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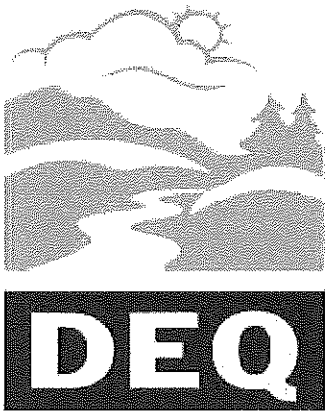
OREGON
ENVIRONMENTAL QUALITY
COMMISSION MEETING
MATERIALS 12/02/1994



State of Oregon
Department of Environmental Quality

Environmental Quality Commission

☑ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item F
December 2, 1994 Meeting

Title:

Proposed Temporary Rule Adopting the Federal Universal Treatment Standards and the Toxicity Characteristic Waste Treatment Standards, and Other Land Disposal Restriction (LDR) Program Revisions

Summary:

On September 19, 1994, EPA promulgated a final rule amending the Hazardous Waste Land Disposal Restrictions (LDR) program found in 40 **Code of Federal Regulations** (CFR) Part 268. The Department is proposing to temporarily adopt the EPA amendments to the LDR program which establish universal treatment standards and organic toxicity characteristic waste treatment standards. Because the EPA rule takes effect in Oregon on December 19, 1994, it will create confusion within the regulated community between the Department's currently effective LDR Program and EPA's newly revised LDR program unless the Commission adopts the EPA rule.

Department Recommendation:

Temporarily adopt the EPA amendments to the LDR program as presented in Attachment A of the staff report and propose permanent adoption of the amendments by the Commission at its meeting on May 19, 1995.

Report Author	Division Administrator	Director

November 15, 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: November 14, 1994

To: Environmental Quality Commission

From: Lydia Taylor, Interim Director

Subject: Agenda Item F, December 2, 1994 Environmental Quality Commission Meeting

Proposed Temporary Rule Adopting the Federal Universal Treatment Standards and the Toxicity Characteristic Waste Treatment Standards, and Other Land Disposal Restriction Program Revisions

Statement of the Issue

On September 19, 1994, EPA promulgated a final rule amending the Hazardous Waste Land Disposal Restrictions (LDR) program found in 40 **Code of Federal Regulations** (CFR) Part 268. The Department is proposing to temporarily adopt the EPA amendments to the LDR program which establish universal treatment standards and organic toxicity characteristic waste treatment standards. Because the EPA rule takes effect on December 19, 1994, it will create confusion within the regulated community between the Department's currently effective LDR Program and EPA's newly revised LDR program unless the Commission adopts the EPA rule.

Background

On October 4, 1994, EPA authorized Oregon to implement, in lieu of EPA, the federal LDR treatment standards and toxicity characteristic regulations as part of Oregon's state-authorized federal hazardous waste program. On September 19, 1994, EPA promulgated a new rule which included revisions to 40 CFR Part 268 establishing federal universal treatment standards and toxicity characteristic (TC) waste treatment standards under the federal Hazardous and Solid Waste Amendments (HSWA) of 1984. Because EPA promulgated these treatment standards pursuant to HSWA, the standards take effect in Oregon on December 19, 1994 and supersede certain parts of the LDR regulations for which the Department received state authorization on October 4, 1994.

In the Department's current authorized LDR program, there are 938 separate treatment standards for hazardous waste constituents found in wastewater and 924 separate treatment standards for non-wastewater hazardous waste constituents (e.g. sludges and

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solid materials). Many (1,093) of these treatment standards will not be changed by the adoption of the universal treatment standards. However, 325 of the new EPA universal treatment standards are more stringent than the Department's current authorized standards and will become effective nationally on December 19, 1994. On this date, the EPA will enforce these new standards until Oregon adopts them. Certain universal treatment standards, however, are less stringent (444) than those contained in the Department's current authorized program and will not take effect in Oregon until the Department has adopted them and EPA has approved them as part of Oregon's authorized program. Until then, the Department must continue to implement its more stringent current authorized standards. Therefore, beginning December 19, 1994 the regulated community of hazardous waste generators and hazardous waste management facilities will need to comply with two different sets of LDR regulations: (1) the Department implemented regulations containing standards that are more stringent than some of the revised universal treatment standards; and (2) an EPA implemented LDR regulation containing standards that are more stringent than the Department's existing treatment standards. (See Table 1 for a comparison between old and new LDR Standards).

This conflicting regulatory authority will (1) create confusion within the regulated community; (2) require the regulated community to meet more stringent Department authorized standards for certain hazardous waste constituents in certain hazardous waste streams; (3) create an increased workload for the regulated community and the Department to determine the applicable treatment standard for specific hazardous waste constituents; and (4) create confusion and potential discord between the Department and EPA over which treatment standards apply for certain hazardous waste constituents, and over specific implementation requirements in the LDR program. Having different treatment standards for the same hazardous constituents in different regulations being implemented by two agencies is neither necessary nor good policy.

