. Dan Colegrove, Grocery Manufacturers of America [written testimony #110]
214. Dennis Griesing, Soap and Detergent Association [Soap and Detergent Assoc. written testimony #49]
215. Tim Mowry, Dolco Packaging [written testimony #48]
216. Jeff Gage, Gage Industries.
217. Keith Atkins, Union Carbide and Oregon Recycled Markets Development Council [written testimony #74]
218. Karie Oakes, private citizen.
219. Jessica Oakes, Girl Scout.

Bend:

220. Michele McKay, Central Oregon Environmental Center.
221. Paula Kinzer, Bend Recycling Team.

Corvallis:

222. Evan Manuel, citizen activist.
223. Tony Kingsbury, Dow Chemical [written notes #119]
224. Kathy Bengtson, Diet Light Weight Loss System [written testimony #53]

COMMENT FOR PREPARATION OF FISCAL AND ECONOMIC IMPACT STATEMENT:

Connie Kirby, Manager, Scientific and Technical Affairs, Northwest Food Processors Assoc. July 20, 1994.

Attachment E

State of Oregon
Department of Environmental Quality

Memorandum

Date: October 3, 1994

To: Environmental Quality Commission

From: E. Patricia Vernon, Manager, Solid Waste Policy and Programs Section

Subject: Summary and Evaluation of Public Comments and Response to Comments, Rigid Plastic Container Rule Adoption

Public hearings were held on the Proposed Rules on September 1, 1994 in Portland, Bend and Corvallis. A total of 87 people attended the hearings. Twenty-five persons gave oral testimony. One hundred and seventeen written comments were received by the Department. Seven additional comments were received after the close of the public comment period. Below is a summary of the comments received and the Department's responses. The numbers in brackets refer to the list in Attachment D. Written comments are numbered in the "100" series. Oral comments are numbered in the "200" series.

Comment 1: General Support for the Rules

COMMENT: (Comments received from OSPIRG [#1], 27 members of the public [#2, #3, #4, #5, #6, #19, #20, #21, #22, #23, #24, #25, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #37, #38, #63, #71, #72], City of Ashland [#10], Metro [#67], League of Women Voters of Oregon [#70], Association of Oregon Recyclers [#104], Bend Recycling Team [#221]) The rules must remain strong to ensure that the recycling incentives provided in the law remain strong. Don't weaken current laws on plastic recycling. Lessening plastic recycling rules will damage Oregon's environmental quality. The law has stimulated the plastics industry to support new plastics collection programs. The most stringent proposal possible should be adopted because it will be more cost-effective to start right from the beginning, rather than starting with exceptions with the idea of fitting them in later on; and consumers will recycle more if the process is easier. Adoption of the proposed rules will provide a needed impetus to expand recycling collection in order to meet the aggregate recycling rate, and use post-consumer plastic in new products.

RESPONSE: The Department is recommending that the Environmental Quality Commission (EQC) adopt rules for the implementation of the Oregon Rigid Plastic Container Law (the Law). The proposed rules reflect, as closely as

possible, legislative intent with regard to requirements on rigid plastic containers. The Department is not proposing any changes to the proposed rules which significantly reduce the level of regulation of or requirements for recycling of rigid plastic containers. The proposed rules were not changed in response to Comment 1.

Comment 2: General Support for Recycling Network

COMMENT: (Comments received from Paulsen & Roles Laboratories [#101], Garten Foundation [#107], Central Oregon Environmental Center [#220], three members of the public [#218, #219, #222]) In order to meet statewide aggregate plastic recycling rates, we need to create a viable statewide network of recyclers. As an individual company we cannot reuse our rigid plastic containers because of our widespread customer base. A stronger recycling infrastructure will enhance effective recycling for all of us [#101]. The only realistic way that the majority of plastic containers can expect to meet the requirements of the law is through the "aggregate recycling rate" option; the issues of "purpose" and pragmatic workability must be kept in mind in developing these rules. If there were reasonable assurance that the mixed plastic bottles could be recovered without substantial increase in existing collection program costs, there would be cause to consider requiring addition of plastic bottles to curbside programs if voluntary initiative was lacking [#107]. People just want to recycle plastics -- which is hard enough --, and understanding what is "rigid" and what qualifies as a "container" are a great burden [#220]. Should establish a deposit on rigid plastic containers [#222].

RESPONSE: The proposed rules do not address requirements for recycling collection or a statewide plastic recycling network. A coordinated statewide plastic recycling program with increased collection would greatly assist in the attainment of the 25% aggregate recycling rate and umbrella compliance with the Law. Such a program would be a supplement to the requirements of the Law. The Department has limited the proposed rules to the specific requirements of the Law. The proposed rules do not address the requirements of ORS 459A.665 ("Opportunity to recycle rigid plastic containers") since these provisions apply to another government entity. The proposed rules were not changed in response to Comment 2.

Comment 3: General Opposition to the Rules

COMMENT: (Comments received from Premier Plastics [#12], International Sanitary Supply Assoc. Inc. [#13], Plastic Ingenuity Inc. [#16], Safeway [#50], Diet Light [#53], Core-Mark International [#73], Griffin Bros, Inc. [#97], National Food Processors Assoc. [#99], McDermott, Will & Emery for Solo Cup Co. [#100], Associated Oregon Industries [#103], Plaid Pantries, Inc. [#106], Grocery Manufacturers of America [#110], Letica Corp. [#112], Association of Oregon Food Industries, Inc. [#114])

A. *General opposition.* This will be very damaging to business and will result in products being removed from the Oregon market if compliance rates are not met [#16, #114]. Our plastic tray supplier cannot use recycled material, nor can they use another material (e.g. cardboard). We are too small to order required production run of soft plastic pouches. Implementation of this law could very possibly force us out of business [#53]. The products regulated by this law equal approximately 25% of our total volume; the regulations mandated by this law will be devastating to our ability to continue to do business in Oregon. We ask that you consider these items and not implement this legislation [#73]. Companies that do the great majority of their business in Oregon will be put at a competitive disadvantage compared with out-of-state companies who do a much smaller percentage of their business here; stores on the border of other states will not be able to compete and customers will shop across borders for items no longer available in Oregon [#97, #114]. The Oregon statute is overly restrictive and does not recognize the unique requirements of food packaging. There are numerous technical obstacles associated with all compliance options [#99, #114]. It is currently not feasible for plastic food containers to comply with federal and state regulations, so such containers may be withdrawn from Oregon. Substitution of containers of different materials will not necessarily reduce waste volume, since such containers may not be of recyclable material, nor will this increase the recycling of plastic [#100, #110]. Plastic packaging has many advantages; this will take food safety back ten years [#50]. Mandating curbside recycling and requiring bins in which to place returned plastic food containers is a more logical approach to achieving the 25% recycling goal [#100]. Oregon's retailers cannot change the packaging decisions made by multi-national manufacturers; retailers should not be forced into the recycling business [#103, #114]. Certain realities of our business prohibit us from obtaining "substantial" compliance; "strict" compliance would severely restrict

continuing our business operations in Oregon [#106].

B. *Extension of implementation date* of the rigid plastic container law. Support an extension because the options of a manufacturer are weight reduction by 10%, or use of 25% recycled content. Neither option affords compliance. Weight reduction is unacceptable to customers as it involves reduced container performance. Currently collection of #1-7 plastics (including sorting and segregation) is insufficient to supply industry demand for recycled resins. Cannot comply without having access to recycled resins. Extension would allow time for all resources to be in place for manufacturers to comply [#12]. Extend the compliance time period and allow the recycling rate to be established before forcing industry to spend million of dollars modifying old molds or purchasing new molds in the name of source reduction. Delay enforcement until 1998 [#112]. (See also Comment 15C.)

RESPONSE:

A. Administrative rules cannot change the requirements of the Law. Specific requirements which place a hardship on an industry sector or an individual container cannot be eliminated by a provision in the administrative rules. The Law did not provide the EQC with authority to exempt individual or classes of manufacturers or containers from its provisions. A legislative change in the statute would be necessary to obtain this result. However, the inclusion or exclusion of a specific type of container from the definition of a rigid plastic container is discussed in the Response to Comments 6-8. The proposed rules were not changed in response to Comment 3A.

B. A general extension of the statutory requirement is beyond the EQC's rulemaking authority. The Law contains a specific implementation date. There has been no authority granted to the EQC to change these dates. A legislative change in the statute would be necessary to obtain this result. The proposed rules were not changed in response to Comment 3B.

Comment 4: Definition of "Drug" (340-90-320(5))

COMMENT: (Comments received from Nonprescription Drug Manufacturers Assoc. [#55]) The definition of "drug" should be changed to either delete the phrase "Drugs include over-the-counter drugs referenced in the federal Food, Drug

and Cosmetic Act..."; this statement is unnecessary because nonprescription drugs are included in the proposed definition. Or, it should be amended to read "Drugs include nonprescription or over-the-counter drugs regulated pursuant to the federal Food, Drug and Cosmetic Act."

RESPONSE: This proposed language helps clarify the legislative intent without making a substantive change. Staff has included the suggested change in the proposed rules.

Comment 5: Definition of "Product Manufacturer" (340-90-320(13))

COMMENT: (Comments received from The Soap and Detergent Association [#49], Southland Corp. [#52], Polystyrene Packaging Council [#61], Plaid Pantries, Inc. [#106])

A. *Clarify definition.* The definition of "product manufacturer" should be clarified to reflect longstanding industry practices, especially concerning store brand and generic items. Such items are often packed by a second party under contract. The term "generator" should either be defined or eliminated. In any case, strongly suggest that the hierarchy in the California regulations be adopted, defining "product manufacturer" as follows:

1. The manufacturer of the product, if stated on the label.
2. The distributor of the product, if the manufacturer is not stated on the label but the distributor of the container is.
3. The importer of the container, if neither the manufacturer nor the distributor is stated on the label but the importer is.

The definition should also include the concept of all "subsidiaries and affiliates" (even if not stated on the label), allowing such parties to assume responsibilities of the product manufacturer. This would clarify responsibility at the company/corporate level. The above changes would have significant advantages for manufacturers as well as for the State by consolidating paperwork and reporting [#49].

B. *Exclude small businesses.* We believe the Legislature did not intend to

define retailers (especially small retailers like 7-Eleven) as "manufacturers." Paperwork requirements would be extremely burdensome for these small businesses, while the effect on the wastestream being landfilled is insignificant. These small firms may be placed at a competitive disadvantage compared to larger or out-of-state operations [#52, #61, #106, #114]. DEQ is required by ORS 183.540 to eliminate this unjustified burden on small businesses and protect their ability to compete economically [#61].

RESPONSE:

A. The Department agrees with the comments and has modified the proposed rules accordingly. This proposed language helps clarify the legislative intent and will help facilitate recordkeeping and reporting. Staff has included the new language based on that used in California regulations. This new language differs from the California regulations in that it also has a provision for containers without manufacturer identification on the label or which are filled at the point of sale.

B. The Law does not explicitly mention point-of-sale packaging, nor does it provide an exemption for such packaging. A point-of-sale packager places product in a rigid plastic container, which is then sold or offered for sale. This falls under the statutory definition of "product manufacturer" as "the producer or generator of a packaged product that is sold or offered for sale in Oregon in a rigid plastic container." Point-of-sale packaging is further discussed in the Response to Comment 31. The proposed rules were changed to reduce the reporting requirements for small product manufacturers partially in response to Comment 5B. In addition, the proposed rules classify penalties for manufacturers who sell less than 500 containers per day as class three, the lowest category of enforcement, which primarily uses warnings.

Comment 6: Definition of "Rigid Plastic Container:" (340-90-330) Support of Alternative A

COMMENT: (Comments received from OSPIRG [#1], Recycling Advocates [#8], City of Ashland [#10], Metro [#67], League of Women Voters of Oregon [#70], Association of Oregon Recyclers [#104], City of Portland [#202], Bend Recycling Team [#221], 23 members of the public [#20, #21, #22, #24, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #38, #56, #58, #59, #69, #71, #72, #218, #222])

A. *General support* [#1, #8, #10, #20, #21, #22, #24, #27, #28, #29, #30, #31, #32, #33, #34, #35, #38, #56, #69, #71, #72, #202, #221]. Support Alt. A as a broader definition of what containers are covered, as local deli and bakeries have shown a willingness to switch to locally recyclable plastic packaging [#10]. The fewer products that are excluded, the easier it is to gather an accurate disposal (denominator) number [#67].

B. *"Complete package" issue*: If language in Alt. B were adopted (excluding from the law plastic containers that are wrapped in another layer of packaging), it would encourage companies to use excess packaging in order to escape the law's requirements. Many cookie trays (sold in another layer of packaging) are coded with a resin number and accepted for recycling. Alt. A will result in increased recycling in Oregon. [#1]

C. *"Contain a product" issue* [#8]: There is no reason that the container must completely contain a product. Cookie trays, domed lids and microwave trays should be included. Sending these bulky packages to the landfill is a waste of resources and burden for future generations. People bring them to recycling sites [#1, #70, #71, #72]. Alt. A better meets the purpose and workability tests; it would tend to simplify waste composition surveys if lids and closures were included (if they otherwise meet the criteria) [Garten Foundation, #107].

D. *"Flexible tube" issue*: Tubes that can be easily twisted and flexed should be covered by the law, but would not oppose adding this exclusion to Alt. A [#1]. Supports Alt. A except for the inclusion of tubes. The public doesn't try to recycle tubes, and they are seldom if ever completely emptied [#104].

E. *"Sidewalls"*: Prefer Alt. A over B, but meat trays should not be excluded. Meat trays do contain the product, and seem to be in the same category as cookie trays. Alt. A(2)(c) should read "Plastic trays which have curved edges or sidewalls designed to contain a product in the tray" [#8]. Alt. A better meets the purpose and workability test, encouraging recyclability of such items, and making for easier waste sort decisions [Garten Foundation, #107].

F. *"Lids"*: Assume domed lids meet the criteria (4)(b) if they hold 8 ounces. If not, wording needs to be added to include domed lids [#8].

G. *"Hierarchy" issue* (in determining volume): Labeled volume should be used to determine the volume of the container. But what is the recourse if a

manufacturer mislabels the volume to be different from the actual volume of the container [#1]? Prefer Alt. A so as not to complicate waste composition sorts [#8]. Using labeled volume rather than volume determined by the product manufacturer, would be the least complicated approach for conducting a waste composition study [#67].

RESPONSE: (See after Comment 8)

Comment 7: Definition of "Rigid Plastic Container:" (340-90-330) Support of Alternative B.

COMMENT: (Comments received from Kiwi Brands Inc. [#9], Mary Kay Cosmetics Inc. [#11], Highland Plastics Inc. [#14, #15], Plastic Ingenuity Inc. [#16], Superfos Packaging Inc [#17], Sencorp Systems [#26], Fabri-Kal [#40], Kraft General Foods [#41], American Pet Products Manufacturers Association Inc. [#42], Mission Packaging [#44], Tri-Plas, Inc. [#45], Eastman Kodak Co. [#46], Clorox [#47], Soap and Detergent Assoc. [#49], Safeway [#50], Campbell Soup Company [#60], Polystyrene Packaging Council [#61], Continental Plastic Containers Inc. [#62], American Plastics Council [#65], Colgate-Palmolive [#66], Union Carbide [#74], Procter & Gamble [#76], Nestle USA [#78], Berry Plastics Corp. [#82], Pennzoil Co. [#85], Elm Packaging Co. [#86], Russell Stanley Corp. [#88], Neale & Assoc. for Geon Co. [#91], Ropak Corp. [#92], Amway Corp. [#95], Cosmetic, Toiletry, and Fragrance Assoc. [#98], Associated Oregon Industries [#103], Grocery Manufacturers of America [#110], Setco, Inc. [#111], Landis Plastics, Inc. [#113], Oregon Food Industries, Inc. [#114], Chesebrough-Pond's USA Co. [#115], Owens-Brockway [#116], Tony Kingsbury for Dow Chemical [#119], Indipak [#205], L&F Products [#206], Geoffrey Lavear for Oregon Recycled Markets Development Council [#210], Gage Industries [#216])

A. *General support* [#11, #49, #74, #88, #103]. Implications in the law that "container" refers to objects that would hold liquids (e.g. use of fluid capacity); this would exclude trays or plastic components of packages not primarily plastic. Tray-type packages are used more for supporting objects and are often filled above the sidewalls; they do not "contain" all of the product they support. The definitions also seem to exclude caps of all types from being part of the container [#9]. Alt. B focuses most closely on the types of rigid plastic containers readily recycled under current technology, and

the amount of contaminates will be reduced. Packaging included in Alt. A but excluded in Alt. B will have almost no effect on the diversion of recyclables from the solid waste stream [#74]. Alt. B most closely fits the common sense understanding of a rigid plastic container and legislative intent [#76, #114]. Alt. B is closer to the California definition; DEQ should consider adopting the California definition of "rigid plastic container" [#86, #95]. Alt. B properly excludes items not normally considered containers in and of themselves [#119].

Alt. B provides a clearer definition and eliminates ambiguity; it will facilitate recordkeeping and require fewer judgment calls; will eliminate many queries to DEQ by companies wanting to know whether their products are covered; easier to comply with and enforce. It provides more opportunities for retail grocers to comply [#14, #15, #17, #18, #26, #40, #44, #46, #61, #62, #64, #66, #74, #78, #82, #85, #86, #91, #110, #111, #113, #116, #119]. Alt. B is less confusing and makes a little more sense than Alt. A [#16]. Alt. B would reduce confusion in waste composition studies [#18]. It specifically excludes certain other plastic packaging products that the Law is not intended to include [#45]. Alt. A includes items that are a very small part of the waste stream and for which it is difficult to include recycled content, but which could present serious hardships, if included, to those companies who primarily utilize these containers [#47, #110]. Alt. A would drive down the recycling rate because it includes items for which there is no recycling market (domed lids, flexible tubes, etc.) [#110]. Overriding concern is to keep rules simple, clear and concise; will enhance compliance, especially from the public [#210].

B. *"Complete package" issue:* The "complete package" concept accurately reflects the intent of the statute ("any container used to protect, store, contain, transport, display or sell products"), which clearly indicates that a rigid plastic container is the package and that it is able to contain products on its own, not as part of another package or as requiring additional packaging material to "contain" a product [#41, #65, #76, #115, #119]. We feel that the Legislature intended that a rigid plastic container be designed to completely contain a product, under normal usage, without other packaging material except a lid or closure [#42, #60, #65]. Some of our products use ultra thin plastic trays (same thickness as some flexible films) as minor packaging components for cookies and candies. These could be considered a flexible inner wrap, and should not fall within the definition of "rigid plastic container" [#60]. Alt. B excludes items not normally considered containers in and of themselves, e.g.

which 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 [#65]. Lids and domed lids should not be in the definition [#216].

C. *"Flexible tube"* issue: Prefer Alt. B; tubes that can be easily hand-folded and flexed are not "rigid." They cannot be rinsed, and would contaminate other materials being recycled. [#8, #18, #65, #66, #76, #95, #119, Garten Foundation [#107]] We believe that the Legislature did not intend to include plastic tubes which can be easily twisted without damage to the container [#42, #61, #62, #65, #103, #115, #116, #119]. No tubes should be considered "rigid plastic containers," including those that can keep their shape when empty. Clearly excluding all tubes will avoid misinterpretation in the waste composition study. The California and Florida regulations exclude all tubes [#98, #115].

D. *Trays*: Alt. B further clarifies that containers such as trays must fully contain the product without other packaging except a lid or closure. This will reduce confusion in the regulated community and in waste composition studies [#65, #119].

E. *"Hierarchy"* issue (in determining volume): This allows manufacturers the flexibility to choose the best method of determining volume [#9]. The labeled fluid measurement (in Alt. A) is not necessarily the most accurate test for volume; it can vary for different products in the same container depending on product density and method of manufacture. The liquid volume measure is the most accurate measure. [#41, #110] Manufacturers should have the flexibility to use either volume or volumetric capacity, as in the California regulations. The advantage of using labeled volume for waste composition studies disappears when labels are removed or illegible. DEQ should instead develop default criteria for the study [#76].

F. *"Multiple reclosure"*: capability of "multiple reclosure" should be added to the definition. This is an important distinguishing attribute of rigid plastic containers. This would provide concrete, practical guidance for determining the status of a container in waste studies [#49, #95, #98, #206].

G. *"Storage"*: To be considered a rigid plastic container, the container must normally store a product for seven days under the California regulations. This should be added to Oregon's regulations as a practical matter of commerce

[#49].

RESPONSE: (See after Comment 8)

Comment 8: Definition of "Rigid Plastic Container:" (340-90-330) Support of
Neither Alternative

COMMENT: (Comments received from National Food Processors Assoc. [#99]) If either of the proposed alternatives is adopted, food companies would have difficulty remaining in compliance simultaneously with laws in California and Oregon. We urge the adoption of the California language, including the concepts of multiple reclosure, being composed entirely of plastic, excluding caps and lids, and allowing the manufacturer to choose either the labeled volume or the volumetric volume. If that language is not adopted, recommend Alt. B, which is more consistent with the plain meaning and intent of the law and includes the concept of "containing" the product.

RESPONSE (to Comments 6, 7 and 8): The comments on the alternative definitions of rigid plastic container were very similar to those put forward and discussed in the development of the two Alternatives by the Task Forces. Some of the specific suggestions in the comments were incorporated in one of the Alternatives. Most of the other comments were considered but not incorporated in an Alternative. The specific elements of the California law and proposed rules were also considered. The California definition of rigid plastic container is less extensive than either the public's perception of a rigid plastic container or the Department's reasonable interpretation of the Law. The Department does not feel that ease in implementation by using a narrow definition justifies the degree of interpretation necessary to achieve it.

The Department is providing the EQC with a proposed rule which includes a single definition of "rigid plastic container." The proposed definition is based upon "Alternative A" as presented for public comment except without language which identifies tubes as rigid plastic containers and with new language to allow product manufacturers to choose between use of labeled volume and volumetric volume (except for five-gallon containers). The issues related to the two Alternatives are discussed in the staff report to the EQC.

Comment 9: "Tamper-resistant seals" (340-90-340(4)(b))

COMMENT: (Comments received from OSPIRG [#1], Reckitt & Colman [#208])
Support the language on p. A-8, lines 38-40 exempting tamper-resistant seals.

RESPONSE: The proposed rules were not changed in as a result of Comment 9.

Comment 10: "Reduced Container" Exemption: (340-90-340(5)) Support of
Alternative A.

COMMENT: (Comments received from OSPIRG [#1], Recycling Advocates [#8],
City of Ashland [#10], League of Women Voters of Oregon [#70], Association
of Oregon Recyclers [#104], Garten Foundation [#107], Bend Recycling Team
[#221], 14 members of the public [#20, #21, #23, #24, #27, #28, #29, #31,
#33, #34, #35, #36, #37, #38])

Agree with requirement for comparison with a container in existence five years
previously to calculate whether a container meets the "reduced container"
exemption. Opposed to adding this exemption to the Law in 1991.
Companies have built-in incentives to reduce the weight of containers (savings
in production and transportation costs). Most containers have already been
reduced for those reasons. 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; it is that they are not being reused or recycled. The goal of the
Law was to increase reuse and recycling. Allowing plastic containers to avoid
reuse and recycling by reducing their weight simply gives plastic
manufacturers more time to delay recycling. They should be recycled like
containers made of other materials (glass, steel, etc.) [#1, #20, #107, #221].
Reducing the weight of packages does not help consumers who are stuck with
nonrecyclable containers; it merely provides a loophole for manufacturers who
want to reduce package weights for economic reasons [#8]. The reduced
container exemption should be as limited as possible and should by no means
be permanent [#21, #23, #24, #28, #29, #31, #33, #34, #35, #36, #37, #38,
#70]. If legislators had wanted this to be ongoing, they would have included it
as a compliance option rather than as an exemption [#8]. Alt. B would have
the practical effect of exempting all new containers from compliance with the
Law. Since the large national brands introduce new products and containers

frequently, the availability of an exemption running five years for each new introduction would soon result in ongoing exemption from the Law of the most commonly sold brands to the disadvantage of local brands which may introduce new products less often [#104].

The reduced container exemption should not be permitted [#27, #30].