Confusion in the regulated community may result in negative effects including: (1) increased potential for noncompliance because of misunderstanding of the correct standard; (2) degradation of the positive relationship between the Department and the regulated community; and (3) increased incidents that might have been avoided through expediency and simplicity of process. During the last three years, 142 hazardous waste generators in Oregon reported land disposing of hazardous waste, according to annually reported information.

Table 1 summarizes the differences between the revised and current treatment standards. In some instances, the changes in the treatment standards reflect updated analytical techniques and, in other cases the revisions represent the use of the best available

technology.

Table 1
Comparison of Universal Treatment Standards to Currently Promulgated Treatment Standards

Parameter	Wastewater Forms	Non-wastewater Forms
Total Number of Constituent/Waste Code Combinations	938	924
Number of Combinations **Unchanged** by the Universal Treatment Standards	677	416
Number of Combinations for which the Universal Treatment Standards are **Slightly Less Stringent**[1]	138	209
Number of Combinations for which the Universal Treatment Standards are **Slightly More Stringent**[1]	76	199
Number of Combinations for which the Universal Treatment Standards are **Significantly Less Stringent**[2]	17	80
Number of Combinations for which the Universal Treatment Standards are **Significantly More Stringent**[2]	30	20

[1]The change is less than a factor of ten greater or less than the currently promulgated standard.

[2]The change is a factor of ten or more greater or less than the currently promulgated standard.

The universal treatment standards will change the current LDR program in which hazardous waste constituents generally have a different treatment standard for each hazardous waste stream, to a program in which the treatment standard for a hazardous waste constituent is the same for all hazardous waste streams in which the constituent is contained.

For example (Table 2), the current treatment standard for lead, as a hazardous constituent, varies widely by waste stream. The new universal treatment standard will create consistency and uniformity:

Table 2
LDR Treatment Standards for Lead

Waste Code	Current LDR Treatment Standard (ppm)	New LDR Treatment Standard (ppm)
Non-Wastewater		
K007 Wastewater treatment sludge from the production of iron blue pigments	3.40	.37
K028 Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane	.021	.37
K046 Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds	.18	.37
K069 Emission control dust/sludge from secondary lead smelting	.24	.37
Wastewater		
F006 Wastewater treatment sludges from electroplating operations	.040	.69
F037 Petroleum refinery primary oils/water/solids-separation sludge	.037	.69
F039 Leachate resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of this part	.028	.69
K061 Emissions control dust/sludge from the primary production of steel and electric furnaces	.51	.69
P110 Tetraethyl lead	.04	.69
U051 Creosote	.037	.69

To avoid confusion and conflict within the regulated community and with EPA, and to simplify the LDR program, the Department proposes to adopt by temporary rule the 40 CFR Part 268 requirements of the September 19, 1994 EPA final rule including the universal treatment standards and the new organic toxicity characteristic waste treatment standards at the Commission meeting on December 2, 1994. If the new standards adopted on December 2, 1994 become effective on December 19, 1994, they will expire 180 days later on June 16, 1995. Permanent rules would be proposed for adoption by the Commission at its

meeting On May 19, 1995. In conjunction with the temporary rulemaking, the Department will seek an expedited authorization approval from EPA Region 10 to implement the new universal treatment standards as quickly as possible. (See Attachment C).

Authority to Address the Issue

Under ORS 183.335, ORS 466.020, OAR 340-100-001, and OAR 340-100-002, the State assumes responsibility for a federal regulation, by adoption of the regulation into state law. This process is facilitated and prescribed by the Environmental Quality Commission. Under 40 CFR 272.1900-272.1949, the EPA authorizes the State of Oregon to assume the responsibility of regulator over the federal hazardous waste program in Oregon.

Alternatives and Evaluation

The scope of alternatives for addressing the issue was limited to: (1) take no action and allow the Department and federal standards to remain different and conflicting; or (2) adopt the new standards in May or July 1995 when federal hazardous waste rules are typically adopted by reference as a group by the Commission.

Summary of Any Prior Public Input Opportunity

The Department provided notice to the Hazardous Waste and Toxics Use Reduction Advisory Committee. Individual members of the advisory committee provided comments supporting the proposed temporary rule adoption. The staff report is being sent to the Department's interested parties mailing list and to all large and small quantity generators who had sent hazardous waste to land disposal in the last three years.

Conclusions

The presence of a conflicting regulatory authority will:

(1) Create confusion for the regulated community of hazardous waste generators and hazardous waste management facilities; and

(2) Create confusion and potential conflict between the Department and EPA over which treatment standards apply for certain hazardous waste constituents, and over specific requirements in the LDR program.

Adoption of a Temporary Rule will:

(1) Avoid confusion and conflict within the regulated community, and between the Department and EPA; and

(2) Simplify the LDR program.

Proposed Findings

Taking this rulemaking action is in the public interest and should benefit all individuals, companies, government agencies, and groups that are subject to the EPA authorized hazardous waste regulations without compromising environmental standards and protection. (See Attachment B for the Statement of Need and Justification of Temporary Rule and Statements of Finding and Serious Prejudice)

Recommendation for Commission Action

The Department recommends that the Commission temporarily adopt the federal universal treatment standards and the organic toxicity characteristic waste treatment standards for the LDR program as presented in Attachment A of the Department Staff Report together with the supporting findings presented in Attachment B.

Attachments

A. Proposed Temporary Rule
B. Statements of Need and Justification of Temporary Rule and Statements of Findings and Serious Prejudice
C. Letter to Randy Smith at EPA Region 10

Reference Documents (available upon request)

1. Statutory Authority
2. Applicable Rule(s)
3. Supporting Technical References

Approved:

Section:

Division:

Report Prepared By: Spencer Bohaboy

Phone: 1-503-229-6783

Date Prepared: 10\31\94

S.B.
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11\14\94

Attachment A
Agenda Item F
EQC Meeting 12/2/94

TEMPORARY RULE

Hazardous Waste Management System: General

Adoption of United States Environmental Protection Agency Hazardous Waste and Used Oil Management Regulations.

340-100-002

(1) Except as otherwise modified or specified by OAR Chapter 340, Divisions 100 to 106, 109, 111, and 120, the rules and regulations governing the management of hazardous waste, including its generation, transportation, treatment, storage, recycling and disposal, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Parts 260 to 266, 268, 270, and Subpart A of 124, and amendments thereto promulgated through July 1, 1993, except for 57 FR 7628, March 3, 1992, are adopted by reference and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080, and 466.090 to 466.215. In addition, 59 Federal Register 48043-48110, September 19, 1994, Part 268 as amended is temporarily adopted by reference effective December 19, 1994.

(2) Except as otherwise modified or specified by OAR Chapter 340, Division 111, the rules and regulations governing the standards for the management of used oil, prescribed by the United States Environmental Protection Agency in Title 40 Code of Federal Regulations, Part 279 and amendments thereto promulgated through July 1, 1993, are adopted by reference into Oregon Administrative Rules and prescribed by the Commission to be observed by all persons subject to ORS 466.005 to 466.080 and 466.090 to 466.215.

(Comment: The Department uses the federal preamble accompanying the federal regulations and federal guidance as a basis for regulatory decisionmaking).

(Rev. 3/11/91; Rev. 10/16/92, Effective 11/1/92; Rev. 7/23/93, Eff. 7/29/93); Rev. 3/11/94, Eff. 3/22/94, Rev. 12/2/94; effective 12/19/94)

ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of Rule 340-100-002(1) Relating to the Federal Universal Treatment Standards and Toxicity Waste Treatment Standards and Other Land Disposal Restriction Program Revisions	))))))	STATEMENT OF NEED AND JUSTIFICATION FOR TEMPORARY RULE

TO ALL INTERESTED PERSONS:

1. On December 2, 1994, and effective on December 19, 1994, the Environmental Quality Commission (EQC) is incorporating by reference the federal universal treatment standards and toxicity characteristic waste treatment standards (Federal Register FR 59, 47982, Part 268, September 19, 1994, effective December 19, 1994) for EPA's Land Disposal Restriction Program (LDR).

2. Statutory Authority:

The Environmental Quality Commission (EQC) has authority to adopt hazardous waste rules under ORS 466.020 and the authority to adopt temporary rules under ORS 183.335.

3. Need for Rule:

Failure to adopt the EPA's new universal treatment standards and toxicity characteristic treatment standards by December 19, 1994 will create confusion among hazardous waste generators, hazardous waste management facilities, the Department and EPA because of the discrepancies between the old and new treatment standards, and make it difficult to determine which treatment standards prevail. The new rule also simplifies reporting and record keeping for the LDR program.

On October 4, 1994, EPA authorized Oregon to implement, in lieu of EPA the federal LDR treatment standards and toxicity characteristic regulations as part of Oregon's state authorized federal hazardous waste program. On September 19, 1994, EPA promulgated a new rule which included revisions to 40 CFR Part 268 establishing federal universal treatment standards and toxicity characteristic (TC) waste treatment standards under the federal Hazardous and Solid Waste Amendments (HSWA) of 1984. Because EPA promulgated these treatment standards pursuant to HSWA, the standards take effect in Oregon on December 19, 1994 and supersede certain parts of the LDR regulations for which DEQ received state authorization on October 4, 1994.