RESPONSE: (See after Comment 12)

Comment 11: "Reduced Container" Exemption: (340-90-340(5)) Support of Alternative B.

COMMENT: (Comments received from Mary Kay Cosmetics Inc. [#11], International Sanitary Supply Assoc. Inc. [#13], Eastman Kodak Co. [#46], Reckitt & Colman [#51], Polystyrene Packaging Council [#61], Continental Plastic Containers Inc. [#62], American Plastics Council [#65], Procter & Gamble [#76], Pennzoil Co. [#85], Ropak Corp. [#92], Castrol North America [#93], Sunbeam Plastics [#96], Graham Packaging Co. [#102], Grocery Manufacturers of America [#110], Oregon Food Industries, Inc. [#114], Chesebrough-Pond's USA Co. [#115], Tony Kingsbury [#119], American Pet Products [#200], L&F Products [#206]) The rules should allow source reduction for new products marketed after January 1, 1995 or in existence for less than five years [#11, #92, #114]. Since other compliance options are limited for cleaning chemicals and food products, we support Alt. B. This would allow manufacturers who have not offered a product in Oregon for five years to still comply with the regulations, and would be an incentive to new manufacturers and distributors to discover new packaging methods. If this is not allowed, Oregon may face a drop in the number of products available and a rise in price [#13, #102, #114, #119]. Alt. B will provide compliance flexibility for new products, as innovative material and plastic container technologies continue to evolve. Source reduction must always remain an available option to pursue in the future, including for products introduced after 1995 [#46, #93, #96, #110]. The intent of ORS 459A.660(5)(d) was to allow container manufacturers to qualify for this exemption for a package which was reduced at any time during the past five years [#61]. This provides greater opportunity for source reduction -- supporting the state's solid waste management hierarchy --, while Alt. A eliminates whole categories of containers that could potentially be source reduced [#65, #110].

The language should be modified to allow 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 time to further source reduce the container [#46].

The Attorney General has interpreted the statute to require a five-year comparison; the EQC should recommend to the Legislature that this exemption be applied to products not in existence five years previously as an on-going tool [#110]. Support Alt. B in the interim until the statute can be changed to resolve this issue in a manner consistent with the state's solid waste hierarchy (source reduction having top priority) [#76].

RESPONSE: (See after Comment 12)

Comment 12: "Reduced Container:" (340-90-340(5)) Support of Neither Alternative.

COMMENT: (Comments received from Kraft General Foods [#41], Clorox [#47], Soap and Detergent Assoc. [#49], Procter & Gamble [#76], Nestle USA [#78], Amway Corp. [#95], Cosmetic, Toiletry, and Fragrance Assoc. [#98], National Food Processors Assoc. [#99], Chesebrough-Pond's USA Co. [#115])

Neither Alternative A nor B allows for new product packages after 1/1/95 to be exempted through source reduction. Alt. 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. Recommend that a container introduced after 1/1/95 be allowed the "source reduction" exemption; a new product package would be the "base" and would have five years in which to develop a source-reduced container. If the container does not comply in five years, it would be in violation since its introduction. Source reduction is basically the only option for food and cosmetic manufacturers. Without the proposed exemption, the regulations effectively prohibit new food packages manufactured after 1/1/95 from being introduced into Oregon. The May 31, 1994 Attorney General's advice stating that there is no basis for a source reduction exemption for new products in the statute is unfounded and speculative as to legislative intent. There is nothing in the statute that prohibits new packages from using the source reduction exemption [#41, #98]. DEQ should develop a workable mechanism for introduction of new products and the use of source reduction [#78, #115].

Manufacturers should 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." This provision is included in California's regulations. Under the regulation as currently written, manufacturers would have to introduce [a new product in] a heavy container and then take the weight out later rather than reducing that package from the beginning [#47]. This violates the solid waste hierarchy and results in generation of excess packaging. The Oregon statute should be amended by adding language from the California statute providing for qualification of reduced containers in the future through a comparison with comparable packages at the time of introduction, and a one-year waiver for new products and packaging [#49, #51, #76, #95, #98, #99].

Language should be added to reward companies which have already engaged in source reduction, such as the inherent source reduction of products which are diluted for use at some minimum ratio. It is inequitable not to take these previous source reductions into account [#49, #61, #95, #98] (Pennzoil Co. [#85], The Butcher Co [#79]). Or, provision could be made for accepting as "reduced packages" those which have reached the limit of technical feasibility [#49]. If this cannot be done by rule, it should be taken to the Legislature [#61].

Recommend extending the source reduction beyond a one-time exemption [#98].

RESPONSE (to Comments 10, 11 and 12): The comments on the alternative provisions for reduced containers are very similar to those made in discussions at Task Force meetings. Some of the issues raised in the comments were already directly considered in one of the earlier alternatives discussed by the Task Forces. As a result of Task Force guidance these provisions were not included in either Alternative A or B put forward for public comment. The range of source reduction options offered in the comments go well beyond what the Attorney General's office has advised the Department that the Law allows. There is no provision in the Law to allow an exemption for a new container which may be reduced in the future. There is also no provision in the Law of an exemption for a "reduced" container for which there is no previous equivalent container for the same product for comparison. The five-year time span for purposes of comparison is set by statute. Reduced containers in the marketplace in 1995 would be compared to the same

container for the same product in 1990. A container which was reduced after January 1, 1995 would be compared to the same container for the same product used five years earlier. Containers which have been "source reduced" but which do not qualify as a reduced container under the Law or rules would need to comply by some other method. The proposed rules cannot make changes in the requirements set out in the Law. A change in the statute would be necessary to obtain this result. The Department is recommending Alternative A to the EQC. The proposed rules were not otherwise changed in response to Comments 11, 12 and 13.

Comment 13: "Reduced Container:" (340-90-340(5)) Permanent Exemption.

COMMENT: (Comments received from Kraft General Foods [#41], Soap and Detergent Assoc. [#49], Reckitt & Colman [#51], Nestle USA [#78], Monsanto [#87], Chesebrough-Pond's USA Co. [#115]) Source reduction should not be limited to a one-time five-year exemption, but should be an ongoing compliance option. Source reduction is the EPA's highest priority. A one-time exemption stifles innovative technologies for reducing the amount of plastic packaging in Oregon. DEQ should recommend to the EQC that the law be so amended [#41]. Source reduction reduces the amount of packaging in the marketplace on a per capita basis. Recycled content mandates do not require less packaging; rather they are designed to force the development of markets for recycled resins. The Oregon statute as written assigns source reduction a lower priority because this exemption is time-limited. The Oregon statute should be amended to match California law [#49].

RESPONSE: The Law provides for a five-year exemption for reduced containers. The EQC has not been granted authority to change the reduced container status from an exemption to a compliance option. A change in the statute would be necessary to obtain this result. The proposed rules were not changed in response to Comment 13.

Comment 14: "Substantial Investment" Exemption (340-90-340(6))

COMMENT: (Comments received from OSPIRG [#1], Recycling Advocates [#8], City of Ashland [#10], International Sanitary Supply Assoc. Inc. [#13], Eastman Kodak Co. [#46], League of Women Voters of Oregon [#70], Garten

Foundation [#107], Bend Recycling Team [#221], Gage Industries [#217], four members of the public [#27, #28, #29, #31])

A. Support language for one-time-only two-year exemption in the proposed rule. This was the intent of the Law negotiated in 1991. This was meant as a "good faith" exemption to allow a little more time to meet the 25% recycling goal. New plastic packaging introduced after 1995 should be designed to have recycled content, to be recyclable in local recycling programs, or be reusable [#1, #8]. This exemption should not be expanded [#27, #28, #29, #31, #70, #221].

B. Oppose proposed one-time two-year exemption. Support a longer or permanent "substantial investment" exemption. 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 helps only those manufacturers who are currently in the development stages of new package types. Need to continue to encourage "substantial financial investment" in plastics recycling [#13, #107]. This exemption should run until the 1997 recycling rates are calculated [#216].

C. Allow new material a five-year exclusion period to achieve the 25% recycling goal. A material which did not exist in 1995 cannot have a 20% recycling rate (or a 25% rate by 1997). A five-year exclusion would encourage future materials innovations after 1995 [#46].

RESPONSE: "Substantial investment" is one of five exemptions included in the statute for rigid plastic containers. Containers are exempt if there has been substantial investment in achieving the recycling goal, viable markets for the material, if collected, can be demonstrated, the material is within five percent of the goal, there is substantial evidence of accelerating recycling rates and reasonable projections show that the material will meet the goal within two years.

The rigid plastic container law is built around the January 1, 1995 compliance date. The clearest meaning of the statutory language limits the "substantial investment" exemption to a one-time, two year exemption. The Department believes that the "substantial investment" exemption was added to the law to give additional time for those manufacturers making a good faith effort to comply and who are getting results from that effort. An exemption longer

than two years does not fit with the criterion that requires reasonable projections that the goal will be met within two years. It would not be logical to allow a longer exemption if the goal is not actually met within the first two years.

The statutory language apparently envisions manufacturers keeping records to justify the "substantial investment" exemption of any rigid plastic container. The Department, however, will determine the aggregate recycling rate (recycling rate for all rigid plastic containers) for purposes of compliance and is the best entity to determine if the "substantial investment" criteria have been met for all containers. In addition, the "substantial investment" exemption question for the aggregate recycling rate should be answered before the January 1, 1995 compliance date. Manufacturers deserve to know if the compliance date for all containers is being delayed before the January 1, 1995 deadline.

The Department will determine if rigid plastic containers, in the aggregate, qualify for the "substantial investment" exemption before January 1, 1995.

A requirement that the Department determine the aggregate rigid plastic container recycling rate for purposes of compliance before January 1, 1995 has been added to OAR 340-90-380(2). In addition, a requirement that the Department determine, prior to January 1, 1995, if the substantial investment exemption has been met has been added to OAR 340-90-340(6)(c).

Comment 15: Exemptions in General (340-90-340)

COMMENT: (Comments received from Olin Chemicals [#7], Kiwi Brands Inc. [#9], Mary Kay Cosmetics Inc. [#11], International Sanitary Supply Assoc. Inc. [#13], Steinfeld's Products Company [#39], American Pet Products Manufacturers Assoc. Inc. [#42], Foodservice & Packaging Institute [#48, #77], Soap and Detergent Assoc. [#49], Block Drug Company Inc. [#54], Ciba-Geigy Corporation [#57], Continental Plastic Containers Inc. [#62], National Agricultural Chemicals Assoc. [#64], The Butcher Co. [#79], Western Agricultural Chemicals Assoc. [#81], DowElanco [#83], Oregonians for Food and Shelter [#84], Monsanto [#87], Russell Stanley Corp. [#88], Quintex Corp. [#89], DuPont Agricultural Products [#90], Neale & Assoc. for Geon Co. [#91], Ropak Corp. [#92], S.C. Johnson & Son, Inc. [#94], Amway Corp. [#95], Griffin Bros, Inc. [#97], Cosmetic, Toiletry, and Fragrance

Assoc. [#98], McDermott, Will & Emery for Solo Cup Co. [#100], Paulsen & Roles Laboratories [#101], Graham Packaging Co. [#102], Associated Oregon Industries [#103], Oregon Agricultural Chemicals & Fertilizers Assoc. [#105], Plaid Pantries, Inc. [#106], United Grocers [#108], Grocery Manufacturers of America [#110, #213], Letica Corp. [#112], Oregon Food Industries, Inc. [#114], Owens-Brockway [#116], L&F Products [#206])

A. *Exemption for FIFRA products.* Products registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) are considered hazardous and are regulated under 49 CFR Parts 106-180. The Environmental Protection Agency (EPA) and the U.S. Department of Transportation (DOT) impose strict limitations on containers for FIFRA-regulated products. These limitations seriously impede the ability of companies to comply with the proposed Oregon regulations. Section 24(b) of the FIFRA statute, "Authority of States," 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).

We believe that Congress has preempted state regulation of pesticide packaging. Manufacturers of registered pesticide products may be able to use refillable containers or incorporate recycled content; but the legal obligations to meet FIFRA requirements are unambiguous. We believe that federal law requires that an exemption be granted for FIFRA products [#49, #54, #64, #84, #86, #90, #94, #105]. Oregon law impermissibly imposes requirements concerning "packaging" of pesticide products [#64]. Other states have exempted FIFRA products; Oregon's proposed regulations would create logistical problems because of confusion about Oregon's requirements. There are also interstate commerce implications and consequences [#81]. State regulation of pest management products would have a negative impact on the economy that is inappropriate and unnecessary because of FIFRA regulation, and the industry's investment in recycling [#83]. We believe it is not necessary to have specific legislative direction in Oregon law for DEQ to grant an exemption for FIFRA products [#94].

FIFRA and Recycled Content [#81, #84, #90, #97]. These regulations allow "no used material other than production residues or regrind from the same

manufacturing process" to be used in plastic containers for FIFRA-regulated chemicals. This federal regulation essentially prohibits recycled materials in plastic containers which are used to transport hazardous materials, including FIFRA-regulated products. Oregon's law is in direct opposition to the federal mandate. Enforcing the Oregon recycling mandate for FIFRA-registered products would be subject to litigation. Please modify the "no FIFRA" exemption in the final rule [#7, #13, #62]. FIFRA-registered products require research including extensive testing in specific packages to demonstrate compliance with requirements for wall thickness, prevention of contamination, etc. Compliance may not be technologically feasible for some products [#9]. There is a great variety of recycled materials used in recycled plastic resin, and a variety of formulations used in FIFRA-registered products; this creates the risk that the product and container will react unpredictably with one another. It would be impossible to assure that all containers are of identical recycled content, and then determine how the recycled content package will affect the product formulation. Virgin container materials are the only option [#42]. For many companies, recycled content is the only cost-effective method of compliance, but DOT regulations restrict this.

EPA Recycling Program for FIFRA Containers. Containers used for FIFRA-regulated products cannot be recycled; the label must contain specific directions for disposal of the container (wrapped in paper and discarded) [#42]. 1988 amendments to FIFRA §19 empower EPA to establish a comprehensive regulatory program for storage, transportation and disposal of pesticide containers, which are intended to facilitate recycling. Draft rules were published on February 11, 1994. This system of regulations creates a conflict and makes it unnecessary for Oregon to regulate these products [#13, #79, #94]. FIFRA imposes a very high residue removal standard in an effort to enhance recyclability. But it virtually precludes the use of recycled materials in manufacturing such containers because containers made with recycled materials will not meet the residue removal standard currently proposed by EPA [#13]. Pesticide containers should not enter the general plastics recycling stream until an investigation undertaken by the Agricultural Container Research Council is completed; this will study residues and their associated risks [#87].

FIFRA-Regulated Products and Reuse [#90]. Companies with products covered by FIFRA are precluded from using the "recycled content" option; this leaves the "reuse" option. But for most companies this is not an economic

possibility. Many companies producing or distributing cleaning chemicals are small, and the market is fragmented. This makes the reuse option too costly and hard to administer. Therefore we support an exemption for FIFRA-regulated products [#13]. Current FIFRA regulations forbid refilling of containers smaller than 56 gallons; therefore the "reuse" option is closed to many agricultural chemicals [#81, #87]. Agricultural containers are in general smaller due to lower application rates, sold as one-way packages, and not suitable for bulk containers [#84, #87, #90].

Since FIFRA products cannot use recycled content, be reused, or be recycled, we request that the Task Force recommend an exemption be added to the statute for FIFRA-registered products [#42, #206].

The real outcome is that most pesticide manufacturers would have only one way to comply with both the state act and federal laws -- the aggregate rigid plastic container recycling rate. This is a problem because the recycling rate will not be calculated until more than one year after the compliance date. DEQ may not have authority to simply add another "exemption" for FIFRA products, but we believe they could add clarifying language to 340-90-350 Compliance Standards, as follows: "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..." [#84].

B. *Exemption for cosmetic products.* These products are regulated by the US Food and Drug Administration (FDA). There are no FDA guidelines on use of recycled content. The industry has been developing standards, but this requires exhaustive testing. Should consider the option of a cosmetic exemption or an extension of time to comply for regulated products. Cosmetic manufacturers are working on using recycled plastic materials, but development is time-consuming. Investigations include developing a comprehensive list of potential contaminants in recycled material, and testing migration of contaminants from package to product [#11, #95, #98].

C-1. *Exemption for food packages and food processors* [#62, #109, #116, #206, #213]. We must all work to exempt food packaging from this legislation in the 1994 legislature, while also encouraging recycling of food plastic packaging into non-food plastic products [#39]. The lack of corporate averaging and effective denial of the source reduction option leave use of post-

consumer resin as the only compliance option for food packaging; however food cannot be packaged in recycled content containers due to federal regulations, and should be excluded permanently [#91, #92, #95, #109]. The Oregon regulation is preempted by federal regulations governing food containers (FDA and USDA). These require that all plastics used in food packaging meet the same standards as virgin material. The other compliance options are out of the control of the container manufacturer. This is unfair and probably a violation of substantive due process rights under the U.S. Constitution [#100, #116]. Lack of an exemption for food products could result in a multi-layered structure, reducing the recycling value; a switch to alternative materials; or putting recycled content into food containers before adequate testing is completed, which could cause health problems. The plastics industry should be given time to place recycled HDPE into food containers [#102].

Should exempt rigid plastic food containers that hold a food product for less than seven days (as does California); or postpone the enforcement of the law until the recycling rates are accurately calculated and DEQ can tell businesses what types of packaging are in compliance [#103, #114].

C-2. Exemption for retail grocers and retail food establishments. Point-of-sale foodservice containers should be excluded from this law for the following reasons: consistency with the California program (which exempts containers storing products only for a limited duration); to comply, retail food establishments would have to discontinue selling a variety of products to their customers (since records could not be kept documenting compliance for the variety of containers used for various products); the retail food industry has no viable compliance options; and it operates on a small profit margin. (See also Comments 5 and 30) [#48, #77, #106, #108]. There should be either an exemption for food service containers or a complete food exemption [#108].

D. Exemption for DOT-regulated products [#81, #88, #89, #94, #97, #101, #105, #206, #213]. Containers (plastic drums and jerricans) used in shipping hazardous materials are regulated by the DOT under CFR Title 49 and the United Nations Transport of Dangerous Goods Code (UN) (if shipped out of the U.S.). The overriding issues here are transportation and storage safety. CFR Title 49 prohibits most use of recycled content. In general the regulatory environment for hazardous material packaging is very detailed, and includes compliance with ASTM standards and OSHA Materials and Storage

requirements [#112]. As we increase post-consumer resin content in DOT/UN packaging, strength decreases, necessitating a weight increase [#89]. Strongly urge that packages containing hazardous materials in rigid plastic under CFR Title 49 and/or UN be exempt from the Oregon law (or in general where state laws conflict with federal laws and regulations), as follows: "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" [#49, #62, #94, #101]. DOT regulations for hazardous materials preempt hazardous material shipments in recycled plastic containers (which covers one-third of pesticides) [#64]. Our suppliers won't be able to provide DOT containers with 25% post-consumer content until January 1, 1996. Consequently we request DOT hazardous substances be exempted until January 1, 1996, as California is doing [#79].

E. *"Special Circumstance Product" exemption.* Products meeting "special circumstances" criteria should be exempt (i.e. must be packaged in very specific resin because of compatibility issues; cannot be source-reduced; cannot contain recycled content; no market for the resin from which it's made; and cannot be refilled/reused). Product manufacturer would have to document all of the above to DEQ, and that all their other containers comply [#54].

F. *Exemption for agricultural chemical containers.* Because of problems with FIFRA, DOT/UN and because Oregon already has a successful pesticide container recycling program which recycles over 25% of high density polyethylene plastic pesticide containers, strongly urge an exemption for agricultural chemical containers [#81, #90, #105].

G. *Exemption for "concentrated products."* An exemption should be added for "a product sold in a concentrate form that is one-half or less of the volume of the product in its intended use form." This would encourage the marketing of such products, resulting in significant source reduction [#95].

H. *Exemption for federally regulated products.* The DEQ and the EQC should exempt federally regulated products, or recommend to the Legislature that federally regulated containers that cannot comply with the Oregon law, i.e. those containers whose compliance with federal safety standards would preclude compliance with the Oregon law, should be exempted from its provisions [#110, #112].

RESPONSE: The EQC does not have authority to grant general exemptions from the provisions of the Law. The proposed rules do not provide any exemptions from the provisions of the Law except those specified in ORS 459A.660(5). The proposed rule clarifies these in OAR 340-90-340. The proposed rules were not changed in response to Comment 15.

A. *FIFRA*. Products registered under FIFRA are not identified as exempt by the Law. The Department has been advised by the Attorney General's office that the Law and proposed rules are not in direct conflict with Section 24(b) of the FIFRA statute. (See Attorney General's Memorandum, Attachment J.) While some compliance options may not be available to this class of rigid plastic container, other options such as the various recycling rate options remain open. The EQC has been granted no authority to provide an exemption for FIFRA-regulated products. A change in the statute would be necessary to obtain this result.

B. *Cosmetic products*. Cosmetic products which are regulated by the FDA are not identified as exempt by the Law. Cosmetic product manufacturers may be having a difficult time identifying a compliance option for rigid plastic containers used for their products. Manufacturers feel that they need more time to develop individual compliance programs. While some compliance options may not be available to this class of rigid plastic container, other options such as the various recycling rate options remain open. The EQC has been granted no authority to provide an extension in compliance dates or an exemption from compliance for cosmetic products. A change in the statute would be necessary to obtain this result.

C. *Food products*. As with other general classes of products, there has been no authority granted to the EQC to provide an exemption from compliance or an extension in compliance dates for food packages. A change in the statute would be necessary to obtain this result. While some compliance options may not be available to some containers in this class of rigid plastic container, other options such as the various recycling rate options remain open and in some cases compliance has been achieved.

D. *DOT/UN*. Products in containers covered by DOT and UN codes may be restricted in the use of some compliance options. However, like the FIFRA-regulated material, these containers are not identified as exempt by the Law. While some compliance options may not be available to this class of rigid

plastic container, other options such as the various recycling rate options remain open. The EQC has been granted no authority to provide an exemption from compliance of an extension in compliance dates for DOT-regulated products. A change in the statute would be necessary to obtain this result.

E. "*Special circumstances*" products. There may be some very specific products where none of the compliance options are available for compliance by the specific product manufacturer. These containers could only comply under one or more of the recycling rate compliance options. If those rates are not achieved, the containers would have no method of compliance. As with other classes of containers seeking exemption, the EQC has been granted no authority to provide an exemption from compliance for specific product-related containers. A change in the statute would be necessary to obtain this result.

(Responses to Comments 15F, 15G and 15H are included in the general Response to Comment 15.)

Comment 16: Pre-existing Containers (340-90-350(2))

COMMENT: (Comments received from Eastman Kodak Co. [#46], Chesebrough-Pond's USA Co. [#115]) The language in 340-90-350(2) should be changed to exclude containers made before 1995 but filled during or after the year 1995. For certain specialized products we purchase multi-year quantities to minimize procurement costs; these supply our production demands for several years. This is consistent with the spirit of the Oregon law [#46]. Support pre-existing container language [#115].

RESPONSE: The proposed rules OAR 340-90-350(2) allow containers sold after 1/1/95 but filled prior to 1/1/95 to be excused from compliance. It is reasonable to also extend this coverage to containers sold after 1/1/95 but manufactured before 1/1/95. Staff has included the suggested change in the proposed rules.

Comment 17: Recycled Content Compliance (340-90-360)

COMMENT: (Comments received from The Soap and Detergent Assoc. [#49], KW

Plastics Recycling Division [#75], Neale & Assoc. for Geon Co. [#91], Gage Industries [#216])

A. The proposed rule (340-90-360) provides for calculation of the recycled content rate on a "production run" basis. Strongly urge that this be changed to an annual basis. This would accommodate any short-term market/supply problems which could affect the ability to comply on a "production run" basis. The results would be the same for the state. This would also reduce paperwork [#49, #216].

B. We are concerned with the requirement for recycled content in rigid plastic food containers. Post-consumer resin may have adverse effects on HDPE containers which are now reclaimable, through use of barrier layers, etc. Currently the supply of post-consumer HDPE cannot meet the demand; legislation is not necessary to increase markets for reclaimed HDPE. Implementation of the recycled content in food containers should be delayed until there is a better solution for food-grade bottles [#75].