In the Department's current authorized program, there are 938 separate treatment standards for hazardous waste constituents found in wastewater and 924 separate treatment standards for non-wastewater hazardous waste constituents (e.g. sludges and solid materials). Many (1,093) of these treatment standards will not be changed by the adoption of the universal treatment standards. However, 325 of the new EPA universal treatment standards are more stringent than the Departments's current authorized standards and will become effective nationally on December 19, 1994 because EPA promulgated these standards under HSWA. Effective December 19, 1994 EPA will enforce these standards until Oregon adopts the standards. Certain universal treatment standards, however, are less stringent (444) than those contained in the Department's current authorized program and will not take effect in Oregon until the Department has adopted them and EPA has approved them as part of Oregon's authorized program. Until then, the Department must continue to implement its more stringent current authorized standards. Therefore, beginning December 19, 1994 hazardous waste generators and hazardous waste management facilities will need to comply with two different sets of LDR regulations: (1) the Department implemented regulations containing standards that are more stringent than some of the revised universal treatment standards; and (2) an EPA implemented LDR regulation containing standards that are more stringent than the Department's existing treatment standards.

This conflicting regulatory authority will (1) create confusion within the regulated community; (2) require the regulated community to meet more stringent Department authorized standards for certain hazardous waste constituents and certain hazardous waste streams; (3) create and increased workload for the regulated community and the Department to determine the applicable treatment standards for specific hazardous waste constituents; and (4) create confusion and potential conflict between the Department and EPA over which treatment standards apply for certain hazardous waste constituents, and over specific implementation requirements in the LDR program. Having different treatment standards for the same hazardous constituents in different regulations being implemented by two agencies is neither necessary nor good policy.

Confusion in the regulated community may result in negative effects including: (1) increased potential for noncompliance because of misunderstanding of the correct standard; (2) degradation of the positive relationship between the Department and the regulated community; and (3) increased incidents that might have been avoided through expediency and simplicity of process.

The universal treatment standards will change the current LDR program in which hazardous waste constituents generally have a different treatment standard for each hazardous waste stream, to a program in which the treatment standards for a hazardous waste constituent is the same for all hazardous waste streams in which the constituent is contained.

Therefore, to avoid confusion and conflict within the regulated community and with EPA, and to simplify the LDR program, the Department proposes to adopt by temporary rule the 40 CFR Part 268 requirements of the September 19, 1994 EPA final rule, including the universal treatment standards and the new organic toxicity characteristic waste treatment standards at the Environmental Quality Commission meeting on December 2, 1994. If the new

standards adopted on December 2, 1994 become effective December 19, 1994, they will expire 180 days later on June 16, 1995. Permanent rules would be proposed for adoption by the Commission its meeting on May 19, 1995. In conjunction with the temporary rulemaking, the Department will seek an expedited authorization approval from EPA Region 10 to implement the new universal treatment standards as quickly as possible (See attachment C).

4. Documents Relied Upon:

U.S. Environmental Protection Agency, 59 FR, 47980, September 19, 1994; and the Universal Treatment Standard proposal, 58 FR 48092, September 14, 1993.

5. Justification of Temporary Rule:

See attached statement.

6. Documents are available for public review during regular business hours, 8 a.m. to 5 p.m., Monday through Friday, on the 8th Floor, at the Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

ON BEHALF OF THE
ENVIRONMENTAL QUALITY COMMISSION

Date

Lydia Taylor, Interim Director

Statement of Findings of Serious Prejudice
and
Attorney General Approval of Temporary Rule Justification

Agency: Environmental Quality Commission

Temporary Rule: Amendment of OAR 340-100-002(1) to adopt temporarily by reference universal treatment standards and toxicity characteristic waste treatment standards found in the Federal Register volume 59, page 47982, 40 Code of Federal Regulation, Part 268, September 19, 1994, effective December 19, 1994.

1. The Environmental Quality Commission finds that its failure to take this rulemaking action promptly will result in serious prejudice to the public interest and to all individuals and groups that are subject to Oregon's hazardous waste management program and the EPA authorized hazardous waste management program.

2. This finding of serious prejudice is based upon the agency's conclusion that the following specific consequences would result from failure to take this rulemaking action immediately:

a. Confusion among hazardous waste generators, hazardous waste management facilities, the Department, and EPA because of the differences between the old federal (state implemented) and new universal treatment standards and difficulty in determining which treatment standards apply.

b. The regulated community will be forced to comply with two different sets of LDR regulations: (1) the Department implemented regulations containing some treatment standards that are more stringent than some of the revised treatment standards; and (2) an EPA implemented LDR regulation containing some standards that are more stringent than the Department's existing treatment standards.

c. The regulated community will need to meet more stringent Department authorized treatment standards that are based on analytical detection methods that have since been revised or technology that EPA has determined is no longer the best available technology.

d. Confusion and potential conflict between the Department and EPA over which treatment standards apply to certain hazardous waste constituents, and over specific implementation requirements in the LDR program.

e. The regulated community would not be able to use the new simplified reporting and record keeping requirements for the LDR program.

3. The agency concludes that waiting until May 1995 to adopt the rule permanently will result in the consequences stated in paragraph 2 above.

4. This temporary rulemaking action will avoid or mitigate these consequences by establishing a single set of universal treatment standards and a simplified LDR program to apply in Oregon.

ON BEHALF OF THE COMMISSION:

Date

Lydia Taylor, Interim Director

I have reviewed this temporary rule as required by Oregon Laws 1993, Chapter 729, Section 6, and find that the above statement of agency findings is legally sufficient. I therefore approve this rule as required by, and for the purposes of, Oregon Laws 1993, Chapter 729, Section 6.

Date 11/15/94

Assistant Attorney General

Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

October 25, 1994

Attachment C
Agenda Item F
EQC Meeting 12/2/94

Mr. Randy Smith, Division Director
Hazardous Waste Division
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: LDR Phase II Rule Adoption and Authorization

Dear Randy:

As you know, EPA adopted and published the Land Disposal Restrictions (LDR) Phase II rule as final on September 19, 1994. We support the effort to simplify and clarify the LDR program by establishing universal treatment standards. However, as we review the new universal treatment standards against those in the current LDR program (for which we received authorization on October 4, 1994) some of the concentration levels are higher than the authorized LDR program and some are lower. Needless to say, this has the potential to create serious confusion among generators and management facilities, and create critical implementation and enforcement problems for our two agencies. The potential confusion is similar to that created when the TC rule was promulgated to replace the EP toxicity test in 1990.

In order to alleviate as many of the problems as possible prior to the effective date of the universal treatment standards on December 19, 1994, we have developed a strategy to overcome this situation that we would like you to consider. We are planning to go to our Environmental Quality Commission (EQC) on December 1, 1994 to adopt by reference the universal treatment standards and the treatment standards for TCLP waste as a **temporary** rule. (We would have to return to the EQC within six months for a permanent adoption.)

Concurrently, we plan to submit an abbreviated interim authorization application to your office requesting that you give us expedited interim authorization for the new universal treatment standards. Since we were only recently authorized for the old LDR program and standards, it should be a fairly quick exercise to "reauthorize" us for these new standards. Hopefully, we could get interim authorization by December 19, 1994 or shortly thereafter. By DEQ quickly revising its rules and EPA quickly authorizing the state, we should be able to work together to reduce confusion among the regulated community and ensure seamless implementation. Should any of these timeframes slip, I would like us to work together closely to resolve any issues in applying the rules.

811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993
DEQ-1

I look forward to your assistance in this effort. If you have any questions, comments or concerns, please call me at 503/229-5072 or Roy Brower at 503/229-6585.

Sincerely,

Mary Wahl, Administrator
Waste Management and Cleanup Division

cc: DEQ Hazardous Waste Managers
Paul Burnett, DEQ
Stephanie Hallock, DEQ Eastern Region
Tom Bispham, DEQ Northwest Region
Steve Greenwood, DEQ Western Region
Betty Wiese, EPA Region 10
Lauris Davies, EPA Region 10
Kim Ogle, EPA Region 10

Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

Agenda Item G
December 2, 1994, Meeting

Title:

Proposed Adoption of a Temporary Rule Amendment to Wastewater System Operator Certification Fees (OAR 340-49-065)

Summary:

The Department proposes that the Environmental Quality Commission adopt a temporary rule amendment which would suspend implementation of the recently adopted fee schedule increase under OAR 340-49-065, for a period of 180 days or until May 30, 1995. The temporary rule amendment would also reinstate the fees that were in place prior to the effective date of the new fee schedule (November 30, 1994).

The temporary rule amendment is in response to the Legislative Emergency Board's request for the Department to delay implementation of fee increases, allowing the Legislature the opportunity to consider the increase through their regular legislative budget review process. The temporary rule would enable the Department to maintain continuity in administering the certification program, and would help alleviate concerns and confusion regarding fees for persons interested in certification.

Department Recommendation:

It is recommended that the Commission adopt the temporary rule amendment regarding wastewater system operator certification fees as presented in Attachment A.

Report Author	Division Administrator	Director (Interim)

November 30, 1994

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

State of Oregon
Department of Environmental Quality Memorandum†

Date: November 30, 1994

To: Environmental Quality Commission

From: Lydia Taylor, Interim Director

Subject: Agenda Item G, December 2, 1994, EQC Meeting

Statement of the Issue

On August 26, 1994, the Environmental Quality Commission (Commission) adopted an amended fee schedule under OAR 340-49-065, that increased various fees charged by the Department of Environmental Quality (Department) to certify persons as qualified to supervise the operation of wastewater collection and/or treatment systems.