C. The proposed rules fail to give credit for recycled content used in other than rigid plastic containers. To divert materials from landfills, the rules should allow and encourage broader recycled content applications [#91].

RESPONSE:

A. The proposed rules require that for containers to meet the recycled content compliance standard they must be manufactured in a process which is designed and operated to produce containers with 25% recycled content. The term "production run" was unclear as used in the proposed rule. It is the intent of the rule that the container manufacturer determine the rigid plastic containers it produces are in compliance with the Law. Recycled content compliance for an individual container would be judged by evaluation of the production process, input of recycled plastic, from which the container was produced. The language in OAR 340-90-360 has been changed and is now consistent with that in OAR 340-90-410(1)(a)(B): "Production run" has been changed to "during the same time period that the container was made, within a one year period as determined by the container manufacturer." The language in OAR 340-90-410(1)(a)(B) has also been changed for consistency.

B. The use of recycled content is one of several options provided in the Law.

The Law does not allow for a waiver or delay in implementation for food-grade bottles. The proposed rules were not changed in response to Comment 17B.

C. The Law encourages the use of recycled content in rigid plastic containers through the recycled content compliance option. It encourages the use of recycled content in all plastic products through the three recycling rate options. The proposed rules were not changed in response to Comment 17C.

Comment 18: Recycling Rate for "Product-Associated Container" (340-90-370(3))

COMMENT: (Comments received from AJP Northwest [#80]) One compliance option is a 25% recycling rate for a "product-associated container." My company distributes and operates a recycling program for polystyrene foodservice grade material for our customer base (including deli's, schools, cafeterias, etc). That customer base is what the proposed rules call the "product manufacturer." My recycling program allows for containers from many container manufacturers; consequently the wording of the definition at 340-90-320(12) ("Product-associated container means a brand-specific rigid plastic container...") will cause me many problems. Recommend changing the wording to allow for various brands to be used. Certification that a particular product is made from a specific resin should be easily accessible.

Section 340-90-370(2) specifies how the recycling rate is to be calculated for "specified types" of rigid plastic containers. The proposed rule says that the recycling rate for type of container, in the aggregate, must be at least 25%. Does this mean that recycling programs such as ours will not be available until the aggregate rate of that material (i.e. polystyrene) is at 25%? Or does it mean that our program must meet a minimum of 25% recycled? We want to be able to offer our customers the opportunity to comply by offering both a recycled content option and a recycling program.

RESPONSE: The use of containers from several container manufacturers by a single product manufacturer does not preclude the product manufacturer from obtaining a product-associated recycling rate for all containers which hold his "brand" of product. A point-of-sale product manufacturer who has a successful "in-house" recycling program could seek compliance for his containers under the product-associated container option. The reference to

"brand-specific" in the Law and proposed rules could mean either the container or product manufacturer's "brand." The proposed rules were not changed in response to Comment 18.

Comment 19: Calculation of the Recycling Rate

COMMENT: (Comments received from OSPIRG [#1], Recycling Advocates [#8], City of Ashland [#10], Eastman Kodak Co. [#46], Continental Plastic Containers Inc. [#62], Chef Francisco [#68], League of Women Voters of Oregon [#70], Pennzoil Co. [#85], Association of Oregon Recyclers [#104], Garten Foundation [#107], Northwest Food Processors Assoc. [#109], Gage Industries [#216], 15 members of the public [#19, #20, #21, #22, #24, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36])

A. Post-consumer rigid plastic containers used to calculate recycling rate.

1.) Support calculation of the rigid plastic container recycling rate using only post-consumer rigid plastic containers, not in-plant plastic scrap and containers or containers that are taken directly from one manufacturing plant to another manufacturer. The law must push beyond the plastic recycling that is already occurring in Oregon. Counting only post-consumer containers in the numerator is consistent with the method of determining recycling rates for other materials [#1, #8, #10, #19, #20, #21, #22, #24, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #70, #107]. Inclusion of pre-consumer plastics would be a slap in the face to communities working to improve their plastics recycling programs [#10]. Food packages should be a part of the recycling rate calculation [#109].

2.) Oppose use of post-consumer rigid plastic containers to calculate the recycling rate. The statute does not use the term "post-consumer rigid plastic containers," but rather "rigid plastic containers." To conform to the law, increase clarity, reduce confusion and for consistency, "post-consumer rigid plastic containers" should be replaced with the term "rigid plastic containers" wherever used [#62, #65, #216]. There is an added inconsistency between the statutory definition of "recycled material" and the proposed definition of "post-consumer rigid plastic container." The former refers to *intended end use or product life cycle* while the latter refers to *intended end use and product life cycle* [#65].

B. The methodology for calculating the aggregate recycling rate does not use the same container criteria for the numerator and denominator. The numerator is restricted to rigid plastic containers 8 oz. to 5 gallons in size, whereas the denominator includes the total weight of all rigid plastic containers disposed of in Oregon (plus the numerator). Companies recycling rigid plastic containers of any size should be allowed to include that figure in the numerator, thus maintaining the same criteria in the numerator and denominator [#46].

C. Submission of data from recyclers. We are concerned about DEQ's reliance on voluntary submission of data to calculate the recycling rate. Recyclers often start up and go out of business quickly, thus making it difficult to collect accurate data. Recyclers also may not have the staff to maintain accurate records [#46]. What recourse is there against recyclers who understate the amount of recycled plastic reported? [#109] We caution the Department not to impose additional recordkeeping requirements on those who only collect and compact material for delivery to other in-state handlers so they won't avoid handling plastics because of the additional paperwork [#104].

D. Public comment/challenge on recycling rate. DEQ should provide a mechanism to receive public comment on the aggregate recycling rate before it is officially issued. This will allow DEQ to make adjustments for errors or omissions before beginning enforcement. This will yield the most accurate rate possible [#65, #216]. The public should be given evidence by DEQ so adjustment methods to the rate can be challenged [#216].

E. Frequency. The rules should require that studies to calculate the aggregate rate be conducted frequently enough to be fair and accurate [#68]. DEQ should be required to calculate the aggregate recycling rate on an annual basis [#85].

F. Methodology. Precise methodology used for calculating the rate is not given, including a definition of the recycler survey process, the auditing process for survey respondents, accuracy expectations on survey and waste characterizations, etc. [#109]

G. Public review for methodology. No public review for the proposed methodology is proposed. No indication is given that there will be an appeals process built into the methodology [#109].

RESPONSE:

A. The intent of this legislation was to provide opportunity for the public to recycle plastic and to purchase plastic items made with recycled content. As used here, the public means the household and commercial consumers where typically the plastic would have been placed in the disposal stream. It does not mean a manufacturing plant where historically an established market for the plastic material exists, and the material does not enter the disposal stream. The calculation of an aggregate recycling rate is a measurement of the public's ability to recycle plastic and the words "post-consumer" make the distinction described above.

B. By definition, a rigid plastic container is 8 fluid oz. or greater and 5 gallons or less in size and that definition will be applied to the greatest extent possible in calculating both the numerator and denominator. The rule does use the same methodology in calculating the numerator and denominator.

C. Private recyclers, manufacturers and distributors are required to provide data annually to the Department relative to materials which are recycled or recovered from the wastestream. Although the Department approaches this annual survey as a voluntary one, the authority exists to require submittal of the data. The same authority exists for obtaining rigid plastic container recycling data.

D. There is no formal provision for public comment on the determination of the aggregate recycling rate for compliance purposes or the calendar year aggregate recycling rate before they are officially issued. However, the Department will continue to work with the interested persons throughout the process of determination of these rates so that problems, adjustments or omissions in the methodology can be addressed.

E. An annual rate calculation was considered frequent enough to be fair and accurate. The rules provide for annual calculation of the recycling rate.

F. The methodology for collection of recycling or waste composition data is not included in the proposed rules. This methodology has been developed and will continue to be improved by the Department with the assistance of outside technical advice. Formalization of the specific procedure in the administrative rules would require a formal amendment through the rule making process each

time a small improvement or other change was desired.

G. The Department proposes to continue to use and develop data collection methodologies with the direct input of advisory task forces and technical advisors from the public sector.

The proposed rules were changed in response to Comments 19A-G as noted in response to Comment 14 (Page E-18).

Comment 20: Publication of Report on Aggregate Recycling Rate (340-90-380(2)(d))

COMMENT: (Comments received from American Plastics Council [#65]) The report to be written by DEQ should include "potential error associated with estimation of the total tons of municipal solid waste disposed of in Oregon."

RESPONSE: The rules language will be amended to read: "...a report which includes a discussion of potential error associated with estimation of the total tons of municipal solid waste disposed of in Oregon, information on the recycling and disposal data collection and analysis methodologies and..."

Comment 21: Pyrolysis (340-90-380(7))

COMMENT: (Comments received from OSPIRG [#1], Recycling Advocates [#8], City of Ashland [#10], Steinfeld's Products Company [#39], American Plastics Council [#65], League of Women Voters of Oregon [#70], Oregonians for Food and Shelter [#84], Neale & Assoc. for Geon Co. [#91], Ropak Corp. [#92], Garten Foundation [#107], Gage Industries [#216], 21 members of the public [#3, #19, #20, #21, #22, #23, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #38, #69, #71, #72, #222])

Agreement with proposed rule: Strongly support language in the proposed rule, incorporating the Attorney General's advice that fuel or energy products of pyrolysis should not count in the recycling rate. The law was meant to increase recycling of plastic, not use of plastics as fuel or energy. Burning plastic is not recycling. Pyrolysis is energy recovery [#1, #3, #19, #20, #21, #22, #23, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #38, #70, #71, #72, #107, #222].

Disagreement with proposed rule: Disagree with efforts to classify pyrolysis of plastics as non-recycling. Pyrolysis removes plastics from the waste stream, and reuses them as a resource [#39, #91, #92]. Pyrolysis transforms recyclable material into a "product" as required by ORS 459.005. Liquid hydrocarbon is a product that has value and can be sold in commerce. The proposed rule would give recycling credit for only that portion of pyrolysis products that can be traced into another plastic product, other than fuel or energy. This is not realistically probable. Pyrolysis can process mixed waste plastics that are difficult to recycle mechanically. The phrase "other than fuel or energy" should be removed from the definition of "recycled in Oregon" (340-90-320(16)) [#65, #216]. The proposed rule is inconsistent with the statutory definition 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." The demand for post-consumer resin is less than the supply, so collected material will just be stockpiled [#84, #91].

RESPONSE: The Department does not oppose pyrolysis and is not classifying the pyrolysis of plastics as "non-recycling." The advice we have received from the Attorney General's office following its study of Oregon law and legislative history is that pyrolysis of plastics is not recycling to the extent the end product of that process is a form of energy. Therefore, calculation of the recycling rate for rigid plastic containers excludes outputs of pyrolysis which are fuel products or otherwise used for energy recovery. Outputs from pyrolysis which are recycled into new products not used for energy recovery are included in the calculation of the recycling rate.

Pyrolysis of rigid plastic containers when the end products go to energy recovery may be appropriate as a way to keep those containers that cannot be recycled out of the state's landfills. While this recovery is encouraged and is counted toward statewide and local recovery rate goals, it cannot be considered recycling under Oregon law.

Comment 22: Compliance Reporting (340-90-400 and 340-90-410)

COMMENT: (Comments received from OSPIRG [#1], Eastman Kodak Co. [#46], Clorox [#47], Southland Corp. [#52], L&F Products [#206])

Supports procedure for requesting proof of compliance and underlying records from the product manufacturers and container manufacturers [#1].

A. Suggests use of two-year record retention rather than three. Most businesses operate under a two-year system, making it cumbersome to keep data more than two years. Computer systems may not be able to hold more than two years of data. Two years would be consistent with California [#46, #206].

B. There should be a standard amount of time given to comply with any DEQ request for information, rather than different amounts of time in the proposed rule. It can take a significant amount of time to collect information from internal business units; therefore we recommend a standard 60-day response time. There should also be an option for a 30-day extension in case of extenuating circumstances.

C. Manufacturers should be able to use national data to fulfill recordkeeping requirements which could be prorated based on Oregon's population. Our firm sells a substantial amount of product to national chains through central distribution points; we have no mechanism to track what is actually shipped into Oregon [#47].

RESPONSE:

A. The proposed rules require record retention for three years. The three-year period was agreed upon by the Certification, Auditing and Records Task Force as a reasonable compromise between the Department's need to be sure records will still be available when requested and the burden to the manufacturer of retaining records over time. Particularly in the case of container manufacturers, the Department may not request records for well over a year after the container is manufactured. Staff feels that a two-year retention period is insufficient to ensure records will be available when needed. The proposed rules were not changed in response to Comment 22A.

B. The time periods for reporting were developed through discussion in the Certification, Auditing and Records Task Force. Each time period was considered appropriate for the type and availability of information requested. It was felt that a straight 60-day requirement would overly prolong the process while 30 days might encourage requests for time extensions. All of the

reporting requirements include an option for a time extension. The proposed rules were not changed in response to Comment 22B.

C. The use of national data, adjusted to represent Oregon is one method of providing documentation of compliance. Nothing in the proposed rules restricts this approach to documentation. The proposed rules were not changed in response to Comment 22C.

Comment 23: Responsibility of a Container Manufacturer (340-90-410)

COMMENT: (Comments received from Continental Plastic Containers Inc [#62], Pennzoil Co. [#85])

A. To clarify the container manufacturer's responsibility, the words "upon request" should be added to 340-90-410(2)(a) on line 24. This can be deleted from line 30, same page. The same phrase should be added to the definition of "Container Manufacturer's Certificate of Compliance" in 340-90-320(2) [#62].

B. The rule should require 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. This may be needed for a product manufacturer to demonstrate compliance [#85].

RESPONSE:

A. The addition of the language "upon request" to OAR 340-90-410(2)(a) would slightly clarify and reduce the container manufacturer's responsibility. However since the container manufacturer may not know if a product manufacturer will need an Oregon-required Certificate, it is reasonable to allow the container manufacturer to wait to provide the Certificate until it is requested. This places slightly more responsibility on the product manufacturer. Staff has included the suggested change in the proposed rules in OAR 340-90-410(2)(a) but does not feel that the same change is necessary in the definition in OAR 340-90-320(2).

B. A container manufacturer must supply a Certificate of Compliance to a product manufacturer. However the container manufacturer has no obligation

to provide other information to a product manufacturer. Since other information in a container manufacturer's records may contain trade secrets, it is unreasonable for the proposed rules to require that information be provided to product manufacturers. The proposed rules were not changed in response to Comment 23B.

Comment 24: Documentation for Drug Exemption (340-90-400(3)(a)(C))

COMMENT: (Comments received from Nonprescription Drug Manufacturers Assoc. [#55]) Language in 340-90-400 specifying documentation needed to demonstrate an exemption for drugs should be amended. Subparagraph (3)(a)(C)(ii) should be changed to read: "Appropriate references to the FDA Final Monograph or Tentative Final Monograph under which the drug is marketed." This more correctly reflects what is in the FDA regulations.

RESPONSE: The suggested change appears to further clarify the intent of the proposed rules. Staff has included the suggested change to OAR 340-90-400(3)(a)(C)(ii) in the proposed rules.

Comment 25: Confidential Information (340-90-420)

COMMENT: (Comments received from Eastman Kodak Co. [#46], Chesebrough-Pond's USA Co. [#115]) Urges deletion of subsections (2)(a) and (b) of OAR 340-90-420, which would eliminate the potential of releasing confidential information to competitors. The regulations should state how confidential information sent to the State should be identified, such as "Confidential - Trade Secret - Do Not Release." [#46]

Support mechanism for confidentiality of certification data in 340-90-420 [#115].

RESPONSE: The language in OAR 340-90-420(2) is intended to give the person who is making a claim that trade secrets are contained in information provided to the Department, an opportunity to defend that claim and protect such information. Removal of this provision would not provide greater protection

of claimed trade secrets. The proposed rule was not changed in response to Comment 25.

Comment 26: Reduced Civil Penalty for Small Businesses

COMMENT: (Comments received from Polystyrene Packaging Council [#61])

A. Although DEQ has proposed to reduce the status of a violation by a product manufacturer selling fewer than 500 rigid plastic containers a day, the mere threat of sanctions will discourage many proprietors from continuing to use even lawful plastic packaging and increase their costs.

B. DEQ's resources will not be adequate to ensure that the law is enforced equitably.

RESPONSE:

A. The Department has reduced the reporting requirements to lessen the potential impact of the Law on small point-of-sale businesses which put a product in a rigid plastic container. There is no provision in the Law to exempt containers used by these businesses from the provisions of the Law. The Department hopes that container manufacturers will provide and small point-of-sale businesses will use rigid plastic containers which comply with the Law.

B. Regardless of the resources available, the Department will provide equitable enforcement.

The proposed rules were not changed in response to Comment 26.

Comment 27: Implementation Date/Retroactive Enforcement

COMMENT: (Comments received from Steinfeld's Products Company [#38], American Pet Products Manufacturers Association Inc. [#42], Safeway [#50], Reckitt & Colman [#51], McDermott, Will & Emery for Solo Cup Co. [#100], Oregon Food Industries, Inc. [#114]) The understanding was that as a result of amendments by the 1993 Legislature, the law could not be implemented

until after January 1, 1996 and DEQ had calculated recycling rates for 1995. Now it appears that DEQ could fine product manufacturers for non-compliance in 1995. The food industry effectively has only two ways to comply, through the 25% aggregate rigid plastic container recycling rate, or through the "substantial investment" exemption. If DEQ implements compliance on January 1, 1995 for the food industry, millions of dollars in sales will be placed in jeopardy. At least, please implement the "substantial investment" exemption immediately [#39]. Fines have been lowered, but what assurance is there that fines will not be levied retroactively? Lower fines do not address the issue [#50]. The risk of retroactive enforcement may force a choice between technical non-compliance in 1995 or withdrawal from the market. Rulemaking should clarify this ambiguity [#51].

If the regulation goes into effect on January 1, 1995, this will be at least a year prior to the Department's calculation of a rigid plastic container recycling rate. At the same time, the regulation requires the manufacturer or retailer to act as if that rate had been determined. The manufacturer would be required to commit valuable resources based on an unknown assumption and risk retroactive enforcement actions. This is unfair [#42, #50, #100]. DEQ will apply the calculated 1995 recycling rate retroactively to determine whether product manufacturers were violating the statute by selling containers in 1995 that were not being recycled at a 25% rate in 1995. This does not comport with the plain language of the statute. The statute states that rigid plastic containers comply if rigid plastic containers in the aggregate "are being recycled in Oregon at a rate of 25 percent by January 1, 1995." There is no provision regarding recycling rates for the calendar year 1995 or any subsequent year. The legislative intent here was not to rely on a retroactively applied recycling rate, 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 violations [#100]. Concerning the Director's recent directive on enforcement, even if the effective enforcement date is January 1, 1996, the rules will begin to be enforced before DEQ has calculated the recycling rate(s). The affected industries still will not know whether the packaging they are using is in compliance [#114]. Implementation of the regulation should be stayed until the Department has calculated the recycling rates, and the date of compliance should be stayed until one year after such rates are made known [#42]. Retroactive enforcement should be prohibited [#114].

RESPONSE: The Department has considered the public comments concerning

implementation dates, compliance dates and enforcement. The Department believes that a close reading of the statute supports the interpretation that the determination of the recycling rate should be made before manufacturers are required to place into their records their demonstration of compliance. The Department also believes that requiring manufacturers to choose a compliance method without knowing the recycling rate may not be appropriate or realistic.

In response to the public comments, the Department will propose the following to the Environmental Quality Commission:

1) The Department will determine whether the aggregate recycling rate for purposes of compliance is at least 25% by January 1, 1995. This determination will be based on existing data and include projections of what is likely to happen. (Note that the Department Director has already formally stated that enforcement actions for violation of the statute and implementing rules shall be based solely upon a manufacturer's compliance status beginning January 1, 1996.)

2) At the same time, the Department will use similar data and projections to determine if the statutory criteria for the substantial investment exemption for the aggregate recycling rate have been met.

3) Before January 1, 1996, and each year thereafter, the Department will determine, as needed, new aggregate and resin specific recycling rates for compliance purposes.

The above approach allows manufacturers to know beforehand if the aggregate or resin specific recycling rates can be used for compliance purposes after January 1, 1995. The Department believes this is the most fair way to implement the rigid plastic container law. A change in the propose rules has been made partially as a result of this comment, OAR 340-90-380(2)

Comment 28: Corporate Averaging

COMMENT: (Comments received from OSPIRG [#1], Recycling Advocates [#8], City of Ashland [#10], Mary Kay Cosmetics Inc. [#11], Kraft General Foods [#41], Eastman Kodak Co. [#46], Clorox [#47], Soap and Detergent Assoc. [#49], Reckitt & Colman Inc. [#51], Continental Plastic Containers Inc. [#62],

League of Women Voters of Oregon [#70], KW Plastics Recycling Division [#75], Procter & Gamble [#76], Pennzoil Co. [#85], Castrol North America [#93], Amway Corp. [#95], Sunbeam Plastics [#96], Cosmetic, Toiletry, and Fragrance Assoc. [#98], Paulsen & Roles Laboratories [#101], Graham Packaging Co. [#102], Association of Oregon Recyclers [#104], Garten Foundation [#107], Chesebrough-Pond's USA Co. [#115], Owens-Brockway [#116], L&F Products [#206], Bend Recycling Team [#221], 15 members of the public [#19, #20, #21, #22, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #218])

Opposition to corporate averaging: Oregon law does not provide for this option. Concerns have been raised that it would put smaller, local firms at a disadvantage, and that it could allow large national manufacturers to comply with the law without increasing recycling in Oregon. We have seen no information that would allay those concerns. Corporate averaging should not be allowed [#1, #8, #10, #19, #20, #21, #22, #27, #28, #29, #30, #31, #32, #33, #34, #35, #36, #70, #104, #218, #221]. At any rate, corporate averaging for the source reduction exemption should not be allowed [#1]. Although a case can be made for encouraging large companies to increase recycled content over 25%, it would be inappropriate to promote this concept at this time as an unfair advantage over smaller manufacturers; moreover there is not clear evidence that corporate averaging would produce the desired result of providing better markets in Oregon for post-consumer recycled plastics [#107].

Support of corporate averaging: Should allow corporate averaging across product lines to be consistent with California requirements. Lack of this option could hinder the offering of some products in the state, forcing consumers to cross the border to purchase such products [#11, #98]. Corporate averaging should be allowed for compliance with recycled content, reuse, or the source reduction exemption. This gives maximum flexibility for companies to comply with the law by making only those package changes which maintain product safety and package integrity. It also offers more opportunities to keep compliance costs down [#41, #76, #93, #95, #96, #101, #102, #115, #206]. Some containers capable of using recycled content can use more than 25% recycled content; others cannot contain any recycled content. Corporate averaging would allow companies to use whatever compliance method achieves the greatest gains at least risk and cost. Manufacturers could focus on their largest volume items. It would also make reporting less

burdensome, as a limited number of container styles are used for a wide variety of products [#46, #85]. "Company-wide/multiple packaging line" averaging of recycled content is the most important issue to us; technology is available to use more than 25% recycled content in our highest volume containers. But we can't use the other options [#85]. Allowing corporate averaging would result in more recycled material being used in a shorter amount of time [#47]. It would alleviate some of the complications currently in the development of markets for recycled resins by allowing companies to run over 25% recycled resins in molds that are set up for recycled resins [#75]. If averaging is not allowed, some companies will reduce the use of post-consumer resins [#116].

The ability to average among non-food containers (as well as averaging between food and non-food containers) is critical. Product compatibility issues may significantly inhibit or prevent the use of recycled content for cleaning products (which interact with their packaging in different and complex ways). But other packaging by the same company may be capable of containing more than the stipulated minimum. The company should receive credit for using what it can where most suitable. Urge adoption of the provisions of Section 17944(b) [not attached] of the California regulations [#49].

Averaging does not necessarily need to be applied to all compliance standards as a condition of being adopted into the rule. Recycling content averaging is beneficial; DEQ should evaluate the benefits of allowing averaging for the others on a standard-by-standard basis [#85].

Corporate averaging should be extended to container manufacturers as well as product manufacturers [#49].