Pursuant to the requirements of ORS 448.410, the Commission adopted the amended fee schedule subject to "conditions precedent" that the Department obtain approval for the fees from the Department of Administrative Services (DAS) and submit a report to the Legislative Emergency Board. DAS approval was obtained on November 8, 1994, and the full Emergency Board considered the Departments report on November 18, 1994.

In response to the Department's report, the Emergency Board requested further legislative evaluation of the need for the increased fees during the current fiscal biennium. Further, the Emergency Board requested the increased fees not be implemented pending review through the regular legislative budget process (scheduled to begin on or about January 9, 1995).

As the conditions placed on adoption of the fees have been satisfied, the amended fee schedule and associated amended rules relating to certification applications (OAR 340-49-055 and 060), also adopted by the Commission on August 26, 1994, have been placed into effect, having been duly filed with the Secretary of State, on November 30, 1994.

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

In order to respond to the legislative request, maintain continuity in administration of the Wastewater System Operator Certification Program, and alleviate concern and uncertainty for interested persons affected, the Department proposes the Commission adopt a temporary amendment to OAR 340-49-065. The temporary rule would suspend the implementation of the new fees for 180 days (until May 30, 1995) to allow legislative review of any and all aspects of the fee increase. The temporary rule amendment would also re-implement the previous fee schedule in effect prior to November 30, 1994, for this interim period.

All certificate renewal notices/applications for the period July 1, 1995 to June 30, 1997 (fees due and payable by June 30, 1995) will be mailed on or about April 1, 1995. Under the proposed temporary rule, the Department would send a renewal fee statement indicating the lower rates in effect at the time of mailing of the notice.

Background

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

The statute directs the Commission to establish a schedule of fees the Department charges persons to be certified as qualified to supervise the operation of wastewater collection and/or treatment systems. In accordance with the statute, these fees are established to generate sufficient revenue to cover the costs incurred by the Department for carrying out statutory provisions for operator certification, which include administrative rule requirements. All fees received are appropriated to the Department and dedicated to cover program expenditures.

Historically, and despite significant growth in the numbers of persons certified under the program, revenue under the then existing fee scheduled (initially adopted in 1988) provided only about one half of actual program costs. This resulted in increased reliance on supplemental funding from highly competitive and scarce Department funds, putting the certification program in jeopardy.

Authority to Address the Issue

The Commission has authority to adopt rules, including operator certification fees, under ORS 468.020 and 448.410(1)(d) respectively.

Alternatives and Evaluation

The time required for permanent rulemaking would not allow the Department to promptly suspend the fees in order to meet the request of the Emergency Board.

Summary of Any Prior Public Input Opportunity

Because of the need proceed rapidly, and because of the abbreviated time-frame of the temporary rule process, no public input has been solicited on this action. The Department's Office of Public Affairs shall make appropriate press notifications and staff of the Department's Wastewater Operator Certification Program will notify members of the standing Wastewater System operator Certification Advisory Committee of the proposed action. Additionally, the Department intends to notify all interested and affected persons (post adoption) of the temporary rule action and its implications regarding fees.

Proposed Findings

Under Oregon Revised Statute 183.335, the Commission is required to make specific findings that failure to act promptly will result in serious prejudice to the public interest or the interests of the parties concerned. These findings are contained in this Staff Report as Attachment B.

Recommendation for Commission Action

It is recommended that the Commission adopt the temporary rule amendment to OAR 340-49-065, as presented in Attachment A of the Department Staff Report together with the supporting findings presented in Attachment B.

Attachments

A. Proposed Action
B. Findings of Serious Prejudice

Approved:

Section: Thomas J Lucas

Division: Michael Downs

Report Prepared By: M. Steven Desmond

Phone: (503) 229-6824

Date Prepared: November 30, 1994

MSD:crw

November 30. 1994

A

PROPOSED
TEMPORARY RULE AMENDMENT TO

OAR 340-49-065

NOTE:

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

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

FEE SCHEDULE FOR WASTEWATER TREATMENT WORKS SYSTEMS OPERATOR CERTIFICATION

OAR 340-49-065

The following temporary rule shall be effective on filing and until May 30, 1995, ending at midnight on that day.