The process of gaining compliance using post-consumer resin requires extensive testing; manufacturers making a good-faith effort to comply may not be able to meet the deadline. Corporate averaging is one way to "extend the compliance deadline" for such cases. California's regulations provide for an extension for a manufacturer who has substantially achieved the goal, and who intends to be in full compliance at a later date [#51].

There is no language in the Law which prevents DEQ from including corporate averaging [#47]. We do not agree that because the averaging option is not specifically identified in the Law, it cannot be allowed in the rule. The

Law is a general framework. If averaging is not allowed in any form, there is no practical way to comply with the recycled content option, under which each container in a batch is considered in compliance if the entire batch has 25% recycled content. Because this may not be true, the use of averaging is implied in the law. Corporate averaging does not thwart the goals of the statute; it will contribute to waste reduction goals 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 [#85, #98].

We consider the argument to be faulty that corporate averaging would put small manufacturers at a disadvantage [#85].

If DEQ decides not to allow recycled content averaging as a compliance option, it should at least be offered as an exemption for a minimum of five years. This would allow manufacturers time to incorporate 25% recycled content into all their containers or to develop alternative packaging [#85].

RESPONSE: Corporate averaging was discussed by the Department's three advisory task forces. The national and local manufacturers have strong, opposing, feelings on this issue. The Law does not specify "averaging" as a method of calculating compliance. However, mathematical averaging is already incorporated into the calculation of recycling rates.

One point made during the discussion of averaging was that corporate averaging of recycled content at either the container or product manufacturer level may provide a competitive advantage to the large national manufacturer over the local small manufacturer. Agreement was not reached on this point. Compliance with the recycled content standard might be difficult for some classes of products. Corporate averaging might allow for compliance across classes of products for large "multi-product" manufacturers. Again, this might put small single-product manufacturers at a disadvantage. It might also add individual non-complying containers to the market, with a 0% recycled content container "averaging" up to a 25% content container.

The Department has not found an application for corporate averaging which would ensure equity for both large national and small local manufacturers. It would not be appropriate to introduce into the implementation of the Law a new concept which generated inequity. A clear policy direction on the use of corporate averaging would appropriately come from the Legislature. The

proposed rules have not been changed in response to Comment 28.

Comment 29: Consistency with California and Other States' Laws

COMMENT: (Comments received from OSPIRG [#1], Mary Kay Cosmetics Inc. [#11], Kraft General Foods [#41], Monsanto [#87], Castrol North America [#93], S.C. Johnson & Son, Inc. [#94], Amway Corp. [#95], Sunbeam Plastics [#96], Cosmetic, Toiletry, and Fragrance Assoc. [#98], National Food Processors Assoc. [#99], Graham Packaging Co. [#102], Oregon Agricultural Chemicals & Fertilizers Assoc. [#105]) The existence of differing and conflicting laws in the various states is very burdensome to industries with regional or national distribution. Regulating pesticide packages and disallowing corporate averaging is inconsistent with California rules [#87]. Requirements should be consistent with other states' requirements whenever possible to facilitate compliance [#93, #96, #102, #105].

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 [#1].

State-by-state consistency of plastic container requirements is crucial for interstate commerce. There are significant differences on several key issues between California and Oregon regulations. These differences could result in the marketing of "Oregon only" products, or the banning of products in Oregon, and should be altered in Oregon regulations [#11, #94, #95, #98, #99].

California allows a one-year waiver for new package introduction; in that manner a base weight can be established for source reduction providing a mechanism for new packages to be introduced after the effective date of the law [#41].

RESPONSE: There are some similarities between the Oregon and California rigid plastic container laws. However, the two laws differ in specific detail. Those differences in the laws lead to major differences in the administrative rules for each state. The Oregon Law does not give the EQC authority to adopt rules identical to the proposed California rules. Specific language in the California law allows for provisions such as averaging, reduced container compliance,

one-year waivers, exemption of FIFRA-regulated products, and exclusion of containers which do not store the product for more than seven days. These provisions are lacking in the Oregon Law. The Department has sought consistency of the proposed Oregon rules with the California rules where legally possible and where they do not result in a weakening of the intent of the Oregon Law. The proposed rule has not been changed in response to Comment 29, except as noted in the Response to Comment 8.

Comment 30: Reusable Containers Used to Store Nonconsumables

COMMENT: (Comments received from Mattel, Inc. [#43], Ropak Corp. [#92])

A. The rule does not address reusable containers that function as storage containers for nonconsumables such as a power drill and drill bits, modeling clay, etc. Such products may have a long life, and continued reuse of the container is essential for storage of the product. Moreover, these "storage containers" constitute a minuscule portion of the waste stream [#43].

B. Re-use of plastic containers by consumers should be considered in implementation of the law. There is evidence that rigid plastic containers, especially pails and buckets, are re-used by consumers for a variety of applications [#92].

RESPONSE:

A. The proposed rules do not address the reuse of a container for storage by the consumer for an original nonconsumable product. The Department feels that it cannot determine the potential impact of allowing storage containers for nonconsumable products to be considered reused without further information and consideration. While these containers may be "reused" there has been no change in the proposed rule to specifically qualify these types of containers.

B. The Law specifically states that to qualify as a reused container, a container must be reused for the same or substantially similar use. If a consumer uses a container for substantially different uses this does not qualify the container as "reused." The proposed rule has not been changed in response to Comment 30B.

Comment 31: Problems for Point-of-sale Foodservice Industry

COMMENT: (Comments received from the Foodservice & Packaging Institute [#48, #77], Polystyrene Packaging Council [#61], American Plastics Council [#65], Plaid Pantries, Inc. [#106], United Grocers [#108], Oregon Food Industries, Inc. [#114], Tony Kingsbury [#119]) There are inherent differences between generic containers used by the foodservice industry and other regulated containers. These differences make it impossible for container and product manufacturers to comply with these rules, which are not written for point-of-sale foodservice containers and are unworkable for retail foodservice establishments.

Containers used by this industry move through commerce differently. Generic containers are often purchased "off-the-shelf," not directly from a container manufacturer. The product manufacturer (foodservice establishment) has no direct relationship with the container manufacturer; therefore the product manufacturer cannot obtain the necessary data from the container manufacturer for compliance with a specific option. Therefore documentation will be highly problematic and overly burdensome [#48, #65, #77, #106]. Manufacturers of foodservice containers do not know who will ultimately buy the container nor in which state they will be sold [#77]. Point-of-sale containers such as clear clamshells are often generic and not associated with a specific product; they present compliance problems as outlined in the next paragraph [#106, #114].

There are no real options for this industry. **Reuse** of these single-use containers is prohibited by the federal Food Code. **Recycled content** can only be used where the container manufacturer has complete control of the source of the post-consumer material, and it can be used only for a specific container (e.g. school lunch tray). This critical customer/supplier relationship does not exist between most foodservice customers and the container manufacturer. An FDA no-objection letter is required for recycled content in food-contact packaging. To incorporate post-consumer content in a deli container, testing would have to be done for a variety of food, at a variety of different temperatures for a variety of different uses, because the manufacturer doesn't know what food product the container will hold. The documentation required for the recycled content option is unworkable; how could a container manufacturer determine a "production run" for a generic container? Would he have to know who the purchaser will be? Meeting the **aggregate recycling rate of 25%** is not a certainty. A retailer could not calculate a **specified type**

recycling rate, since at most he could determine materials were *collected* for recycling; but collection is not recycling. **Source reduction** is not an option because it is based on a "container to product ratio." This cannot be determined for point-of-sale or generic containers, as the same container is not associated with a product over the years to make a five-year comparison. The same container could be used for many different products (e.g. soup, ice cream, etc.), and needs change overnight as menus change [#48, #65, #77]. Many containers have already been reduced as much as possible [#77]. Costs to retailers to change suppliers and materials will be prohibitive. DEQ's Fiscal and Economic Impact Analysis contains several significant errors that could mislead one to believe that implementation of the law would have no significant fiscal impact on point-of-sale retailers and container manufacturers. For example, the recordkeeping costs to manufacturers of generic point-of-sale containers is not "negligible," and in fact goes to the heart of the way business is conducted [#77]. [Note: Comments received from the Northwest Food Processors Assoc. on July 20, 1994 concerning on the fiscal impact of the rule are attached after comments received during the public comment period. These were solicited by the Department during preparation of the Fiscal and Economic Impact Analysis, but were received too late to be included in that document]

The unanticipated impacts of regulation of food service disposable polystyrene products must be addressed by DEQ (if these are regulated, food service vendors will switch to alternative products weighing more than polystyrene, which are not recycled thus adding to landfills, and which are more expensive) [#61]. The above obstacles need to be examined by DEQ [#65, #119]. Recommend implementing the exemptions discussed above in Comment 15C-1, "Exemption for food packages and food processors" [#114].

RESPONSE:

A. *Recordkeeping*. The Department agrees that recordkeeping should be kept to a minimum for small point-of-sale product manufacturers. Consequently the proposed rule has been changed to specify that product manufacturers with sales of fewer than 500 containers per day will not have to keep records of container compliance. However, they must maintain records of quantity of product purchased, brand name, and product number, and source of purchase. The Department will follow up with container manufacturers on compliance records. The Department anticipates that container manufacturers will not sell

noncomplying containers in Oregon and that point-of-sale product manufacturers will not use containers which do not comply with Oregon Law. New language has been added to the proposed rules, OAR 340-90-400(7).

B. *Polystyrene*. Polystyrene, particularly food service polystyrene, is currently recyclable, and recycling programs do exist. Small point-of-sale product manufacturers can contribute to the recycling rate.

C. *Enforcement*. Enforcement against point-of-sale product manufacturers will be taken if they are in violation. A non-complying small point-of-sale product manufacturer will receive a notice of noncompliance and be given a reasonable period of time in which to come into compliance.

Comment 32: New Product Waiver (See also Comment 12, "Reduced Container")

COMMENT: (Comments received from Procter & Gamble [#76]) There should be provision for a limited waiver for new products or packages introduced into the stream of commerce.

RESPONSE: The Law does not make provision for the EQC to grant any waiver from the compliance standards. The Department assumes that it was legislative intent in 1991 that packaging for products introduced in 1995 and beyond would have been developed to be in compliance with the 1991 law. One consideration which has been raised is that a waiver for new products would place similar existing products at a competitive disadvantage. The EQC has not been granted authority to issue individual product waivers. A change in the statute would be necessary to obtain this result. The proposed rules have not been changed in response to Comment 32.

Comment 33: Responsibility of Retailers, Third-party Challenges

COMMENT: (Comments received from Safeway [#50], Oregon Food Industries, Inc. [#114]) The rules should clearly state that retailers not otherwise product or container manufacturers will not be subject to enforcement for selling a product in a noncomplying container. The DEQ July 22, 1994 memo says that retailers would probably not be subject to enforcement. Rules should clarify this gray area and state that the retailer is not subject to enforcement for non-

point-of-sale items [#114]. Upon review of the Oregon statutes, our attorneys believe that retailers are at risk of third-party challenges [#50].

RESPONSE: The Law and proposed rules do not identify retailers or place requirements on them except where they take on the additional role as a product manufacturer by directly packaging products in rigid plastic containers. In those cases where a retailer is a product manufacturer, the proposed rules treat these product manufacturers equitably with all other product manufacturers. A third-party challenge of a retailer may be possible. However, there is nothing in the proposed rules to encourage or facilitate such a challenge. The Department anticipates that product manufacturers and container manufacturers will not sell noncomplying containers in Oregon and that retailers will not sell containers which do not comply with Oregon Law. The proposed rule has not been changed in response to Comment 33.

COMMENTS ON SPECIFIC LANGUAGE (not covered in "topic" comments above):

Page A-1, line 15. **Purpose.** Change "amount" to "number" of rigid plastic containers being disposed of in Oregon. This would clarify that reducing the weight of rigid plastic containers is not sufficient if they continue to be landfilled. We need to actually divert plastic packaging volume from being landfilled. (OSPIRG [#1])

RESPONSE: The term "amount" is general and more appropriate for the policy statement of these rules. Amount can include weight, volume, and number, or a combination thereof. The proposed rules have not been changed.

Page A-14, (340-90-340(6)). Delete paragraphs (6)(a)(A) and (B). Paragraph (6)(a)(A) simply repeats (6)(a). Paragraph (6)(a)(B) is unnecessary because "viable market" is defined by what immediately follows (Soap and Detergent Assoc. [#40])

RESPONSE: OAR 340-90-340(6)(a)(A) and (B) are part of the criteria for meeting the exemption set out in ORS 459A.660(5)(e). All of the

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criteria from the law are listed here; elimination of two of those criteria in the proposed rules might cause confusion as to intent. The proposed rules have not been changed.

Page A-18, line 29. Add "post-consumer" after "weight of." (OSPIRG [#1])

RESPONSE: The addition of "post-consumer" clarifies the intent of this section. The suggested language has been added to the proposed rules OAR 340-90-380(2)(c)(B)(i).

Where is the section dealing with Compliance for reused containers? (OSPIRG [#1])

RESPONSE: The rule related exclusively to reused container compliance was dropped from the proposed rules after the substantive material in the rules was transferred to OAR 340-90-400 and 410. This left the rule with only a direct restatement of ORS 459A.655(1)(c) which can already be found in OAR 340-90-350(1)(c). Therefore the rule dealing with Compliance for Reused Containers was deleted.

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ATTACHMENT - F

Detailed Changes to Original Rulemaking Proposal
Made in Response to Public Comment

The following new language is added to OAR 340 Division 90

OAR 340-90-310 PURPOSE

- (1) The following administrative rules, OAR 340-90-320 through 430, are intended to establish the minimum requirements for the implementation of the Oregon Rigid Plastic Container Recycling Law, ORS 459A.650 through 680. The Commission's purposes in adopting these rules are to:
- (a) Reduce the amount of rigid plastic containers being disposed of in Oregon;
 - (b) Increase the reuse or recycling of rigid plastic containers that would otherwise be disposed of;
 - (c) Increase the use of recycled material in the manufacture of rigid plastic containers.

OAR 340-90-320 DEFINITIONS

As used in OAR 340-90-310 through 430 unless otherwise specified:

- (1) "Container manufacturer" means the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon. A "container manufacturer" is the same as a "package manufacturer" as defined in ORS 459A.650(2).
- (2) "Container Manufacturer's Certificate of Compliance" means the certificate provided by the container manufacturer to a product manufacturer which describes the records which the container manufacturer has available to document that a rigid plastic container or containers are in compliance with OAR 340-90-350 (1)(a), (1)(b)(A), or (1)(b)(B).
- (3) "Container/product ratio" means the ratio of the weight of a rigid plastic container to the units of product in the container.
- (4) "Department" means the Department of Environmental Quality.
- (5) "Drug" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations, including the following:
 - (a) Articles recognized in the official *United States Pharmacopoeia*, official *Homeopathic Pharmacopoeia of the United States*, or official *National Formulary*, or any supplement to any of them; and

- 1 (b) Articles intended for use in the diagnosis, cure, mitigation, treatment,
2 or prevention of disease in man or other animals; and
3
4 (c) Articles (other than food) intended to affect the structure or any
5 function of the body of man or other animals; and
6
7 (d) Articles intended for use as a component of any article specified in
8 clauses (a), (b), or (c) of this section.
9

10 Drugs include nonprescription or over-the-counter drugs regulated pursuant
11 to [referenced in] the federal Food, Drug and Cosmetic Act (21 U.S.C. 321)
12

- 13 (6) "FDA" means federal Food and Drug Administration.
14
15 (7) "FD&C Act" means federal Food, Drug and Cosmetic Act (21 U.S.C. 321).
16
17 (8) "Infant formula" has the meaning given by the federal Food, Drug and
18 Cosmetic Act (21 U.S.C. 321(f)), and is food which purports to be for
19 special dietary use solely as food for infants because it simulates human milk
20 or is suitable as a complete or partial substitute for human milk.
21
22 (9) "Medical device" means an instrument, apparatus, implement, machine,
23 contrivance, implant, in vitro reagent, or other similar or related article,
24 including a component, part or accessory, which is:
25
26 (a) Recognized in the *National Formulary, United States Pharmacopoeia,*
27 or any supplement thereto, and intended:
28
29 (A) For use in the diagnosis, cure, mitigation, treatment, or
30 prevention of disease in man or other animals; or
31
32 (B) To affect the structure or any function of the body of man or
33 other animals which does not achieve its primary intended
34 purpose through chemical action within or on the body of man
35 or other animals; and is
36
37 (b) Not dependent upon being metabolized for the achievement of any of
38 its principal intended purposes.
39
40 (10) "Medical food" has the meaning given by the federal Food, Drug, and
41 Cosmetic Act (21 U.S.C. 321) and pertinent regulations and includes the
42 following:
43
44 (a) A product formulated to be consumed or administered internally under
45 the supervision of a physician; and
46
47 (b) A product intended for specific dietary management of a disease or
condition for which distinctive nutritional requirements, based on

1 recognized scientific principles, are established by medical evaluation.

2
3 For purposes of these rules, medical food is food that is consumed or
4 directly placed in the stomach or intestine through a tube, or other food
5 which is used to manage a disease or medical condition, or food labeled
6 "may be used as the sole source of nutrition" or "may be used as the sole
7 item of the diet". Food for which popular dietary claims are made, such as
8 "low fat" or "low sodium," is not medical food.

9
10 (11) "Post-consumer rigid plastic container" means a rigid plastic container that
11 would otherwise be destined for solid waste disposal, having completed its
12 intended end-use and product lifecycle. Rigid plastic containers which held
13 obsolete or unsold products shall be considered post-consumer rigid plastic
14 containers when used as a feedstock for new products other than fuel or
15 energy.

16
17 (12) "Product-associated container" means a brand-specific rigid plastic container
18 line, which may have one or more sizes, shapes or designs and which is
19 used in conjunction with a particular, generic product line. A "product-
20 associated container" is the same as a "product-associated package" as
21 defined in ORS 459A.650(3).

22
23 (13) "Product manufacturer" means the producer or generator of a packaged
24 product that is offered for sale in Oregon in a rigid plastic container.
25 ~~{Product manufacturer includes both persons who package a product which
26 is shipped off site for sale and those who package a product at the point of
27 sale.}~~

28
29 **(a) For purposes of these rules "product manufacturer" includes all**
30 **subsidiaries and affiliates.**

31
32 **(b) Identification of the product manufacturer, for purposes of these rules,**
33 **shall be determined by the following hierarchy:**

34
35 **(A) When the name of the entity that manufactured the product**
36 **held by the container is stated on the container label, then that**
37 **entity shall be considered the product manufacturer;**

38
39 **(B) When the container label does not state the entity that**
40 **manufactured the product held by the container, but the**
41 **container label does state the distributor of the container, then**
42 **the distributor shall be considered the product manufacturer;**

43
44 **(C) When the container label does not state either the entity that**
45 **manufactured the product held by the container or the**
46 **distributor of the container, but the container label states the**
47 **importer of the container, then the importer shall be considered**
the product manufacturer;

1 **(D) When the container does not have a label or the label does not**
2 **state the entity that manufactured the product held by the**
3 **container, or the distributor of the container, or the importer of**
4 **the container, or the container is filled at the point of sale and**
5 **no other manufacturer distributor or importer is identified on the**
6 **label, then the store that sells the product held by the container**
7 **shall be considered the product manufacturer.**
8

9 (14) "Product manufacturer's Report of Compliance" means the report provided
10 by a product manufacturer to the Department which documents compliance
11 of a rigid plastic container or containers with requirements of OAR 340-90-
12 350 or exemption from those requirements as set out in OAR 340-90-330.
13

14 (15) "Recycled content" means that portion of a package's weight that is
15 composed of recycled material, as determined by a material balance
16 approach that calculates total recycled material input as a percentage of total
17 material input in the manufacture of the package.
18

19 (16) "Recycled in Oregon" means generated in Oregon as plastic from post-
20 consumer rigid plastic containers and collected, processed and eventually
21 manufactured into another product, other than fuel or energy, either in
22 Oregon or outside the state.
23

24 (17) "Recycled material" means a material that would otherwise be destined for
25 solid waste disposal, having completed its intended end use or product life
26 cycle. Recycled material does not include materials and by-products
27 generated from, and commonly reused within, an original manufacturing and
28 fabrication process.
29

30 (18) "Recycling rate" means the level, stated as a percentage, at which post-
31 consumer rigid plastic containers are recycled in Oregon. The rigid plastic
32 container recycling rate is determined by dividing the weight of plastic from
33 post-consumer rigid plastic containers recycled in Oregon by the combined
34 weight of plastic from both post-consumer rigid plastic containers recycled
35 and those disposed of in Oregon.
36

37 (19) "Reduced package" means a rigid plastic container which has a
38 container/product ratio which is at least ten percent less than the
39 container/product ratio for the same product by the same product
40 manufacturer five years earlier, as provided in OAR 340-90-330(5).
41

42 (20) "Replacement product" means a product which is used to refill a rigid plastic
43 container. Replacement product must be the same as or similar to the
44 original product in the container.
45

46 (21) "Reused container" means either a refillable or reusable container which is
47 refilled by the product manufacturer or reused by the consumer and is used
 at least five times with the same or a similar product.

1 OAR 340-90-330 RIGID PLASTIC CONTAINERS

2
3 ALTERNATIVE A

4
5 (1) A rigid plastic container is a
6 plastic bottle, jar, cup, tub, pail,
7 "clamshell" container, or other
8 plastic container which meets
9 the following criteria:

10
11 (a) Is designed to hold a
12 product for sale;

13
14 (b) Has a volume of not less
15 than eight *fluid* ounces
16 and not more than five
17 gallons. The volume of
18 the container shall be
19 determined using one of
20 the following methods:

21
22 (A) For a container
23 which is labeled in
24 liquid measure, the
25 labeled volume; *or*

26
27 (B) ~~{For containers not~~
28 ~~covered in~~
29 ~~(1)(b)(A), }~~ *The*
30 *measured* liquid
31 volume of the
32 container; *and*

33
34 (C) *For containers*
35 *which have a*
36 *labeled product*
37 *liquid volume of*
38 *five gallons or less*
39 *and a measured*
40 *container liquid*
41 *volume of more*
42 *than five gallons*
43 *the labeled product*
44 *volume shall used.*

45
46 (c) Is composed
47 predominantly of plastic
resin;

ALTERNATIVE B

~~(1) A rigid plastic container is a
plastic bottle, jar, cup, tub, pail,
"clamshell" container, or other
plastic container which meets
the following criteria:~~

~~(a) Is designed to hold a
product for sale;~~

~~(b) Has a volume of not less
than eight ounces and
not more than five
gallons. The volume of
the container shall be
determined using one of
the following methods:~~

~~(A) The labeled liquid
volume; or~~

~~(B) The measured
liquid volume of
the container;~~

~~(c) Is composed
predominantly of plastic
resin;~~

1 (d) Is able to maintain its
2 shape, whether empty or
3 full, under normal usage,
4 independent of any
5 product which it contains
6 or other external support.
7

~~(d) — Is able to maintain its
shape, whether empty or
full, under normal usage,
independent of any
product which it contains
or other external support.~~

~~(e) — Is designed to completely
contain a product, under
normal usage, without
other packaging material
except a lid or closure.~~

8
9
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13
14 (2) The following containers are
15 also rigid plastic containers if
16 they meet the criteria set forth
17 in Section (1) of this rule:
18

~~(2) — The following containers are
also rigid plastic containers if
they meet the criteria set forth
in Section (1) of this rule:~~

19 (a) Plastic boxes, baskets,
20 crates, and flower pots
21 which are sold containing
22 a product;
23

~~(a) — Plastic boxes, baskets,
crates, and flower pots
which are sold containing
a product;~~

24 ~~{(b) — Rigid plastic tubes};~~

~~(b) — Rigid plastic tubes, not
including tubes which
can be easily hand
folded, flexed, and
twisted without damage
to the container;~~

25
26
27 (e**b**) Plastic trays which have
28 sidewalls designed to
29 contain a product in the
30 tray.
31

~~(c) — Plastic trays which have
sidewalls designed to
contain a product in the
tray without the use of
packaging other than a
lid or closure.~~

32
33
34
35
36
37
38 (3) The determination of whether a
39 container meets the definition
40 of rigid plastic container shall
41 be based solely upon the
42 characteristics of the plastic
43 container itself at the time of
44 determination and not upon any
45 material used as packaging for
46 a rigid plastic container or for
47 packaging of individual
products within a rigid plastic

~~(3) — The determination of whether a
container meets the definition
of rigid plastic container shall
be based solely upon the
characteristics of the plastic
container itself at the time of
determination and not upon any
material used as packaging for
a rigid plastic container or for
packaging of individual
products within a rigid plastic~~

1 container.

container.—

2
3 (4) Lids and caps are not
4 considered to be part of a rigid
5 plastic container except when
6 they meet one of the following
7 criteria:

~~(4) Lids and caps are not
considered to be part of a rigid
plastic container except when
they meet one of the following
criteria:—~~

8
9 (a) Are designed to be
10 permanently attached to
11 a rigid plastic container;
12 or

~~(a) Are designed to be
permanently attached to
a rigid plastic container;
or~~

13
14 (b) Independently meet the
15 criteria set forth in
16 Section (1) of this rule.

~~(b) Independently meet the
criteria set forth in
Section (1) of this rule.~~

17
18 (5) The following packaging items
19 shall not be considered part of
20 a rigid plastic container:

~~(5) The following packaging items
shall not be considered part of
a rigid plastic container:~~

21
22 (a) Labels;

~~(a) Labels;~~

23
24 (b) Those parts of the whole
25 package or of the rigid
26 plastic container for
27 which the principal
28 purpose is to provide a
29 tamper resistant seal.
30 This does not include
31 portions of a rigid plastic
32 container which have a
33 principal purpose other
34 than providing a tamper
35 resistant seal; and,

~~(b) Those parts of the whole
package or of the rigid
plastic container for
which the principal
purpose is to provide a
tamper resistant seal.
This does not include
portions of a rigid plastic
container which have a
principal purpose other
than providing a tamper
resistant seal; and,~~

36
37 (c) A bag, film, or flexible
38 inner or outer wrap
39 which is used to cover or
40 contain a product or a
41 rigid plastic container.

~~(c) A bag, film, or flexible
inner or outer wrap
which is used to cover or
contain a product or a
rigid plastic container.~~

42
43
44 OAR 340-90-340 EXEMPT RIGID PLASTIC CONTAINERS

45
46 (1) Rigid plastic containers which meet one of the sets of criteria in sections (2)
47 through (6) of this rule are exempt from the requirements of OAR 340-90-
350 through -370.

1 (2) The product in the rigid plastic container is one of the following:

2
3 (a) A "drug" as defined in OAR 340-90-320(5);

4
5 (b) A "medical device" as defined in OAR 340-90-320(9);

6
7 (c) "Medical food" as defined in OAR 340-90-320(10); or,

8
9 (d) "Infant formula" as defined in OAR 340-90-320(8).

10
11 (3) The rigid plastic container and product are shipped out of Oregon before they
12 are sold to the final consumer.

13
14 (4) The packaging is necessary to provide a tamper-resistant seal for public
15 health purposes.

16
17 (a) For the purposes of OAR 340-90-310 through 430, packaging which
18 provides a tamper-resistant seal is one of the following:

19
20 (A) A separate device associated with a rigid plastic container
21 which resists tampering with the product in the container or
22 exposes when an attempt to tamper with a product has
23 occurred, such devices include but are not limited to tape, film,
24 foil, and tamper-resistant caps and lids; or

25
26 (B) A portion of a rigid plastic package which is designed to work
27 with a device described in paragraph (A) of this section or
28 which independently resists tampering with the product in the
29 container or exposes when an attempt to tamper with a product
30 has occurred.

31
32 (b) A complete rigid plastic container shall not be considered "necessary
33 to provide a tamper-resistant seal" and shall not be exempt under the
34 provisions of this rule.

35
36
37 ALTERNATIVE A OAR 340-90-340(5)

~~ALTERNATIVE B OAR 340-90-340(5)~~

38
39 (5) The container is a reduced
40 container.

~~(5) The container is a reduced
container.~~

41
42 (a) A container is a reduced
43 container when the
44 container/product ratio has
45 been reduced by at least ten
46 percent when compared
47 with the container used for
the same product by the

~~(a) A container is a reduced
container when the
container/product ratio has
been reduced by at least ten
percent when compared
with the container used for
the same product by the~~

1 same product manufacturer
2 five years earlier.

3
4 (A) For a container which
5 has been changed to a
6 reduced container after
7 January 1, 1990 and
8 before January 1,
9 1995:

10
11 (i) Comparison shall
12 be made to the
13 container/product
14 ratio of the
15 equivalent
16 container sold five
17 years earlier;

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32 (ii) The exemption
33 shall start on
34 January 1, 1995;
35 and shall run until
36 January 1, 2000.

37
38 (B) For a container which
39 has been changed to a
40 reduced container on or
41 after January 1, 1995:

42
43 (i) Comparison shall
44 be made to the
45 container/product
46 ratio of the
47 equivalent
container sold five

same product manufacturer
five years earlier.

~~(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.~~

~~(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:~~

1
2
3
4
5
6
7
8
9
10
11
12
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14
15
16
17
18
19
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21
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23
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29
30
31
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46
47

years earlier;

~~(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.

~~(iii) The exemption shall start on the date the reduced container was first used by the product manufacturer and shall run for five years.~~

(b) A reduction in container/product ratio may not be achieved by substituting plastic for a different material for a substantial part of the container.

~~(b) A reduction in container/product ratio may not be achieved by substituting plastic for a different material for a substantial part of the container.~~

(A) Different material means a material other than plastic, including

~~(A) Different material means a material other than plastic, including but not limited to glass,~~

1 but not limited to glass,
2 metal, wood, or paper.

~~metal, wood, or paper.~~

3
4 (B) Use of different plastic
5 resins or combinations
6 of plastic resins is not
7 use of a different
8 material.

~~(B) Use of different plastic
resins or combinations
of plastic resins is not
use of a different
material.~~

9
10 (c) For the purposes of
11 calculating the
12 container/product ratio, a
13 unit of product is one of the
14 following:

~~(c) For the purposes of
calculation of the
container/product ratio, a
unit of product is one of the
following:~~

15
16 (A) A unit of weight of
17 product;

~~(A) A unit of weight of
product,~~

18
19 (B) A unit of volume of
20 product; or

~~(B) A unit of volume of
product, or~~

21
22 (C) A unit of product use.

~~(C) A unit of product use.~~

23
24 (i) To qualify as a
25 "unit of product,"
26 a "unit of product
27 use" must be
28 clearly stated on
29 the container or in
30 other product use
31 instructions.

~~(i) To qualify as a
"unit of product,"
a "unit of product
use" must be
clearly stated on
the container or
other product use
instructions.~~

32
33 (ii) Some examples of
34 units of product
35 use include the
36 number of
37 "standard
38 applications",
39 "servings", or
40 other generally
41 accepted units of
42 product use.

~~(ii) Some examples of
units of product
use include the
number of
"standard
applications",
"servings", or
other generally
accepted units of
product use.~~

43
44 (d) A reduced container is not
45 exempt from OAR 340-90-
46 350 through -370 if the
47 Department finds that
changes made in the original

~~(d) A reduced container is not
exempt from OAR 340-90-
350 through 370 if the
Department finds that
changes made in the original
container adversely impact~~

1 container adversely impact
2 the potential for the
3 container to be recycled or
4 to contain recycled content.

~~the potential for the
container to be recycled or
to contain recycled content.~~

5
6 (e) A reduced container is not
7 exempt from OAR 340-90-
8 350 through -370 if the
9 container/product ratio for
10 the original container was
11 increased after January 1,
12 1990.

~~(e) A reduced container is not
exempt from OAR 340-90-
350 through -370 if the ten
percent reduction in the
container/product ratio is
accomplished by comparing
the reduced container to an
original container for which
the container/product ratio
was increased after January
1, 1990.~~

13
14
15
16
17 (f) A reduced container is
18 exempt from OAR 340-90-
19 350 through -370 even
20 though the container/
21 product ratio for the original
22 container was increased
23 after January 1, 1990 if
24 there is at least a ten
25 percent reduction in the
26 container/product ratio for
27 the reduced container as
28 compared to the original
29 container prior to any
30 increase in the
31 container/product ratio.

32
33
34 (f) For purposes of receiving an
35 exemption under this
36 section, a concentrated form
37 of a product shall be
38 considered to be the "same
39 product by the same
40 product manufacturer" if it:

~~(g) For purposes of receiving an
exemption under this
section, a concentrated form
of a product shall be
considered to be the "same
product by the same
product manufacturer" if it:~~

41
42 (A) Has the same
43 product line name;
44 and

~~(A) Has the same
product line name;
and~~

45
46 (B) Is intended for the
47 same use.

~~(B) Is intended for the
same use.~~

- 1 (6) (a) There has been a substantial investment in achieving the recycling rate.
2 To meet the "substantial investment exemption", all of the following
3 provisions must be met:
4
5 (A) A substantial investment has been made in achieving the recycling
6 rate;
7
8 (B) There is a demonstrated viable market for the material from which
9 the container is made;
10
11 (C) The relevant recycling rate for calendar year 1995 is at least 20%;
12
13 (D) The recycling rates for the rigid plastic containers for the previous
14 two years show evidence of increasing; and
15
16 (E) Reasonable projections indicate that the rigid plastic containers will
17 meet the 25 percent recycling rate by January 1, 1997.
18
19 (b) The exemption provided under the provisions of ORS 459A.660(5)(e)
20 shall be a one time exemption with an effective date of January 1, 1995
21 to December 31, 1996.
22

23 **(c) The Department shall, before January 1, 1995, determine if the**
24 **conditions for the "substantial investment exemption" for rigid plastic**
25 **containers, in the aggregate, have been met.**

26
27 OAR 340-90-350 COMPLIANCE STANDARDS
28

- 29 (1) Except as provided in OAR 340-90-340, by January 1, 1995 any rigid plastic
30 container sold, offered for sale, or used in association with the sale or offer
31 for sale of products in Oregon shall comply with one of the following:
32
33 (a) Have at least 25 percent recycled content;
34
35 (b) Be made of plastic that is being recycled in Oregon at a rate of at least
36 25 percent by meeting one of the following criteria:
37
38 (A) It is a rigid plastic container and rigid plastic containers, in the
39 aggregate, are being recycled in Oregon at a rate of at least 25
40 percent by January 1, 1995;
41
42 (B) It is a specified type of rigid plastic container and that specified type
43 of rigid plastic container, in the aggregate, is being recycled in
44 Oregon at a rate of at least 25 percent by January 1, 1995; or
45
46 (C) It is a product-associated container and that class of containers, in
47 the aggregate, is being recycled in Oregon at a rate of at least 25
percent by January 1, 1995.
}

1 (c) Be used at least five times for the same or a substantially similar use.

- 2
3 (2) Individual rigid plastic containers sold in Oregon after January 1, 1995 but
4 manufactured by a container manufacturer or filled by a product manufacturer
5 prior to January 1, 1995 are not required to meet the compliance standards
6 listed above. A product manufacturer must be able to document that the
7 containers were filled prior to January 1, 1995.
8

9
10 OAR 340-90-360 RECYCLED CONTENT COMPLIANCE

- 11
12 (1) A rigid plastic container shall have at least 25 percent recycled content by
13 January 1, 1995 to comply with OAR 340-90-350(1)(a).
14
15 (2) (a) A container manufacturer shall determine the recycled content of an
16 individual rigid plastic container as being the same as the calculated
17 recycled content for all the same type of rigid plastic containers
18 manufactured ~~{from the same production run}~~ during the same time
19 period, within a one year period, as determined by the container
20 manufacturer, with the same input ratio of recycled material to total
21 plastic.
22
23 (b) The recycled content of a rigid plastic container is calculated by dividing
24 the weight of recycled material used in the production of the container by
25 the total weight of plastic material used to produce the container. The
26 result of that calculation is a percentage, which is the recycled content.
27

28 Note: Stated as a formula this is:

29
30
$$\frac{\text{Recycled Material}}{\text{Total Plastic Material}} \times 100 = \text{Recycled Content}$$

31

32
33
34 OAR 340-90-370 RECYCLING RATE COMPLIANCE

35
36 A rigid plastic container may comply with OAR 340-90-350(1)(b) by meeting one
37 of the following criteria:

- 38
39 (1) The aggregate recycling rate for compliance purposes in Oregon for all rigid
40 plastic containers, ~~{in the aggregate}~~ as calculated~~{determined}~~ pursuant to
41 OAR 340-90-380(2), is at least 25 percent.
42
43 (2) It is a specified type of rigid plastic container and the recycling rate in Oregon
44 for that type of container, in the aggregate, is at least 25 percent.
45
46 (a) A manufacturer using this recycling rate option may designate the type of
47 rigid plastic containers on which the recycling rate will be based. This
48 becomes the specified-type. A specified-type may be designated using

1 any one or combination of the following characteristics:
2

3 (A) Type of plastic resin used to manufacture the container, for example
4 HDPE, natural HDPE, colored HDPE, PETE, PVC;
5

6 (B) Shape and design of the container, for example all bottles, all tubs,
7 all gallon jugs, all buckets;
8

9 (C) Use of the container, for example milk bottles, non-milk dairy
10 containers, household chemical containers, or other generic product
11 lines;
12

13 (D) Other specified characteristics of the container.
14

15 (b) The characteristics used to identify a specified type of rigid plastic
16 container shall not exclude or limit it to an individual product-associated
17 container.
18

19 (3) (a) It is a product-associated rigid plastic container and the recycling rate in
20 Oregon for that type of container, in the aggregate, is at least 25
21 percent.
22

23 (b) A product manufacturer using this recycling rate option may designate
24 the product-associated rigid plastic container on which the recycling rate
25 will be based. This becomes the product-associated rigid plastic
26 container. A product-associated rigid plastic container may be
27 designated by the following single or combination of characteristics but
28 must be limited to a specific brand and generic product line:
29

30 (A) The brand of product in the container (Example: all Brand X products
31 or all Brand Y products);
32

33 (B) The brand and type of product in the container (Example: Brand X
34 dish soap or Brand Y cooking oil);
35

36 (C) The brand and type of container (Example: all Brand X gallon jugs,
37 or all Brand Y jars);
38

39 (D) The brand and resin type of the container (Example: all Brand X
40 PETE containers, or all Brand Y HDPE containers);
41

42 (E) Other specific characteristics or combination of characteristics
43 which are brand specific.
44

45 (4) A manufacturer choosing the options described in sections (2) or (3) of this
46 rule may rely upon disposal or recycling data generated by the Department,
47 where available. Manufacturers using other data to calculate a recycling rate
must be able to document that such data were generated by a methodology

1 acceptable to the Department and are verifiable.

2
3
4 OAR 340-90-380 RECYCLING RATE CALCULATION

5
6 (1) The recycling rate for rigid plastic containers shall be calculated as one of the
7 following:

8
9 (a) Aggregate or specified resin type recycling rate for compliance purposes:

10
11 (b) Calendar year ~~{in the}~~ aggregate recycling rate; ~~{as a}~~

12
13 (c) S~~{s}~~pecified type rate, or; ~~{as a}~~

14
15 (d) P~~{p}~~roduct-associated rate.

16
17 (2) Recycling rate for compliance purposes.

18
19 (a) Aggregate recycling rate for compliance purposes.

20
21 (A) The Department shall determine a recycling rate for rigid plastic
22 containers, in the aggregate, for compliance purposes by January 1,
23 1995 and each year there after.

24
25 (B) The aggregate recycling rate for compliance purposes shall be based
26 in part on the most recent calendar year recycling rate and in part on
27 other information which reflects or indicates the level of rigid plastic
28 container recycling. When determining the recycling rate for
29 compliance purposes for years prior to the calculation of the
30 calendar year recycling rate, the Department will use the best
31 available recycling rate information in lieu of a calander year
32 recycling rate.

33
34 (b) Specified resin type recycling rate for compliance purposes.

35
36 (A) The Department shall determine a specified resin type recycling rate
37 for rigid plastic containers for compliance purposes for each of the
38 plastic resin types identified in ORS 459A.680 by January 1, 1995
39 and each year there after.

40
41 (B) The Specified resin type recycling rate for compliance purposes shall
42 be based in part on the most recent calendar year recycling rate and
43 in part on other information which reflects or indicates the level of
44 rigid plastic container recycling. When determining the recycling
45 rate for compliance purposes for years prior to the calculation of the
46 calendar year recycling rate, the Department will use the best
47 available recycling rate information in lieu of a calander year
3 recycling rate.

1
2 ~~(2)3~~ Calendar year aggregate recycling rate.

- 3
4 (a) The calendar year aggregate recycling rate for rigid plastic containers
5 shall be calculated by the Department and includes all rigid plastic
6 containers including those exempted by OAR 340-90-340 (2), (4), (5)
7 and (6) from meeting compliance standards.
8
9 (b) The calendar year recycling rate for rigid plastic containers in the
10 aggregate shall be determined as a percentage by dividing the aggregate
11 numerator by the aggregate denominator. The numbers in both the
12 numerator and denominator of this calculation shall be collected and/or
13 adjusted to represent the same calendar year.
14
15 (c) The elements of the formula to calculate the calendar year aggregate
16 recycling rate for post-consumer rigid plastic containers in Oregon are:
17
18 (A) The aggregate numerator, expressed in tons.
19
20 (i) The numerator shall be calculated as the total weight of post-
21 consumer rigid plastic containers recycled in Oregon.
22
23 (ii) In addition to the Department's census of material recovery
24 rates, the Department may use as the basis for determining the
25 total weight of post-consumer rigid plastic containers recycled
26 in Oregon an annual recycling census of all parties directly
27 involved in brokering, processing, or recycling post-consumer
28 rigid plastic containers from Oregon. Monthly forms may be
29 provided by the Department for record keeping purposes only.
30 Census respondents will be asked to calculate and submit:
31
32 (I) The total amount of post-consumer rigid plastic received
33 from Oregon sources which is rigid plastic containers as
34 defined in OAR 340-90-330;
35
36 (II) The percentage of (I) that is lost due to removal of
37 contaminated, non-plastic, and non-recyclable material;
38 and
39
40 (III) Any other information the Department may require to
41 accurately determine the recycling tonnages.
42
43 (iii) Procedures to conduct the census shall be designed and
44 implemented relating to:
45
46 (I) Developing and maintaining a comprehensive list of
47 handlers and reclaimers;

- 1 (II) Obtaining data from handlers and reclaimers, including the
2 use of monthly and annual record keeping and reporting
3 forms;
4
5 (III) Reconciling variances in reported data;
6
7 (IV) Maintaining quality control in data collection and analysis;
8 and
9
10 (V) Adjusting data to produce estimates of the amount of
11 plastic from post-consumer rigid plastic containers by
12 controlling for contamination, including moisture, organic
13 matter and other non-plastic materials.
14

15 (iv) The Department shall publish a report on the findings of the
16 census, methodologies used and information regarding potential
17 errors.
18

19 (B) The aggregate denominator, expressed in tons.
20

21 (i) The denominator shall be calculated as the sum of the total
22 weight of post-consumer rigid plastic containers recycled in
23 Oregon (the numerator) plus the total weight of post-consumer
24 rigid plastic containers disposed of in Oregon. The total weight
25 of post-consumer rigid plastic containers disposed of in Oregon
26 shall be calculated by multiplying the estimated percent of
27 municipal solid waste which is post-consumer rigid plastic
28 containers times total tons of municipal solid waste disposed in
29 Oregon.
30

31 (ii) The total tons of municipal solid waste disposed in Oregon is
32 derived from information collected under the provisions of ORS
33 459A.010 (4)(d).
34

35 (iii) A composition study of solid waste disposed of in Oregon shall
36 be used as the basis for estimating the percent of disposed
37 solid waste which is post-consumer rigid plastic containers.
38 Adjustments to a previous composition study may be used as a
39 substitute for a new composition study.
40

41 Note: Stated as a formula, this is:
42

$$43 \frac{\text{Aggregate Numerator}}{\text{Aggregate Denominator}} \times 100 = \text{Calendar Year Aggregate Recycling Rate}$$

44
45
46 (d) The calendar year aggregate rigid plastic container recycling rate will be
47 determined by the Department annually on a calendar year basis
3 beginning with 1995 and published in a report which includes a

1 **discussion of potential errors associated with calculation of the total tons**
2 **of municipal solid waste disposed of in Oregon.** information on the
3 recycling and disposal data collection and analysis methodologies and
4 margin of error for the percent composition of rigid plastic containers.
5

6 (~~314~~) Specified type recycling rate. The recycling rate for a specified type of
7 rigid plastic container as calculated by the Department shall be
8 determined as a percentage by dividing the specified type numerator by
9 the specified type denominator. The numbers in both the numerator and
10 denominator of this calculation shall be collected and/or adjusted to
11 represent the same calendar year.
12

13 (a) The elements of the formula to calculate the specified type recycling rate
14 for rigid plastic containers in Oregon are:

15 (A) The specified type of post-consumer rigid plastic container
16 numerator shall be calculated as the total of the specific type of
17 post-consumer rigid plastic containers recycled in Oregon, expressed
18 in tons.
19

20 (B) The specified type of post-consumer rigid plastic container
21 denominator, expressed in tons.
22

23 (i) The denominator shall be calculated by one of the following
24 methods:
25

26 (I) As the sum of the weight of the specified type of post-
27 consumer rigid plastic containers recycled in Oregon plus
28 the total weight of the specified type of rigid plastic
29 containers disposed of in Oregon; or
30

31 (II) The total weight of the specified type of post-consumer
32 rigid plastic containers sold in Oregon.
33

34 (ii) If the weight of the specified type of post-consumer rigid
35 plastic containers disposed of is used to calculate the
36 denominator, a composition study of solid waste disposed of in
37 Oregon shall be used as the basis for determining the weight
38 disposed of.
39
40

41 Note: Stated as a formula, this is:

42
$$\frac{\text{Specified Type Numerator}}{\text{Specified Type Denominator}} \times 100 = \text{Specified Type Recycling Rate}$$

43
44

45 (b) Any person calculating the recycling rate of a specified type of post-
46 consumer rigid plastic container may rely upon disposal or recycling data
47 generated by the Department. Persons using other data to calculate a
48

1 recycling rate must be able to document that such data were generated
2 by a methodology acceptable to the Department and are verifiable.

3
4 (c) Adjustment to data collected by the recycling survey and composition
5 study identified in paragraphs ~~(2)3~~(c)(A)(ii) and ~~(2)3~~(c)(B)(ii) of this rule
6 respectively shall be made only by use of a methodology acceptable to
7 the Department.

8
9 (d) Data collected on a national basis may be used to determine the post-
10 consumer rigid plastic container recycling rate in Oregon if it can be
11 shown how these data are either typical of or can be adjusted to
12 accurately represent conditions in Oregon.

13
14 ~~(4)5~~ Product-associated recycling rate. The recycling rate for a product-
15 associated rigid plastic container as calculated by the Department shall be
16 determined as a percentage by dividing the product-associated numerator
17 by the product-associated denominator. The numbers in both the
18 numerator and denominator of this calculation shall be collected and/or
19 adjusted to represent the same calendar year.

20
21 (a) The elements of the formula to calculate the product-associated recycling
22 rate for rigid plastic containers in Oregon are:

23
24 (A) The numerator shall be calculated as the total weight of product-
25 associated post-consumer rigid plastic containers recycled in
26 Oregon, expressed in tons.

27
28 (B) The product-associated post-consumer rigid plastic container
29 denominator, expressed in tons. The denominator shall be the total
30 weight of the product-associated rigid plastic containers sold in
31 Oregon.

32
33 Note: Stated as a formula, this is:

34
35
$$\frac{\text{Product-associated Numerator}}{\text{Product-associated Denominator}} \times 100 = \text{Product-associated Recycling Rate}$$

36
37
38 ~~(5)6~~ In cases where the Department calculates the aggregate recycling rate ***for***
39 ***compliance purposes*** for post-consumer rigid plastic containers, a product
40 manufacturer or container manufacturer shall rely on the Department's
41 rate calculation when claiming that a container or containers comply with
42 OAR 340-90-350(1)(b)(A). In cases where the Department calculates the
43 recycling rate for specified types of or product-associated post-consumer
44 rigid plastic containers, a product manufacturer or container manufacturer
45 may rely on the Department's rate calculation when claiming that a
46 container or containers comply with OAR 340-90-350(1)(b)(B) or
47 (1)(b)(C).