~~*[(1) Fee Schedule:*~~

~~*(a)*~~

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

~~*(b) All applications for a new certificate, including upgrade to a higher level, but excluding certification by reciprocity, require scheduling*~~

~~*of an examination and shall be accompanied by fee payment equal to the sum of the appropriate application fee and examination fee as shown in subsection (1)(a) of this rule.*~~

~~*(c) Grade I Conversion Fee: $20.00. Persons applying for a Grade I certificate who hold a Provisional certificate, or are recognized as an "Operator-In-Training", and who have met all minimum qualifications for Grade I certification under OAR 340-49-030(1)(a)(B) or OAR 340-49-030(1)(b)(B), must pay a conversion fee for issuance of a certificate.*~~

~~*(d) Combination Renewal for Grades I and/or II Only: $90.00. Persons having more than 1 (one) certificate pertaining to wastewater systems (wastewater collection and wastewater treatment) at Grades I and/or II must pay the full renewal fee for one certificate at $60.00 and a lesser fee for the additional certificate at $30.00.*~~

~~*(e) A reinstatement fee is payable in addition to the renewal fee for a certificate if an operator allows his/her certificate to lapse (expire). Re-examination is required for a renewal application post-marked more than 180 days after the certificate lapses (OAR 340-49-045(3)). A re-examination fee (if any) will be payable as shown in paragraph (1)(a)(C) of this rule.*~~

~~*(f) Certificate and Document Replacement – all grades: $20. Requests for replacement of damaged, stolen, or otherwise lost certificate and renewal documents.]*~~

(1)

Application Type	*Fee*
(a) New Certification — Includes Examination.	*$ 50.00*
(b) Renewal Certification (2-Year Renewal Period).	*$ 40.00*
(c) Certification to a Higher Grade — Includes Examination.	*$ 35.00*
(d) Certification through Reciprocity.	*$ 55.00*
(e) Reinstatement of Lapsed Certificate.	*$ 50.00*

(2) Persons applying for a Wastewater Treatment and Collection System Operator Grade Level I or Grade Level II Combination Renewal Certificate (OAR 340-49-030(1)(c) or (d)) must only submit a single renewal fee ($40.00).

~~*[(g)]*~~ *(3)* Fees are non-refundable upon making application, except as provided in OAR 340-49-060(2).

Statement of Findings of Serious Prejudice
and
Attorney General Approval of Temporary Rule Justification

Agency: Environmental Quality Commission

Temporary Rule: OAR 340-49-065 Relating to Wastewater System Operator Certification Fees

1. The Environmental Quality Commission (Commission) finds that its failure to promptly take this rulemaking action will result in serious prejudice to the public interest and to all individuals and groups that have an interest in the certification of operators of domestic wastewater systems (collection and treatment) in the State of Oregon.

2. This finding of serious prejudice is based upon the agency's conclusion that the following specific consequences would flow from failure to immediately take this rulemaking action:

   a) The proposed temporary rulemaking will enable the Department to maintain continuity in administration of the Wastewater System Operator Certification program by reinstating the fee schedule that was in place prior to November 30, 1994.

   b) Failure to take this action will cause confusion and uncertainty for persons interested in the Wastewater System Operator Certification Program because recently adopted rules might not accurately reflect the appropriate fee amounts and filing deadlines.

   c) Failure to adopt the proposed temporary rule prejudices the Department's ability to delay implementation of the fee increase in order to allow the Legislature the opportunity to consider any and all aspects of the fee increase through their regular legislative budget review process.

3. The agency concludes that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in the consequences stated above because:

   a) The time required for permanent rulemaking would not allow the Department to promptly suspend the fees in order to meet the request of the Emergency Board.

4. This temporary rulemaking action will avoid or mitigate these consequences by enabling the fee increase to be reviewed by the legislature prior to implementation while maintaining the agency's ability to collect fees in effect prior to November

30, 1994, in the interim.

ON BEHALF OF THE COMMISSION

12/2/94
Date

Lydia Taylor
Lydia Taylor, Interim Director

I have reviewed this temporary rule as required by Oregon Laws 1993, chapter 729, section 6, and find that the above statement of agency findings is legally sufficient. I therefore approve this rule as required by, and for the purposes of, Oregon Laws 1993, chapter 729, section 6.

12/2/94
Date

Michael B Huston
Assistant Attorney General

ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

In the Matter of Amendment of Rule 340-49-065 Relating to Wastewater System Operator Certification Fees	)))	STATEMENT OF NEED AND JUSTIFICATION OF TEMPORARY RULE

TO: ALL INTERESTED PERSONS

1. Effective December 2, 1994, the Environmental Quality Commission (Commission) is adopting a temporary amendment to Rule 340-49-065 relating to wastewater system operator certification fees.

2. Statutory Authority: The Commission has authority to adopt rules, including operator certification fees, under ORS 468.020 and 448.410(1)(d).

3. Documents relied Upon: OAR Chapter 340, Division 49;
ORS Sections 448 and 468

4. Need for Rule: On August 26, 1994, the Commission adopted rule amendments to OAR 340-49-065. Under these rule amendments, various fees charged by the Department of Environmental Quality (Department) for certifying persons in the operation of domestic wastewater treatment works (collection and treatment systems) were increased to adequately fund the Wastewater System Operator Certification program. [1].