1 (~~617~~) In cases where a manufacturer calculates the recycling rate for specified
2 types of or product-associated post-consumer rigid plastic containers, a
3 product manufacturer may rely upon disposal or recycling data generated
4 by the Department, where available. Manufacturers using other data to
5 calculate a recycling rate must be able to document that such data were
6 generated by a methodology acceptable to the Department and are
7 verifiable.
8

9 (~~718~~) Calculation of a recycling rate shall include only those outputs from
10 processing rigid plastic containers which are recycled into new products.
11 When a processing technology results in a combination of outputs, some
12 of which are recycled into new products and others of which are fuel
13 products, or energy recovery, the recycling rate shall not include any
14 portion of the output which is a fuel product, is used to produce fuel
15 products, or is otherwise used for energy recovery.
16

17 OAR 340-90-390 WASTE COMPOSITION

18
19
20 (1) A waste composition study undertaken by the Department shall consist of a
21 representative, statistically valid sampling of Oregon's municipal solid waste.
22 A protocol of standards and procedures shall be designed which relate to:

- 23
24 (a) Development of a representative sampling plan;
25
26 (b) Application of the definition of a rigid plastic container in OAR 340-90-
27 330 when identifying and categorizing rigid plastic containers in the field;
28
29 (c) Maintenance of quality control, including training and auditing;
30
31 (d) Performing sampling, including but not limited to sample selection,
32 sorting, weighing; and
33
34 (e) Field data adjustments for contamination including moisture, food and
35 other non-plastic materials.
36

37 (2) The Department shall ~~publish a report of~~ the findings of the waste composition
38 study, the methodologies used and information regarding potential error.
39

40 OAR 340-90-400 RESPONSIBILITIES OF A PRODUCT MANUFACTURER

41
42
43 (1) A product manufacturer shall be able to document that a rigid plastic container
44 or containers are in compliance with either the requirements of OAR 340-90-
45 350 or with one of the exemptions set out in OAR 340-90-340.
46

47 (2) A product manufacturer's documentation that a rigid plastic container or
48 containers are in compliance with the provisions of OAR 340-90-350 shall
49

1 include, at a minimum, the following information:
2

3 (a) Recycled content. For each container which is in compliance with OAR
4 340-90-350(1)(a):

5
6 (A) A description of the container, including its resin type, and product;
7 and

8
9 (B) A copy of the container manufacturer's Certificate of Compliance
10 from each manufacturer who supplied that container.

11
12 (b) Aggregate recycling rate. For containers which are in compliance with
13 the aggregate recycling rate requirement, OAR 340-90-350(1)(b)(A), a
14 product manufacturer shall rely upon the rigid plastic container aggregate
15 recycling rate ***for compliance purposes established***~~calculated~~ by the
16 Department as the sole documentation necessary to show that a rigid
17 plastic container complies with this requirement.
18

19 (c) Other recycling rates. For containers which are in compliance with the
20 specified type container recycling rate requirement, OAR 340-90-
21 350(1)(b)(B) or the product-associated container recycling rate
22 requirement, OAR 340-90-350(1)(b)(C):

23
24 (A) A description of the container and product;

25
26 (B) Identification of the specified type or product-associated criteria;

27
28 (C) Documentation of the recycling rate for the type of container
29 pursuant to OAR 340-90-380(~~34~~) or (~~45~~);

30
31 (D) Where the Department or the container manufacturer has calculated
32 a recycling rate for a specified type or product-associated rigid
33 plastic container, the product manufacturer may rely upon that rate
34 to show that the container complies with the recycling rate
35 requirements.
36

37 (d) Reuse and refill. For containers which are in compliance with the reuse
38 requirements, OAR 340-90-350(1)(c):

39
40 (A) A description of the container and product; and

41
42 (B) Documentation of the number of times the containers are refilled or
43 reused.

44
45 (i) The number of times a refillable container is reused is
46 determined by review of the product manufacturer's records
47 which show the following information for a uniform period of
3 time:

- 1 (I) The number of returned containers actually refilled;
2
3 (II) The number of new containers added to the total number
4 of containers used in the product manufacturer's refillable
5 container program; and
6
7 (III) The total number of containers filled as first use
8 containers.
9
10 (ii) The number of times a reusable container is reused is
11 determined by review of the product manufacturer's records
12 which show the following information for a uniform period of
13 time:
14
15 (I) The amount of product sold in the original container or the
16 number of original containers sold; and
17
18 (II) The amount of replacement product sold or the number of
19 refill units of replacement product sold.
20
21 (iii) A container shall be considered to be used at least five times if
22 it is part of a refillable system or reusable container system
23 which has an average refill or reuse rate for that container of at
24 least four.
25
26 (3) A product manufacturer's records which document that a rigid plastic
27 container or containers are exempt from the requirements of OAR 340-90-350
28 through -370 shall include the following information:
29
30 (a) Drugs, medical devices, medical food, and infant formula. For containers
31 which are exempt under the provisions of OAR 340-90-340 (2):
32
33 (A) A description which clearly identifies the container;
34
35 (B) An identification of which of the four product types will be placed in
36 the container;
37
38 (C) For drugs:
39
40 (i) An FDA letter of approval;
41
42 (ii) Documentation of consistency between the over-the-counter
43 drug claims and FDA requirements, e.g. appropriate ~~pages~~
44 from the FDA regulations; references to the FDA Final
45 Monograph or Tentative Final Monograph under which the drug
46 is marked; or
47
48 (iii) Other definitive evidence that the product meets the FDA

1 definition of a drug.

2
3 (D) For medical devices:

- 4
5 (i) Documentation that the device is intended to be used for
6 diagnosis, cure, or prevention of disease or other definitive
7 evidence that the product meets the FDA definition of a
8 medical device under the FD&C Act (21 U.S.C. 321 (h) and
9 following).

10
11 (E) For medical food:

- 12
13 (i) Documentation that the product meets the definition of medical
14 food as defined in the FD&C Act, 1988 and is intended to be
15 used as a medical food;
16
17 (ii) Other definitive evidence that the product meets the FDA
18 definition of medical food; or
19
20 (iii) Documentation that the product may be labeled "may be used
21 as the sole source of nutrition" or "may be used as the sole
22 item of the diet".
23

24 (F) For infant formula:

- 25
26 (i) Documentation that the product meets the definition of infant
27 formula as set forth in the FD&C Act and is being sold for use
28 as infant formula; or
29
30 (ii) Other definitive evidence that the product meets the FDA
31 definition of infant formula.
32

33 (b) Shipment out of Oregon. No documentation is required for containers
34 which are exempt under the provisions of OAR 340-90-340 (3);

35
36 (c) Reduced containers. For containers which are exempt under the
37 provisions of OAR 340-90-340(5):

38
39 (A) Descriptions, including container resin type, which clearly identify:

- 40
41 (i) The original container before reduction; and
42
43 (ii) The reduced container;

44
45 (B) An identification of the "unit of product" pursuant to OAR 340-90-
46 340(5)(c) being used to develop the container/product ratio

47
3 (C) A statement of the container/product ratio and description of how it

1 was calculated for:

- 2
3 (i) The original container before reduction; and
4
5 (ii) The reduced container.
6

7 (d) Substantial Investment. For containers which are exempt under the
8 provisions of OAR 340-90-340 (6):
9

10 (A) Identification of the class of containers and the type of recycling
11 rate for which the exemption is being claimed;
12

13 (B) Documentation of the following:

- 14
15 (i) A substantial investment has been made in achieving the
16 recycling rate;
17
18 (ii) There is a demonstrated viable market for the material from
19 which the container is made;
20
21 (iii) The relevant recycling rate for calendar year 1995 is at least
22 20%;
23
24 (iv) The recycling rates for the rigid plastic containers for the
25 previous two years show evidence of increasing; and
26
27 (v) Reasonable projections indicate that the rigid plastic containers
28 will meet the 25 percent recycling rate by January 1, 1997.
29

30 **(C) A product manufacturer may rely upon the Department's**
31 **determination of compliance with the requirements of this exemption**
32 **for rigid plastic containers in the aggregate or for rigid plastic**
33 **containers of specified resin type.**
34

35 (4) Product Manufacturer's Report of Compliance.
36

37 (a) Upon the request of the Department, a product manufacturer shall make
38 a Report of Compliance available to the Department.
39

40 (b) A product manufacturer's Report of Compliance shall be submitted on
41 forms provided by the Department and shall contain the following specific
42 information:
43

44 (A) The product manufacturer's

- 45 (i) Name,
46
47 (ii) Address, and
3

- 1 (iii) Name, title, address and phone number of an official company
2 representative;
3
- 4 (B) A description of the container for which compliance or exemption is
5 claimed; and
6
- 7 (C) A description of the product manufacturer's records documenting
8 compliance or exemption.
9
- 10 (c) A product manufacturer shall provide information requested by the
11 Department in accordance with the following procedure and time
12 schedule:
13
- 14 (A) The product manufacturer shall provide a Report of Compliance to
15 the Department within 60 days of the date of receipt of a
16 Department request for the report.
17
- 18 (B) If the Department finds the Report to be incomplete, the Department
19 may request the missing materials from the official company
20 representative. The product manufacturer shall provide missing
21 materials from a Report of Compliance to the Department within 30
22 days of the date of receipt of a Department request for the missing
23 materials.
24
- 25 (C) After it has reviewed the Report of Compliance, the Department may
26 request that the product manufacturer provide all or part of the
27 documentation described in a Report of Compliance, other records,
28 additional information kept by the product manufacturer which is the
29 basis for those records or any other information deemed necessary
30 to determine compliance with the law. The product manufacturer
31 shall provide the records or other material requested to the
32 Department within 45 days of the date of receipt of a Department
33 request for the records.
34
- 35 (5) (a) A product manufacturer may request an extension of the time period to
36 submit materials requested by the Department. Such a request for
37 extension must be in writing and received by the Department prior to the
38 due date of the original Department request. The request for extension
39 shall:
40
- 41 (A) Provide the product manufacturer's name and address;
42
- 43 (B) Provide the name, title, address, and phone number of an official
44 company representative;
45
- 46 (C) State a specific length for the requested extension, not to exceed 60
47 days; and
48

1 (D) Show good reason for the extension.
2

3 (b) Based upon the information provided in the request for extension, the
4 Department may grant the extension, deny the extension or grant an
5 extension for a lesser period of time.
6

7 (6) Records which document compliance with the requirements of OAR 340-90-
8 350 or exemption under the provisions of OAR 340-90-340 shall be
9 maintained and available for audit by the Department for a period of at least
10 three years after the year for which compliance is documented.
11

12 **(7) The Report of Compliance for a product manufacturer which can demonstrate**
13 **that it sell less than 500 rigid plastic containers per day shall consist of the**
14 **quantity, brand name, product number, if any, and source of purchase of rigid**
15 **plastic containers. These small product manufacturers are not required to**
16 **keep other records of container compliance.**
17

18 **(78)** Failure of a product manufacturer to provide a Report of Compliance or
19 additional materials requested by the Department and within the schedule set
20 out in this rule shall be considered a violation of these rules.
21

22 OAR 340-90-410 RESPONSIBILITIES OF A CONTAINER MANUFACTURER 23

24
25 (1) A container manufacturer shall be able to document that a rigid plastic
26 container or containers are in compliance with the requirements of OAR 340-
27 90-350(1)(a), (1)(b)(A), or (1)(b)(B). These records shall include at a
28 minimum, the following information:
29

30 (a) Recycled content. For each container which is in compliance with OAR
31 340-90-350(1)(a):
32

33 (A) A description of the container including its resin type;
34

35 (B) Documentation of the recycled content of the type of container
36 including:
37

38 (i) The total weight of plastic used to manufacture that type of
39 rigid plastic container during the time period when the container
40 was made; and
41

42 (ii) The weight of recycled material used to manufacture that type
43 of rigid plastic container during the same time period, **with in a**
44 **one year period, as determined by the container manufacturer.**
45

46 (b) Aggregate recycling rate. For containers which are in compliance with
47 the aggregate recycling rate requirement, OAR 340-90-350(1)(b)(A), a
48 container manufacturer shall rely upon the rigid plastic container
49

1 aggregate recycling rate for compliance purposes established~~calculated~~
2 by the Department as the sole documentation necessary to show that a
3 rigid plastic container complies with this requirement, OAR 340-90-
4 350(1)(b)(A).

5
6 (c) Specified type recycling rate. For containers which are in compliance
7 with the specified type recycling rate requirement, OAR 340-90-
8 350(1)(b)(B):

9
10 (A) A description of the container;

11
12 (B) Identification of the specified type;

13
14 (C) Documentation of the recycling rate for the type of container
15 pursuant to OAR 340-90-380(~~34~~); and

16
17 (D) Where the Department has calculated a recycling rate for a specified
18 type of container, the container manufacturer may rely upon the
19 Department's rate to show that the container complies with the rate
20 requirements.

21
22 (2) Container manufacturer's Certificate of Compliance.

23
24 (a) A container manufacturer shall make a Certificate of Compliance available
25 to:

26
27 (A) Any product manufacturer who uses containers from that container
28 manufacturer and makes products in those containers available for
29 sale in Oregon; and

30
31 (B) The Department, upon request, only if not otherwise available from
32 the product manufacturer.

33
34 (b) A container manufacturer's Certificate of Compliance shall contain the
35 following information:

36
37 (A) The container manufacturer's

38 (i) Name,

39 (ii) Address, and

40
41 (iii) Name, title, address and phone number of an official
42 representative;

43
44 (B) Description of the container or containers for which compliance or
45 exemption is claimed; and
46
47

1 (C) A description of the container manufacturer's records documenting
2 compliance.
3

4 (c) If after review of the container manufacturer's certificate of compliance
5 the Department determines that the information provided in the certificate
6 is not adequate to document that a container or containers are in
7 compliance with OAR 340-90-350 through 370, the Department may:
8

9 (A) Request that the product manufacturer provide all or part of the
10 documentation described in a Certificate of Compliance, other
11 records, or additional information kept by the container manufacturer
12 which is the basis for those records and any other information
13 deemed necessary to determine compliance with the law. Within 15
14 days of this request, the product manufacturer shall notify the
15 Department whether it will provide the requested information or if
16 the Department shall request it directly from the container
17 manufacturer. If the product manufacturer notifies the Department
18 it will satisfy the request, the records or other material requested
19 shall be provided to the Department within 45 days of the date of
20 the product manufacturer's notification.
21

22 The Department, at its discretion, may audit the container
23 manufacturer directly for purposes of determining compliance with
24 these rules.
25

26 (B) If the product manufacturer cannot provide adequate documentation
27 or other information requested by the Department within the time
28 frame in (A) above, then the Department may request such
29 information directly from the container manufacturer.
30

31 (d) A container manufacturer shall provide information requested by the
32 Department in accordance with the following procedure and time
33 schedule:
34

35 (A) The container manufacturer shall provide a Certificate of Compliance
36 to the Department within 60 days of the date of receipt of a
37 Department request for the Certificate.
38

39 (B) If the Department finds the Certificate to be incomplete, the
40 Department may request the missing materials from the official
41 company representative. The container manufacturer shall provide
42 missing materials from a Certificate of Compliance to the
43 Department within 30 days of the date of receipt of a Department
44 request for the Certificate.
45

46 (C) After it has reviewed the Certificate of Compliance, the Department
47 may request that the container manufacturer provide all or part of
3 the documentation described in a Certificate of Compliance, other

1 records, or additional information kept by the container manufacturer
2 which is the basis for those records and any other information
3 deemed necessary to determine compliance with the law. The
4 container manufacturer shall provide the records or other material
5 requested to the Department within 45 days of the date of receipt of
6 a request for the records.
7

8 (3) (a) A container manufacturer may request an extension of the time period to
9 submit materials requested by the Department. Such a request for
10 extension must be in writing and be received by the Department prior to
11 the due date of the Department's original request. The request for
12 extension shall:

13 (A) Provide the container manufacturer's name and address;

14 (B) Provide the name, title, address, and phone number of an official
15 company representative;

16 (C) State a specific length for the requested extension, not to exceed 60
17 days; and

18 (D) Show good reason for the extension.
19

20 (b) Based upon the information provided in the request for extension, the
21 Department may grant the extension, deny the extension, or grant an
22 extension for a lesser period of time.
23

24 (4) Records which document compliance with the requirements of OAR 340-90-
25 350 or exemption under the provisions of OAR 340-90-340 shall be
26 maintained and available for audit by the Department for a period of at least
27 three years after the year for which compliance is documented.

28 (5) Failure of a container manufacturer to provide the following shall be
29 considered a violation of these rules:

30 (a) A Certificate of Compliance to a product manufacturer; or

31 (b) A Certificate of Compliance or additional materials to the Department as
32 requested and within the schedule set out in this rule.
33

34 OAR 340-90-420 CONFIDENTIAL INFORMATION PROCEDURE

35 (1) Records provided to the Department shall not be disclosed to the public by the
36 Department if:

37 (a) The records contain trade secrets as defined in ORS 192.501(2) or ORS
38 646.461(2);
39
40
41
42
43
44
45
46
47
3

1 (b) The records, or the applicable portions thereof, are clearly identified as
2 trade secrets; and
3

4 (c) The person claiming trade secret status for specific information has
5 provided substantiation as to why the material is a trade secret.
6

7 (2) (a) The Department shall notify the person who requests confidentiality if a
8 request is received to disclose those records. The notice shall be
9 delivered at least 15 days before the Department discloses any of the
10 records, shall include a copy of any written request or a summary of any
11 oral request for disclosure, and state how the Department intends to
12 respond to the request.
13

14 (b) If a product or container manufacturer wishes to defend their trade secret
15 claim, they must respond with a written justification for the basis of their
16 trade secrets claim. Such a justification shall be delivered to the
17 Department within 15 days of the Department's notice of a request to
18 disclose those records.
19

20 (3) (a) The Department will notify the product manufacturer of any information
21 requested directly from the container manufacturer.
22

23 (b) Upon request from the product manufacturer, the Department will make
24 available to the product manufacturer copies of records received from the
25 container manufacturer concerning that product manufacturer, except as
26 provided in section (2) of this rule, so that the product manufacturer may
27 identify which of the records, if any, contain trade secrets of the product
28 manufacturer.
29

30 (c) If the product manufacturer complies with section (1) of this rule with
31 respect to the records of a container manufacturer, the Department shall
32 follow the provisions in Section (2) of this rule if it receives any request
33 to disclose those records.
34
35

36 OAR 340-90-430 VIOLATIONS

37

38 Violations of these rules shall be punishable as provided in ORS Chapter
39 459.995(1)(a) and pursuant to OAR 340-12-042 and -065.
40

41 **OAR 340-12-065 is modified to read:**
42

43 **Solid Waste Management Classification of Violations**

44 **340-12-065** Violations pertaining to the management, recovery and disposal of
45 solid waste shall be classified as follows:
46

47 (1) Class One:
3

- 1 (a) Violation of a Commission or Department Order;
2
3 (b) Establishing, expanding, maintaining or operating a disposal site without
first obtaining a permit;
4
5
6 (c) Accepting solid waste for disposal in a permitted solid waste unit or
7 facility that has been expanded in area or capacity without first
8 submitting plans to the Department and obtaining Department approval;
9
10 (d) Violation of the freeboard limit which results in the actual overflow of a
11 sewage sludge or leachate lagoon;
12
13 (e) Violation of the landfill methane gas concentration standards;
14
15 (f) Violation of any federal or state drinking water standard in an aquifer
16 beyond the solid waste boundary of the landfill, or an alternative
17 boundary specified by the Department;
18
19 (g) Violation of a permit-specific groundwater concentration limit, as defined
20 in OAR 340-40-030(3) at the permit-specific groundwater concentration
21 compliance point, as defined in OAR 340-40-030(2)(e);
22
23 (h) Failure to perform the groundwater monitoring action requirements
24 specified in OAR 340-40-030 (5), when a significant increase (for pH,
25 increase or decrease) in the value of a groundwater monitoring parameter
is detected.
26
27 (i) Impairment of the beneficial uses(s) of an aquifer beyond the solid waste
28 boundary or an alternative boundary specified by the Department;
29
30
31 (j) Deviation from the approved facility plans which results in an actual
32 safety hazard, public health hazard or damage to the environment;
33
34 (k) Failure to properly construct and maintain groundwater, surface water,
35 gas or leachate collection, treatment, disposal and monitoring facilities in
36 accordance with the facility permit, the facility environmental monitoring
37 plan, or Department rules;
38
39 (l) Failure to collect, analyze and report groundwater, surface water or
40 leachate quality data in accordance with the facility permit, the facility
41 environmental monitoring plan, or Department rules;
42
43 (m) Violation of a compliance schedule contained in a solid waste disposal or
44 closure permit;
45
46 (n) Failure to provide access to premises or records when required by law,
47 rule, permit or order;

- 1 (o) Knowingly disposing, or accepting for disposal, used oil, in single
2 quantities exceeding 50 gallons, or lead acid batteries;
3
- 4 (p) Accepting, handling, treating or disposing of clean-up materials
5 contaminated by hazardous substances by a landfill in violation of the
6 facility permit and plans as approved by the Department or the provisions
7 of OAR 340-61-060.
8
- 9 (q) Accepting for disposal infectious waste not treated in accordance with
10 laws and Department rules;
11
- 12 (r) Accepting for treatment, storage or disposal wastes defined as hazardous
13 under ORS 466.005, et seq, or wastes from another state which are
14 hazardous under the laws of that state without specific approval from the
15 Department;
16
- 17 (s) Mixing for disposal or disposing of principal recyclable material that has
18 been properly prepared and source separated for recycling;
19
- 20 (t) Any violation related to the management, recovery and disposal of solid
21 waste which causes major harm or poses a major risk of harm to public
22 health or the environment.
23

24 (2) Class Two:
25

- 26 (a) Violation of a condition or term of a Letter of Authorization;
27
- 28 (b) Knowingly accepting for disposal or disposing of a material banned from
29 land disposal under ORS 459.247, except those materials specified as
30 Class I violations.
31
- 32 (c) Failure of a permitted landfill, solid waste incinerator or a municipal solid
33 waste compost facility operator or a metropolitan service district to report
34 amount of solid waste disposed in accordance with the laws and rules of
35 the Department;
36
- 37 (d) Failure to report weight and type of material recovered or processed from
38 the solid waste stream in accordance with the laws and rules of the
39 Department;
40
- 41 (e) Failure of a disposal site to obtain certification for recycling programs in
42 accordance with the laws and rules of the Department prior to accepting
43 solid waste for disposal;
44
- 45 (f) Acceptance of solid waste by a permitted disposal site from a person that
46 does not have an approved solid waste reduction program in accordance
47 with the laws and rules of the Department;
48

- 1 (g) Failure to comply with any solid waste permit requirement pertaining to
2 permanent household hazardous waste collection facility operations;
3
4 (h) Failure to comply with landfill cover requirements, including but not
5 limited to daily, intermediate, and final covers, and limitation of working
6 face size;
7
8 (i) Failure to comply with any plan approved by the Department;
9
10 (j) Failure to submit a permit renewal application prior to the expiration date
11 of the existing permit in accordance with the laws and rules of the
12 Department;

13
14 **(k) Selling or offering for sale by a product manufacturer a rigid plastic**
15 **container in violation of ORS 459A.655 through 680, or any rules**
16 **adopted pursuant thereto unless the product manufacturer can**
17 **demonstrate that they sell less than 500 rigid plastic containers per day,**
18 **in which case the violation shall be a Class Three;**
19

20 **(l) Failure by a product or container manufacturer to maintain or provide**
21 **records as required by ORS 459A.660, or any rules adopted pursuant**
22 **thereto unless the manufacturer can demonstrate that they sell less than**
23 **500 rigid plastic containers per day in which case the violation shall be a**
24 **Class Three;**
25

26 **(m) Falsely certifying by a product or container manufacturer a rigid plastic**
27 **container as meeting the requirements of ORS 459A.655 through 680, or**
28 **any rules adopted thereto;**
29

30 ~~(k)~~ Any violation related to solid waste, solid waste reduction, or any
31 violation of a solid waste permit not otherwise classified in these rules.
32

33 (3) Class Three:

34 (a) Failure to post required signs;

35 (b) Failure to control litter;

36
37
38
39 **(c) Manufacturing, selling or offering for sale any rigid plastic container**
40 **without complying with the labeling requirements as set forth in ORS**
41 **459A.675 to 680, or any rules adopted pursuant thereto.**
42

Attachment G

IMPLEMENTATION TASK FORCE

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RECYCLING RATE CALCULATION TASK FORCE

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Attachment G-1

SUMMARY OF TASK FORCES' RECOMMENDATIONS

This provides a summary of the major areas of agreement reached by the Task Forces, followed by an identification of areas in which consensus was not reached. All comments refer to the rulemaking proposal presented for public hearing.

Major Areas of Agreement:

o Implementation Task Force:

- **Definition of rigid plastic container.** A majority (7 to 5) supported the idea that a rigid plastic container did not necessarily have to "completely contain a product" without use of other packaging material in order to qualify as a rigid plastic container, as long as it met the other requirements in the definition. The majority position was included in the rulemaking proposal presented for public hearing as "Alternative A" (OAR 340-90-330). However, the notion that the Law was meant to cover a package, not the component parts of a package, also received considerable support and was included in the rulemaking proposal as a discussion option under "Alternative B" to elicit public comment. See discussion below, Areas in Which Consensus Was Not Reached.
- **Point-of-sale packager.** Agreed with the Department's and Attorney General's interpretation of statute that rigid plastic containers used by point-of-sale product packagers (e.g. take-out delis) are covered by the Law.
- **Pyrolysis.** Supported embodying the Oregon Attorney General's advice in rule: that portion of pyrolysis that results in a non-fuel product could count towards the recycling rate.

o Certification, Auditing and Records Task Force:

- **Reporting.** Supported very limited initial reporting requirements, to be submitted in a product manufacturer's Report of Compliance. The reporting process allows the Department to request additional, more detailed information if necessary after reviewing the Report of Compliance.

- **Recordkeeping.** Supported establishing the product manufacturer as the entity primarily responsible for recordkeeping and providing records to DEQ upon request. The container manufacturer must supply records to the product manufacturer, or to the Department on request if this information is not available from the product manufacturer.
- o **Recycling Rate Task Force:**
 - **Aggregate rigid plastic container recycling rate.** The aggregate recycling rate is calculated by the Department as a percentage: the number of rigid plastic containers recycled divided by the number of rigid plastic containers generated in Oregon. The formula is composed of a "numerator" and a "denominator."
 - o **Calculation of the "numerator"** (or amount of rigid plastics containers recycled). Agreed on using an annual recycling census of brokers and processors of rigid plastic containers in Oregon, applying various adjustment factors (for contamination, etc.).
 - o **Calculation of the "denominator"** (or total amount of rigid plastics containers generated in Oregon). Recommended that the basis be a statewide waste composition study. Should include all rigid plastic containers regardless of whether they are exempt from compliance or not.
 - **Frequency of calculation.** The aggregate recycling rate should be calculated annually. If it is impossible to conduct an annual waste composition study, an adjustment to the "denominator" from the previous year's waste composition study should be made.
 - **Specificity of recycling rate rule.** Originally recommended that the recycling rate methodology rule itself remain quite general, with details to be spelled out in a guidance document prepared by the Department. Subsequently it was learned that guidance documents have no regulatory effect, so it was instead recommended to add to the rule requirements for the Department to develop procedures for the calculations.
 - **Calculation of other recycling rates.** Manufacturers may calculate recycling rates for specified types of rigid plastic containers or product-associated rigid plastic containers. Methodologies used for these calculations must be acceptable to the Department.

(Note: the Policy rule, OAR 340-90-310, was added by staff after completion of the rest of the rule package; it was not available for review by the Task Forces.)

Areas in Which Consensus Was Not Reached.

1. **"Rigid Plastic Container."** The area generating the most discussion was the definition of "rigid plastic container" (RPC).

At the heart of the discussion was the interpretation of two elements of the definition: 1) "contain;" and 2) "rigid". A majority of the Implementation Task Force agreed that a "container" did not have to be a "complete package" to qualify (language in OAR 340-90-330, Alternative A). This interpretation would make such things as plastic cookie trays sold inside paper bags subject to the law. The industry felt that the definition supported by the majority was defective and worked with the Department to develop Alternative B.

Another point of interest was how volume of an RPC should be determined. Alternative B allows the product manufacturer to determine how he or she wants to determine the volume of the RPC, by using either the volume on the label or by measuring the liquid volume of the container. Alternative A requires the determination to be made using the volume on the label (if available). The Department included the permissive language in Alternative B as this concept was supported by several members of the regulated community. The Department was reluctant to include it in both Alternatives as staff felt it could unnecessarily complicate conduct of the waste composition study. Using the labeled volume is a clear directive to persons completing the study, and is preferred by the Department. The regulated community pointed out that this would create a major inconsistency with the California law, and felt that a volumetric capacity determination is the best way to determine volume (which in turn decides if the RPC is regulated or not).

The Task Forces tried to balance the statutory definition (and legislative intent, although agreement on that was not always reached) with the practicalities of implementing the law as they dealt with clarifying the definition of RPC.

2. **Reduced Container.** One of the exemption options is to use a "reduced container" which weighs 10 percent less than a container used five years earlier.

The issue is whether and how products newly introduced into commerce (and which therefore used no packaging "five years earlier") might qualify for this exemption. The legislative intent of the exemption was interpreted differently

by various Task Force members. Some felt the Legislature had not meant to exclude newly introduced products from taking advantage of the exemption. They argued that it would be a hardship to disallow use of the exemption by new products; it would discourage innovation, and be unfair to those who wanted to comply by using reduced containers for products that had not been on the market for five years. Food processors were especially interested in having this option since they are generally precluded by federal Food and Drug Administration (FDA) regulations from using other compliance options. Other Task Force members felt the exemption was meant to be one-time for products in existence on January 1, 1995.

The Attorney General advised the Department that the timing of the exemption under the statute is not entirely clear; however, the statutory provision is specific that a reduced container must be compared to a container used for the same product by the same packager five years earlier.

The rulemaking proposal (OAR 340-90-340(5)) included two alternatives: Alternative A which follows the Attorney General's advice and requires comparison with a container in existence five years previously; and Alternative B, which would allow the exemption for products not in existence for a full five years. Alternative B would allow comparison with the original container first used by the manufacturer for that product, even if that container had been sold less than five years. Alternative B was the Implementation Task Force's recommendation prior to advice from the Attorney General.

3. **"Substantial investment" exemption.** A rigid plastic container can qualify for a two-year exemption if a "substantial investment" is made in reaching the recycling rate (see p. 5). The draft rule allows a one-time only exemption (from January 1, 1995 to January 1, 1997), on the basis of advice from the Attorney General. Some Task Force members felt that this exemption should not be restricted to this time period, as this is a disincentive for product manufacturers introducing products after 1995 who might want to make a substantial investment in recycling the rigid plastic containers for those products.
4. **Corporate averaging.** The Task Forces discussed a provision allowing manufacturers to comply with the Law by averaging across all containers they use or produce. Several members argued that corporate averaging of containers across product lines would contribute to the goals of the Law in several ways. For example, it would encourage use of recycled content at rates above 25% in those containers where higher content can be used -- if the additional content could be counted towards compliance in other containers which could not accommodate recycled content (e.g. food containers).

Oregon law does not provide for this option. No consensus for a recommendation was reached, as small manufacturers felt they would be at a disadvantage if corporate averaging were allowed, since they may not have the ability to average given their smaller product lines. (3/17/94, Implementation Task Force)

5. **"Post-consumer rigid plastic container."** Calculation of the "numerator" (or amount of rigid plastic containers recycled) was restricted in the rulemaking proposal to the amount of "post-consumer rigid plastic containers" recycled. A "post-consumer rigid plastic container" is a container that would otherwise be destined for solid waste disposal, having completed its intended end-use and product lifecycle. (OAR 340-90-330(11)) A "post-consumer" container may be one that has held an obsolete product (such as outdated dairy products); but it does not include scrap plastic generated at a manufacturing facility or imperfect containers never filled with product. Scrap plastic and imperfect containers are commonly reused within the original manufacturing process, or are sold because of their market value, rather than being landfilled. This concept is consistent with legislative intent to target for recycling those materials that would otherwise be landfilled.

Some Task Force members representing the industry expressed concern with this. They supported using part of the proposed rule definition of RPC, "...designed to hold a product for sale," as a basis for the recycling rate. RPCs "designed to hold a product for sale" are subject to the Law, even though they may be imperfect and thus pulled off the manufacturing line before being filled. Their recycling should count towards the aggregate rigid plastic container recycling rate. Further, manufacturers should get credit for the recycling they are already doing by reusing these materials in the manufacturing process.

6. **Pyrolysis.** Pyrolysis involves the heating of plastic material to produce liquid hydrocarbons, carbon black and gas that is used as the energy source for the pyrolysis process. The liquid hydrocarbons can be sold to refineries and petrochemical facilities for conversion into a variety of materials including fuel and monomers for plastic products. The issue arose of whether the pyrolysis of rigid plastic containers could count toward the plastics recycling rate. The Attorney General (AG) advised the Department that energy recovery is not "recycling," and the Department cannot give recycling credit for energy recovery. To the extent that the end product of pyrolysis is not energy recovery but is further processed into plastic feedstock, it could contribute to the recycling rate. The proposed rule incorporates that provision, and was supported by most Implementation Task Force members.

However, representatives of the American Plastics Council (APC) strongly disagreed. The APC argues that pyrolysis constitutes recycling because it creates a new product (liquid hydrocarbons). The APC filed a request for summary judgment that pyrolysis qualifies as "recycling" to prevent the Department from preparing a rule excluding any "energy recovery" products of plastics pyrolysis from the recycling rate.

Other Issues.

Appeals process. Task Force members wanted to know how a recycling rate established by the Department might be appealed if they believed it was erroneous. The Attorney General advised the Department 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 the 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. Procedures in OAR 340 Division 11 (Contested Cases) and OAR 340 Division 12 (Enforcement Procedures) would be followed.

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Attachment H

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Implementation of Oregon's Rigid Plastic Container Law

Rule Implementation Plan

Summary of the Proposed Rule

The proposed rule would set policy, compliance and exemption standards, methodologies for calculating rigid plastic container recycling rates, recordkeeping requirements, reporting responsibilities, and enforcement provisions to implement Oregon's Rigid Plastic Container Law.

It will affect "product manufacturers" (persons who produce or generate a packaged product that is sold or offered for sale in Oregon in a rigid plastic container), and "container manufacturers" (persons who produce or generate a rigid plastic container used for a packaged product that is sold or offered for sale in Oregon). This includes manufacturers of foods, beverages, personal care products, household and commercial chemicals, pesticides, automotive accessories, consumer commodities and any other products sold in Oregon in a rigid plastic container. Point-of-sale packagers such as take-out food services, street vendors, etc., who use rigid plastic containers are also subject to the law. Retailers such as grocery stores are also affected, as the law could influence the kinds of products available. It will affect persons involved in brokering, processing or recycling post-consumer rigid plastic containers from Oregon.

Proposed Effective Date of the Rule

January 1, 1995.

Proposal for Notification of Affected Persons

The Department developed a list of persons interested in the Rigid Plastic Container Law in the course of developing the rules through Task Force meetings, etc. The interested persons list includes trade associations of most affected industry groups. These persons will

receive a Status Update in November informing them that rules have been adopted, and how they can obtain a copy. The Department will also develop other information (fact sheets, etc.) to guide the regulated community in complying with the Law, and provide technical information both to individual manufacturers and in appropriate industry forums.

Proposed Implementing Actions

1. Regulated community:

- o On January 1, 1995 product manufacturers must comply with the Law. They will have to begin keeping records beginning March 1, 1995 to document compliance. Container manufacturers will have to supply Certificates of Compliance upon request of the product manufacturer.
- o After the Department calculates an aggregate recycling rate for Calendar year 1995, product manufacturers will have to submit documenting information upon request by the Department.

2. Department:

- o Inform the regulated community about the requirements of the Law through press releases and contacts with trade associations. (Beginning after rule adoption, November 1994)
- o Continue administering its FY 94-95 waste composition study, including special activities to gain additional data concerning amounts of rigid plastic containers disposed of. (May 1994 through June 1995)
- o Contract to determine a "compliance recycling rate" for rigid plastic containers before January 1, 1995. (Beginning immediately after rule adoption, and annually thereafter.)
- o If the "compliance recycling rate" is between 20% and 25%, use best existing and available data and projections to determine if the statutory criteria for the "substantial investment" exemption for the aggregate recycling rate have been met. (Immediately after "compliance recycling rate" is determined.)
- o Develop other information (fact sheets, etc.) to guide the regulated community in complying with the Law, and provide technical information both to individual manufacturers and in appropriate industry forums. (Beginning in fall 1994)

- o Prepare a Report to the 1995 Legislature on the status of plastic recycling programs and possible recommendations for statutory changes, after consultation with the Implementation Task Force. (By January 1, 1995)
- o Develop and administer a recycling census of rigid plastic container brokers and processors. (Annually, beginning in early 1995)
- o Develop reporting forms (e.g. for product manufacturer's Report of Compliance). (Mid-1995)
- o Calculate an aggregate recycling rate for rigid plastic containers for calendar year 1995. (By mid-1996)
- o After calculating the aggregate recycling rate, and if that rate is less than 25 percent (and criteria are not met for the two-year "substantial investment" exemption), begin requesting and reviewing records from product manufacturers documenting how they comply with the Law. (Mid-1996)
- o Calculate an annual rigid plastic container recycling rate using results of the annual plastic recycling census and the Department's biennial waste composition study (using adjustment factors for the years in which no waste composition study is performed). (1997 and thereafter)

Proposed Training/Assistance Actions

- o DEQ headquarters and regional staff will be briefed on the new regulations and DEQ's role in implementation, and will receive copies of Status Updates and Fact Sheets developed above.
- o A master file of questions and answers concerning compliance interpretations will be kept by DEQ headquarters staff.
- o As noted above, DEQ staff will provide compliance information to the regulated communities, and provide outreach both to individual manufacturers and to industry forums. (Beginning in fall 1994)

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459A.620

PUBLIC HEALTH AND SAFETY

Note: Sections 94 and 95, chapter 560, Oregon Laws 1993, provide:

Sec. 94. The State Forestry Department, the State Parks and Recreation Department, the Department of Transportation and the Oregon Department of Administrative Services shall initiate programs under ORS 459A.615 on or after January 1, 1994. The programs shall be based on the evaluation under ORS 459A.610 (1991 Edition). [1993 c.560 §94]

Sec. 95. Section 94 of this Act is repealed January 1, 1995. [1993 c.560 §95]

459A.620 Use of compost or sewage sludge by state agencies given priority. After January 1, 1994, any state agency that prepares a request for bid for soil amendments, ground cover materials, mulching materials or other similar products shall first determine that compost or sewage sludge is not available in adequate quantities, cannot practically be used for the intended applications, would jeopardize the intended project results or would be used in combination with a fertilizer or other similar product. [1991 c.385 §25]

(Plastics)

459A.650 Definitions for ORS 459A.650 to 459A.665. As used in ORS 459A.650 to 459A.665:

(1) "Package" means any container used to protect, store, contain, transport, display or sell products.

(2) "Package manufacturer" means the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon.

(3) "Product-associated package" means a brand-specific rigid plastic container line, which may have one or more sizes, shapes or designs and which is used in conjunction with a particular, generic product line.

(4) "Product manufacturer" means the producer or generator of a packaged product that is sold or offered for sale in Oregon in a rigid plastic container.

(5) "Recycled content" means the portion of a package's weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material input as a percentage of total material input in the manufacture of the package.

(6) "Recycled material" means 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.

(7) "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. [1991 c.385 §34a; 1993 c.560 §96; 1993 c.568 §1]

459A.655 Minimum reuse, recycled material or recycled content for rigid plastic containers. (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;

(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. [1991 c.385 §34b; 1993 c.560 §97; 1993 c.568 §2]

Note: Section 34e, chapter 385, Oregon Laws 1991, provides:

Sec. 34e. Exemptions for plastic containers; review and report on plastic recycling programs. (1) On or before January 1, 1993, the department shall report to the Legislative Assembly on whether to grant an exemption from the criteria established by section 34b of this 1991 Act [459A.655] for rigid plastic containers that cannot meet the recycled content criterion and remain in compliance with United States Food and Drug Administration regulations.

(2) On or before January 1, 1997, the department shall review certifications provided pursuant to section 34c of this 1991 Act [459A.660] and report to the Legislative Assembly on the status of plastic recycling programs in the state, including, but not limited to, participation rates, estimates of the quantities and qualities of recycled materials and status of markets for plastic recycled materials. The report may be used to recommend which rigid plastic containers, if any, should be required to contain higher or lower recycled content or recycling rate standards for the year 2000. [1991 c.385 §34e]

459A.660 Manufacturer records; certification by package manufacturer; exempt containers. (1) On and after March 1, 1995, each product manufacturer and pack-

age manufacturer shall maintain the records specified in this section that demonstrate for all rigid plastic containers of the manufacturer, how the manufacturer has complied with one or more of the requirements of ORS 459A.655, or for what reason, if any, the containers were exempt under subsection (5) of this section during the preceding calendar year. Proprietary information included in the records, if submitted to the department under this section shall not be made available to the general public. The records documenting the compliance shall be submitted to the department upon its request. Each manufacturer required to keep records under this section may be audited by the department. The department shall not take enforcement action, audit or request copies of the records kept by a manufacturer under this section before January 1, 1996, and until the department calculates the recycling rates in ORS 459A.655 (2) for the calendar year 1995.

(2) To the extent a rigid plastic container complies with ORS 459A.655 (1)(c) or (2)(c) because the product manufacturer's particular product-associated package or all of the product manufacturer's rigid plastic containers are being reused under ORS 459A.655 (1)(c) or recycled in the state at the rate specified in ORS 459A.655 (2)(c), the product manufacturer shall keep records that include the information the department may require to determine the product manufacturer's compliance.

(3) To the extent a rigid plastic container complies with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b), the package manufacturer shall keep records that include the information the department may require to determine the package manufacturer's compliance.

(4) If subsection (3) of this section applies, the product manufacturer also shall maintain a record of the written certification by the package manufacturer that the rigid plastic containers comply with ORS 459A.655 (1)(a) or (b) or (2)(a) or (b). The certification also shall state that the package manufacturer will maintain the records required in subsection (3) of this section, and upon request of the department, submit to the department records that include the information the department may require to determine compliance. The product manufacturer may rely on the certification as a defense in any action or proceeding for violation of or to enforce ORS 459A.650 to 459A.665, whether such action or proceeding is brought under ORS 459.992, 459.995 or under any other law.

(5) For any rigid plastic container not described in subsection (3) of this section, each product manufacturer shall keep records that include the information the de-

partment may require to determine that the container is exempt from the requirements of ORS 459A.655 for one of the following reasons:

(a) The containers contain drugs, medical devices, medical food or infant formula as defined by the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq.

(b) The packages are associated with products produced in or brought into the state that are destined for shipment to other destinations outside the state, and which remain with such products upon such shipment.

(c) The packaging is necessary to provide tamper-resistant seals for public health purposes.

(d) The packages are reduced packages. A package shall qualify as reduced when the ratio of package weight per unit of product has been reduced by at least 10 percent when compared with the packaging used for the same product by the same packager five years earlier. In no case may packaging reduction be achieved, for purposes of this paragraph, by substituting a different material category for a material that constituted a substantial part of the packaging in question, or by packaging changes that adversely impact either the potential for the package to be recycled or contain recycled material. Exemptions under this paragraph shall be limited to five years, shall not be renewable and shall not be applicable to packages for which the ratio of package weight per unit of product increased after January 1, 1990.

(e) There has been substantial investment in achieving the recycling goal, viable markets for the material, if collected, can be demonstrated, the material is within five percent of the goal, there is substantial evidence of accelerating recycling rates and reasonable projections show that the material will meet the goal within two years. [1991 c.385 §34c; 1993 c.560 §98; 1993 c.563 §1; 1993 c.568 §3]

459A.665 Opportunity to recycle rigid plastic containers. (1) A local government shall provide the opportunity to recycle rigid plastic containers in metropolitan and urban wastesheds when there is a stable market price for those containers that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers.

(2) The Recycling Markets Development Council shall determine:

(a) If and when a stable market exists.

(b) Whether the requirements of this section are met for any particular wasteshed. [1991 c.385 §34d]

Note: The amendments to 459A.665 by section 50, chapter 385, Oregon Laws 1991, take effect January 1, 1996. The text is set forth for the user's convenience.

459A.665. A local government shall provide the opportunity to recycle rigid plastic containers in metropolitan and urban wastesheds when there is a stable market price for those containers that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers.

Note: Section 4, chapter 568, Oregon Laws 1993, provides:

Sec. 4. On or before January 1, 1995, the Department of Environmental Quality shall report to the Legislative Assembly on the status of plastic recycling programs in Oregon, the implementation of ORS 459A.650 to 459A.665 and, based on the implementation, any recommendations for statutory changes. [1993 c.568 §4]

459A.675 Definitions for ORS 459A.675 to 459A.685. As used in ORS 459A.675 to 459A.685:

(1) "Label" means a code label, as described in ORS 459A.680, molded into or imprinted on or near the bottom of the plastic container or bottle.

(2) "Rigid plastic bottle" means any rigid plastic container intended for single use with a neck smaller than the container body that accepts a screw-type, snap cap or other closure and has a minimum capacity of 16 ounces and a maximum capacity of five gallons.

(3) "Rigid plastic container" means any formed or molded container other than a bottle comprised predominantly of plastic resin and having a relatively inflexible finite shape or form and intended primarily as a single service container with a minimum capacity of eight ounces and a maximum capacity of five gallons. [1991 c.385 §86; 1993 c.560 §99]

Note: 459A.675 to 459A.695 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 459A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

459A.680 Labeling requirements for rigid plastic containers. (1) All rigid plastic bottles and rigid plastic containers sold in Oregon shall be labeled with a code that indicates the resin used to produce the rigid plastic bottle or rigid plastic container. Rigid plastic bottles or rigid plastic containers with labels, basecaps or other components of a different material may be coded by their basic material if the material is compatible in recycling systems. The code shall consist of a number placed inside a triangle and letters placed below the triangle. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a

clockwise path around the code number. The numbers and letters used shall be as follows:

(a) 1 = PETE (polyethylene terephthalate);

(b) 2 = HDPE (high density polyethylene);

(c) 3 = V (vinyl);

(d) 4 = LDPE (low density polyethylene);

(e) 5 = PP (polypropylene);

(f) 6 = PS (polystyrene); and

(g) 7 = OTHER.

(2) The Department of Environmental Quality shall maintain a list of abbreviations used on labels under subsection (1) of this section and shall provide a copy of that list to any person upon request. [1991 c.385 §87; 1993 c.560 §100]

Note: See note under 459A.675.

459A.685 Prohibition on manufacture of rigid plastic containers without label. No person shall manufacture for use in this state any rigid plastic container or rigid plastic bottle that is not labeled in accordance with ORS 459A.680. [1991 c.385 §88]

Note: See note under 459A.675.

459A.695 Requirement for retail establishment supplying plastic bags for customer use. Any retail establishment that offers plastic bags to customers for purchases made at the establishment shall offer, at the location where the customer pays for the goods, paper bags as an alternative to plastic bags and inform customers that a choice is available. Nothing in this subsection shall be construed as requiring retail establishments to use plastic bags. [Formerly 459.419]

Note: See note under 459A.675.

BEVERAGE CONTAINERS

459A.700 Definitions for ORS 459A.700 to 459A.740. As used in ORS 459.992 (3) and (4) and 459A.700 to 459A.740, unless the context requires otherwise:

(1) "Beverage" means beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

(2) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar, or carton containing a beverage.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Consumer" means every person who purchases a beverage in a beverage container for use or consumption.

(5) "Dealer" means every person in this state who engages in the sale of beverages in beverage containers to a consumer, or means

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ATTACHMENT J



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DEPARTMENT OF JUSTICE
PORTLAND OFFICE

MEMORANDUM

DATE: September 28, 1994

TO: Pat Vernon
Waste Management and Cleanup Division
Department of Environmental Quality

FROM: Larry Edelman *LE*
Assistant Attorney General

RE: Federal Preemption of ORS 459A.655
DOJ File No.: 340-410-P0157-93

BACKGROUND

Oregon law requires that "any rigid plastic container sold, offered for sale or used in association with the sale or offer for sale of products in Oregon" must either:

"(a) Contain 25 percent recycled content by January 1, 1995; or

"(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."

ORS 459A.655(1).

In addition, a rigid plastic container fulfills subsection (1)(b) if it meets one of the following:

"(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; or

"(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."

ORS 459A.655(2).

Public comments on DEQ's proposed implementing rules protest that FIFRA preempts ORS 459A.655 for pesticides. In addition, public comments suggest that packaging requirements under the federal Food, Drug, and Cosmetic Act and in the federal Department of Transportation's hazardous materials transportation rules promulgated under the Hazardous Materials Transportation Act (HMTA) may preempt Oregon state law regarding packaging. This memo explores these issues.

QUESTIONS PRESENTED

1. Does FIFRA preempt ORS 459A.655 for pesticide packaging?
2. Does the federal Food, Drug, and Cosmetic Act preempt ORS 459A.655 for the packaging of foods, drugs, and cosmetics?
3. Do the federal Department of Transportation's (DOT's) regulations for hazardous materials transportation preempt ORS 459A.655 for the packaging of hazardous materials?

SHORT ANSWERS

1. Arguably not. ORS 459A.655 does not clearly impose "additional" or "different" packaging requirements proscribed by FIFRA.
2. The Food, Drug, and Cosmetic Act and implementing rules reveal no congressional intent to completely preempt the field for packaging. They may prevent use of recycled content plastic containers for some products, but Oregon law provides alternative compliance options.
3. Because ORS 459A.655 does not directly regulate the transportation of hazardous materials, the federal Act and regulations do not appear to preempt it. Conflicts with the federal rules would only occur if DOT regulations mandated use of a specified rigid plastic container for sale of a product and that container failed to comply under Oregon law.

DISCUSSION

A. There is No Clear Preemption of ORS 459A.655 by FIFRA, DOT Hazardous Materials Regulations or the Food, Drug, and Cosmetic Act

1. **Federal preemption is based on congressional intent; the United States Supreme Court has read statutory prohibitions on additional state requirements broadly.**

The United States Supreme Court has recently outlined the preemption doctrine as follows:

"Under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that interfere with, or are contrary to the laws of Congress, made in pursuance of the Constitution are invalid. Gibbons v. Ogden, 9 Wheat. 1, 211 (1824) (Marshall, C.J.). The ways in which federal law may pre-empt state law are well established and in the first instance turn on congressional intent. Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990). Congress' intent to supplant state authority in a particular field may be express in the terms of the statute. Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977). Absent explicit pre-emptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is 'so pervasive as to make reasonable the inference that Congress left no room for the states to supplant it,' if 'the Act of Congress . . . touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,' or if the goals 'sought to be obtained' and the 'obligations imposed reveal a purpose to exclude state authority. Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). * * *

"Even when Congress has not chosen to occupy a particular field, preemption may occur to the extent that state and federal laws actually conflict. Such a conflict arises when 'compliance with both federal and state regulations is a physical impossibility,' Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963), or when a state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,' Hines v. Davidowitz, 312 U.S. 52 (1941)."

Wisconsin Public Intervenor v. Mortier, 501 US 597, 604-05 (1991).

Significantly for the federal acts that could preempt ORS 459A.655, the Supreme Court has more recently (a) affirmed that "state law that conflicts with federal law is 'without

effect,'" Cipollone v. Liggett Group, Inc., 112 S Ct 2608, 2617 (1992)(quoting Maryland v. Louisiana, 451 US 725, 746 (1981)); and (b) held that statutory language prohibiting "requirements" imposed by state law has a broad preemptive reach, to the point of excluding not only state statutes and administrative rules but also state common law causes of action and damages remedies. Cipollone, 112 S Ct at 2619-20. Therefore, federal acts will preempt ORS 459A.655 if they exhibit a congressional intent to preempt the field or if they conflict with ORS 459A.655. Moreover, if a federal act forbids state "requirements," the federal act's preemption of state law will be very broad.

2. FIFRA's prohibition of additional or different state packaging requirements is clear but nevertheless does not necessarily preempt ORS 459A.655.

FIFRA § 24(b) expresses clear congressional intent to preempt the fields of pesticide labeling and packaging, because a state regulating pesticides nevertheless "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 USC § 136v(b)(as amended 1988). Although the United States Supreme Court has not directly ruled on this section's preemptive force, it has strongly suggested that § 24(b) preempts the field. Thus, in deciding that § 24(a), which allows state regulation of pesticides, does not preempt local government regulation, the Court assessed the relation of the two provisions as follows:

"[F]ield pre-emption [under § 24(a)] cannot be inferred. In the first place, § 136v itself undercuts such an inference. The provision immediately following the statute's grant of regulatory authority to the States declares that '[s]uch State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required under' FIFRA. § 136v(b). This language would be pure surplusage if Congress had intended to occupy the entire field of pesticide regulation. Taking such pre-emption as the premise, § 136v(a) would thus grant States the authority to regulate the 'sale or use' of pesticides, while § 136v(b) would superfluously add that States did not have the authority to regulate 'labeling or packaging,' an addition that would have been doubly superfluous given FIFRA's historic focus on labeling to begin with."

Mortier, 501 US at 612-13.

The Seventh Circuit, citing the above discussion, has commented that "[t]he Supreme Court recently noted the absolutist nature of FIFRA's pre-emption in the labeling and packaging context even as it held that FIFRA does not pre-empt generalized state regulation of pesticides." Shaw v. Dow Brands, Inc., 994 F2d 384 (7th Cir 1993) (emphasis added).

Circuit rulings on § 24(b)'s preemption since the Cipollone decision have held that § 24(b) preempts state laws regarding pesticide packaging and labelling. See MacDonald v. Monsanto Co., 27 F3d 1021, 1024-25 (5th Cir 1994)("FIFRA preempts conflicting state common law concerning the improper labeling of pesticides," but "§ 136v(b) preempts only those state laws that impose or effect different or additional * * * requirements") (emphasis added); Worm v. American Cyanamid Co., 5 F3d 744, 747 (4th Cir 1993) ("language of § 136v(b) manifestly ordains the preemption of the establishment or enforcement of any common law duty that would impose a labeling requirement inconsistent with those established by FIFRA"); King v. E.I. Dupont De Nemours and Co., 996 F2d 1346, 1349, cert dismissed 114 S Ct 490 (1st Cir 1993)("FIFRA preempts the plaintiffs' state law tort claims" based on inadequate warnings for herbicides defendant manufactured and sold when they complied with FIFRA's labeling requirements); Shaw v. Dow Brands, Inc., 994 F2d 364, 371 (7th Cir 1993)(FIFRA preempts common-law actions for labeling and packaging defects); Papas v. Upjohn Co., 985 F2d 516, 518, cert den sub nom Papas v. Zoecon Corp., 114 S Ct 300 (11th Cir 1993)("Cipollone convinces us that the term 'requirements' in section 136v(b) 'sweeps broadly and suggests no distinction between positive enactments and the common law'); Arkansas-Platte & Gulf Partnership v. Van Waters & Rogers, Inc., 981 F2d 1177, 1179, cert den 114 S Ct 60 (10th Cir 1993) ("Congress circumscribed the area of labeling and 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").

FIFRA's legislative history indicates that Congress intended § 24(b) to preempt any state requirements regarding labeling or packaging. As the Fifth Circuit has pointed out:

"The legislative history of FIFRA also clearly indicates that Congress intended to preempt state law in this area. * * * For example, the original House Report by the Agriculture Committee states that '[s]tate authority to change Federal labeling and packaging is completely preempted * * *.' H.REP. NO. 92-511. 92d Cong. 1st Sess. 1, 1-2 (1972) (emphasis added). The House Report further states that '[i]n dividing the responsibilities between the States and the Federal Government for the management of an effective pesticide program, the [House Agriculture] Committee has adopted language which is intended to completely preempt State authority in regard to labeling and packaging.' Id. at 16 (emphasis added). The Senate Agriculture and Forestry Committee Report states that § 136v(b) 'preempts any State labeling or packaging requirements under the Act.' S.REP. NO. 92-838, 92d Cong., 2d Sess., reprinted in, 1971 U.S.C.C.A.N. 3993, 4021."

MacDonald, 27 F3d at 1025, fn 3.

Significantly, however, the Ninth Circuit's most recent case on the subject held that § 24(b) of FIFRA did not preempt a requirement in the California Safe Drinking Water and Toxic Enforcement Act for point-of-sale warning signs on the ground that the requirement was not "labeling." Chemical Specialties Manufacturers Assn., Inc. v. Allenby, 958 F2d 941, cert den 113 S Ct 80 (9th Cir 1992). The Ninth Circuit noted that "additional labeling requirements would be unconstitutional under FIFRA." Id. at 945. Thus, the Ninth Circuit did not extend the preemptive effect of FIFRA to indirect regulation at point of sale.

Notwithstanding the clear preemptory language in section 24(b) and judicial interpretation of FIFRA, it is not clear that the section would preempt Oregon's rigid plastic container law as applied to pesticide products in Oregon. Oregon's law arguably does not impose "additional" or "different" "packaging requirements" as proscribed by FIFRA.¹ The Oregon law does not regulate the manner of pesticide packaging. Rather, the Oregon law is designed to reduce the amount of plastic disposed of in the solid waste stream. The law specifies minimum recycling rates, container reuse, and recycled content options for all rigid plastic containers in Oregon. Notably, the law does not mandate use of any particular type of container or container design for pesticides. Thus, the law does not impose additional or different packaging requirements in the sense of design or performance criteria. The mere assumption that the Oregon law potentially affects pesticides packaged in plastic containers does not establish preemption.

3. HMTA and ODOT's hazardous materials regulations do not directly preempt ORS 459A.655.

The HMTA establishes the general federal basis for regulating the transportation of hazardous materials, and under its authority DOT has promulgated extensive rules regarding the transportation of hazardous materials, including both general and particularized packaging requirements. See 49 USC App §§ 1804 et seq; 49 CFR §§ 171-173 (1994). The HMTA has explicit preemption provisions. Thus,

"Except as provided in subsection (b) of this section and unless otherwise clearly authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe, which concerns a subject listed in subparagraph (B) and which is

¹ Currently there are no applicable packaging requirements under FIFRA other than certain child resistant packaging requirements. EPA has only recently proposed standards for pesticide containers. 26 Fed Reg 6712 (Feb. 11, 1994).

not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is preempted."

49 USC App § 1804(a)(4)(A).

The subjects the provision covers include "[t]he packing, repacking, handling, labeling, marking, and placarding of hazardous materials," 49 USC App § 1804(a)(4)(B)(ii)(emphasis added), and "[t]he design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials."

49 USC App § 1804(a)(4)(B)(v) (emphasis added).

In addition, "any requirement of a State or political subdivision thereof or Indian tribe is preempted if--"

"(1) compliance with both the State or political subdivision or Indian tribe requirement and any requirement of this chapter or of a regulation issued under this chapter is not possible,

"(2) the State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of this chapter or the regulations issued under this chapter, or

"(3) it is preempted under section 1804(a)(4) of this Appendix or section 1804(b) [highway routing] of this appendix."

49 USC App § 1811(a).

Finally, DOT has further specified that:

"(c) With regard to hazardous wastes subject to this subchapter, any requirement of a state or its political subdivision is inconsistent with this subchapter if it applies because that material is a waste material and applies differently from or in addition to the requirements of this subchapter concerning:

"(1) Packaging, marking, labeling, or placarding * * * ."

49 CFR § 171.3 (1994).

No federal appellate court has yet ruled on the HMTA's preemption of state packaging requirements, and the United States Supreme Court has not addressed the Act's

preemption of state law at all. The Ninth Circuit, however, has held that the HMTA preempts state laws imposing additional requirements on the transportation of hazardous materials. See Chlorine Institute, Inc. v. California Highway Patrol, 29 F3d 495 (9th Cir 1994)(HMTA preempts a state requirement that certain hazardous materials be escorted); Southern Pacific Transp. Co. v. Public Services Com'n of Nevada 909 F2d 352 (9th Cir 1990)(HMTA preempts a state requirement for a permit for hazardous materials).

Nevertheless, both of these cases involved state laws that directly regulated the transportation of hazardous materials. ORS 459A.655 potentially only indirectly affects some hazardous materials and their transportation and hence should not be preempted under 49 USC § 1804(a)(4). First, the subjects covered by § 1804(a)(4)(B) all involve the direct regulation of hazardous materials, as emphasized above. Second, the HMTA's inclusion of two provisions for preemption, when viewed in light of § 1804(a)(4)'s directness and § 1811(a)'s more general approach, suggests that § 1804 preemption applies to state requirements directly affecting hazardous waste transportation, while § 1811 applies to state requirements indirectly affecting such transportation. Under this logic, the HMTA would preempt ORS 459A.655 only to the extent that the Oregon statute conflicts with or impedes the federal requirements. This would occur only where compliance with both federal law and ORS 459A.655 would not be possible. We are unaware of any such situations at present.

4. The federal Food, Drug, and Cosmetic Act does not exhibit a clear congressional intention to preempt state packaging requirements.

The federal Food, Drug, and Cosmetic Act addresses labeling, processing, and packaging. Its only clear expression of preemption is with regard to uniform nutrition labeling. Unless a state petitions for and receives exemption, "no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce" any requirements for standards of identity, labeling, or claims "not identical to" the federal standards listed in 21 USC § 343. 21 USC § 343-1(a) and (b). The statute itself refers to these requirements as "labeling," and hence they would not preempt ORS 459A.655, which does not regulate labeling.

The Oregon law specifically exempts containers which contain medical devices, medical food or infant formula as defined by the Food, Drug and Cosmetic Act. ORS 459A.660(5)(a).

FDA regulation may prevent use of recycled content containers for certain food items which must be packaged using materials "safe and suitable." See e.g., 21 CFR 110.80(b)(13)(iii). However, Oregon law does not mandate use of recycled content plastic containers. Thus, there is no direct conflict with the federal regulations.

Pat Vernon
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Similarly, there does not appear to be any conflict with FDA regulations requiring tamper resistant seals or child-proofing requirements for specified products.

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State of Oregon
Department of Environmental Quality

Memorandum[†]

Date: October 17, 1994

To: Environmental Quality Commission
From: Lydia Taylor, Interim Director
Subject: Agenda Item I, October 21, 1994, EQC Meeting

Action Item: Standards, Criteria, Policy Directives and Hiring Procedures to be Used in Hiring Director of Department of Environmental Quality

Statement of the Issue

The Commission may wish to meet in executive session to interview candidates and deliberate on the selection of a director. Prior to meeting in executive session, the Commission must provide an opportunity for public comment on the standards, criteria, policy directives and hiring procedures to be used in this process. The opportunity for public comment is required by statute. This process also allows candidates to maintain anonymity, if specifically requested at the time of their application.

Background

A new director was last hired by the Commission in January 1984. The minimum standards for the position, evaluation criteria, policy relating to recruitment strategies and details of the hiring process for the position of director have not been submitted for public comment for the past decade. These standards and practices must be submitted for public comment prior to their use in the recruitment and hiring of a director if the Commission wishes to meet in executive session. These procedures are required by ORS 192.660 (Public Meetings).

The Department has drafted proposed standards, criteria, policy directive and hiring procedures (as shown in Attachment A) for the Commission to consider submitting for public comment. Following public comment and adoption by the Commission, DEQ can implement recruitment and candidate screening tasks for the benefit of the Commission. Receiving public comments on hiring standards and practices prior to recruitment also allows the Commission to maintain the anonymity of candidates if specifically requested

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

at the time of application. The ability to protect the identity of candidates who request anonymity allows the Commission to consider the broadest range of qualified candidates.

Adoption of these items will update and supersede any standards, criteria, policy directives and hiring procedures previously adopted or used by the Commission in its selection of a director in 1984. These items do not need to be adopted as a rule.

Authority to Address the Issue

ORS 192.660 specifically addresses the criteria necessary for the Commission to meet in executive session. Preparation of standards and practices, and adopting the language with necessary changes after receiving public comment, will allow the Commission to meet in executive session to interview and deliberate on the selection of a director.

Alternatives and Evaluation

1. The Commission could elect to do all interviewing and discussion of candidates in public, negating the need for public comment on standards, criteria, policy directives and hiring procedures. Such an alternative could severely limit the number of serious applicants for the position.
2. The Commission could submit standards, criteria, policy directives and hiring procedures for public comment and subsequently adopt them, allowing the Commission to meet in executive session to interview and discuss candidates.
3. In the proposed standards, criteria, policy directives and hiring procedures (Attachment A) are minimum qualifications for candidates. The minimum qualifications, as proposed by the Department, are very general and would allow a broad range of candidates to qualify. The Department has deliberately left these broad, so that excellent people are not inadvertently excluded. This means more administrative work for the Department in scoring a larger number of applicants for the Commission, if you direct us to do so.
4. The Commission could add to the minimum qualifications to narrow the applicant pool.
5. The Commission could add to the list of preferred qualifications, which would result in higher ratings for candidates who had the Commission's preferred experience.

Summary of Any Prior Public Input Opportunity

There has been no opportunity for public comment on the draft proposed standards, criteria, policy directives or hiring procedures, included in Attachment A.

Conclusions

- Adoption of standards, criteria, policy directives and hiring procedures for selection of a new director, after an opportunity for public comment, is necessary for the Commission to meet in executive session.
- Adoption of above items will allow candidates to maintain anonymity, if they specifically request non-disclosure at the time of their application.
- The Commission may consider public comments and adopt final standards, criteria, policy directives and hiring procedures in a special meeting in mid-November, or during the scheduled December 1 and 2, 1994, Commission meeting. The Commission may begin active recruitment using specific standards and practices after public comment on these items.

Proposed Findings

No findings are required.

Recommendation for Commission Action

1. It is recommended that the Commission direct DEQ to furnish for public review and comment the standards, criteria, policy directives and hiring procedures.
2. It is recommended that the Commission select a meeting date to consider public comment on the above items. A special meeting may be called in mid-November, 1994, or this topic may be included as an agenda item in the scheduled December 1 - 2, 1994 meeting. A hearing to receive public comment may be held during the meeting, or public comment may be reviewed prior to their adoption at the meeting.
3. It is recommended that after consideration of public comment, the Commission adopt the standards, criteria, policy directives and hiring procedures, and direct DEQ to implement the adopted hiring procedures.

Attachments

- A. Standards, Criteria, Policy Directives and Hiring Procedures
- B. Position Description, Director

Approved:

Section: _____

Division: _____

Supria Taylor

Report Prepared By: Paul Burnet
Office of the Director

Phone: 229-5776

Date Prepared: October 17, 1994

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ATTACHMENT A
STANDARDS, CRITERIA, POLICY DIRECTIVES AND HIRING PROCEDURES IN
HIRING DIRECTOR OF DEPARTMENT OF ENVIRONMENTAL QUALITY

The Environmental Quality Commission is proposing to adopt the following standards, criteria and policy directives in recruiting for and hiring a Director for the Department.

STANDARDS

The following are minimum qualifications which individuals must meet in order to be considered for the position:

1. A bachelors degree from an accredited university
2. Demonstrated knowledge of and experience in working with local units of government, industry and/or non-profit organizations.
3. Demonstrated knowledge of and experience in managing a complex public or private organization with more than one program.

Preference may be given to candidates who have the following qualifications:

1. Have a demonstrated knowledge of environmental issues and controls.
2. Have a demonstrated knowledge of Oregon government, geography, business and industry.
3. Demonstrated knowledge of and experience in working with elected officials.

CRITERIA

Candidates will be evaluated on the following basis:

1. The extent and breadth of their minimum qualifications
2. Any additional qualifications
3. The results of an interview with the Commission
4. The responses to any requested reference inquiries

POLICY DIRECTIVES

The Commission will employ a competitive recruitment method including proactive recruitment strategies designed to attract a talented and diverse applicant pool.

HIRING PROCEDURES

1. Advertisements recruiting for candidates will be sent to newspapers of general circulation, targeted newspapers, professional organizations, employee networks, community organizations and resume banks.
2. Applicants will be asked to furnish a resume and a brief narrative demonstrating how they meet the minimum qualifications for the position. Additional information about

desired qualifications should also be included. Applicants who wish to have their applications remain anonymous must request non-disclosure with their application.

3. Recruitment will be held open until sufficient applications are deemed received by the Environmental Quality Commission.

4. A preliminary review of applicant's qualifications to judge whether the minimum qualifications have been met will be completed by the Human Resources Section of the Department. Those applications which meet the minimum qualifications will be forwarded to the Commission.

5. The Commission will select candidates to be interviewed, and will conduct the interviews.

6. The Commission will cause reference checks to occur if appropriate.

State of Oregon
Department of Environmental Quality

Memorandum

Date: September 13, 1994

To: Commissioners
From: Bob Danko *BD*
Subject: Background on Plastics

Although the proposed rigid plastic container rules won't be before you until October 21, Mary Wahl and I thought you might appreciate a little background now. We have learned from the Chair that some of you have or will soon be contacted on that subject. If you need more information or want to discuss, please call me at 229-6266. Thanks.

cc: Mary Wahl

SUMMARY
RIGID PLASTIC CONTAINER LAW AND PROPOSED RULES
(revised 9/12/94)

BACKGROUND

The 1991 Oregon Legislature passed Senate Bill 66, a comprehensive recycling law which also covered rigid plastic containers. This rigid plastic container law was subsequently amended by the 1993 Legislature, changing reporting and enforcement provisions. The requirements of the law go into effect on January 1, 1995.

To help develop program rules, the Department established three task forces. These groups are composed of persons from the regulated community, public interest groups, and the public. They have met monthly from November 1993 through May 1994 and again in September 1994. Gail Achterman, Jerry Powell and Mary Kay Price (Stone Mill Foods) chair the three task forces.

The law allows several options for rigid plastic containers to comply, including 25 percent recycled content, attainment of a 25 percent recycling rate (either aggregate or resin specific), and reuse. It also establishes five exemption categories. Product and package manufacturers must keep records which demonstrate compliance of their containers.

SUMMARY OF PROPOSED RULES

The proposed rules clarify the provisions of the law, and set criteria and procedures for compliance. The rules cover the following major areas:

1. Definitions, including definition of "rigid plastic container". Clarifies that point-of-sale packagers such as take-out delis are considered a product manufacturer under the law. (The food industry has estimated that there may be 10,000 point-of-sale manufacturers in Oregon.)
2. Exemptions. Clarifies statutory language. Note that the two most discussed exemptions are for a "reduced container" and making a "substantial investment" to meet the aggregate recycling rate. The substantial investment exemption, if met for the aggregate recycling rate, postpones the compliance date for all containers from January 1, 1995 to January 1, 1997. Criteria include the recycling rate being at least at 20%, a substantial investment having been made to meet the required 25% rate, and a likelihood of meeting the required rate by 1997.
3. Compliance standards. Adds detail to the statutory compliance options, such as establishing that a rigid plastic container must be used or refilled at least five times to comply with the "reuse" option.

4. Calculation of rigid plastic container recycling rates. Establishes a formula and standards for calculating the recycling rates, including what "counts" as recycling. Incorporates advice from the Oregon Attorney General that any products from pyrolysis of plastics that are used for energy recovery do not count as "recycling."
5. Recordkeeping and reporting. Records must be kept by product and container manufacturers to show compliance with the law and shall be submitted to DEQ upon request.

COMPLIANCE/ENFORCEMENT

All rigid plastic containers sold in Oregon after January 1, 1995 must comply with the rigid plastic container law. However, the law states that the Department may not take any enforcement action against, audit, or request records from a product manufacturer until:

1. January 1, 1996; and
2. Until the Department calculates the rigid plastic container recycling rates for calendar year 1995 (likely about July 1, 1996).

The Director recently issued a policy directive that enforcement actions taken by the Department for violation of the statute and implementing regulations shall be based solely upon a manufacturer's compliance status beginning January 1, 1996...thus no enforcement for violations during calendar year 1995.