As required by ORS 448.410 (1)(d), adoption of this new fee schedule was subject to the "conditions precedent" that the Department obtain approval from the Department of Administrative Services and submit a report to the Legislative Emergency Board. After having satisfied both conditions, the rule was duly filed with the Secretary of State, and became effective on November 30, 1994.

In response to the Department's report, the Emergency Board requested further legislative evaluation of the need for the increased fees during the current fiscal biennium. Further, the Emergency Board requested the increased fees not be implemented pending review through the regular legislative budget process scheduled to begin on or about January 9, 1995. The proposed temporary rule amendment will suspend implementation of the recently adopted fee schedule for a period of 180 days, and reinstate the previous fee schedule during this interim

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[1] In accordance with statutory requirements under ORS 448.410(1)(d), the Commission adopted the fee increase to help recover the costs incurred by the Department in carrying out statutory provisions for operator certification, including implementing administrative rules.

period, pending legislative budget review.

5. Justification of Temporary Rule: (see attached statement)

6. Documents are available for public review during regular business hours, 8 a.m. to 5 p.m., Monday through Friday. at the offices of the Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

Accessibility Information Note: These documents are available in alternate format (e.g. large print, braille) upon request. Please contact the Department's Public Affairs office at (503) 229-5677. Persons with hearing impairments can call DEQ's TTY at (503) 229-6993.

ON BEHALF OF THE ENVIRONMENTAL QUALITY COMMISSION

12/2/94
Date

Lydia Taylor
Lydia Taylor, Interim Director

State of Oregon
Department of Environmental Quality Memorandum†

Date: December 2, 1994

To: Environmental Quality Commission

From: Lydia Taylor, Interim Director

Subject: Agenda Item H, December 2, 1994, EQC Meeting

Standards, Criteria, Policy Directives and Hiring Procedures in Hiring Director of Department of Environmental Quality

Statement of the Issue

The Commission has indicated it wishes to meet in executive session to interview candidates and deliberate on the selection of a director. Prior to meeting in executive session, state law requires an opportunity for public comment on the standards, criteria, policy directives and hiring procedures to be used in this process. After consideration of public comments, the Commission may adopt and utilize these standards and procedures in recruiting and selecting a director, and may therefore meet in executive session for this purpose.

Background

Oregon's Public Meeting law (ORS 192.660) allows the Commission to meet in executive session for the purpose of interviewing candidates and deliberating on the selection of a director, provided it has first received public comment on the standards and procedures to be used in the process. Obtaining public comment on the standards and procedures also allows the Commission to maintain the anonymity of candidates (if requested at the time of application), which will encourage the broadest range of qualified candidates to apply.

The Commission, in its October 21, 1994 meeting, instructed DEQ to request public comment on the hiring standards and criteria, and set the December 2, 1994 Commission meeting for adoption. Information on the comment process, with the proposed standards and procedures, were mailed to all individuals on the "EQC Rules" mailing list, comprised of 489 individuals. The mailings (Attachment A) were made on October 27,

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

1994, with the comment period extending to November 23, 1994. Four responses were received.

Authority to Address the Issue

ORS 192.660 specifically addresses the criteria necessary for the Commission to meet in executive session. Adopting standards and procedures after consideration of public comments, 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 to formally adopt 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 adopt standards, criteria, policy directives and hiring procedures, after public input, allowing the Commission to meet in executive session to interview and discuss candidates.

3. In the proposed standards, criteria, policy directives and hiring procedures 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

The issue of standards, criteria, policy directives and hiring procedures for hiring a director was discussed by the Commission in its October 21, 1994 meeting. Following the Commission's instructions to request public comment, DEQ mailed notice of the chance to comment and the draft standards and procedures to 489 individuals on the mailing list for those interested in notice of EQC agenda items. The notice for chance to comment was mailed on October 27, 1994, and comments were requested by November 22, 1994, allowing over 3 weeks for response by the public.

RESPONSES:
Responses were received during the comment period from four individuals and organizations. Their comments are summarized below, with the original documents included in Attachment B.

Associated Oregon Industries (James Whittey) - Suggested director should possess distinct qualities, including: vision for the agency, consensus-building abilities, integrity, and other interactive skills.

City of Eugene (Christine Anderson) - Suggested director should have experience with the concerns of municipalities, be open to innovative approaches to environmental management, use a collaborative process in rulemaking, and be an effective advocate of the department's positions with the legislature.

Institute for a Sustainable Environment (John Baldwin) - Suggested director should have a science background, with experience in resource or environmental management, and that an advanced degree was desirable.

Oregon Association of Clean Water Agencies (Kevin Hanway) - Suggested director should have previous experience in environmental issues, should possess a collaborative, non-confrontational style, should understand issues facing municipalities (especially relating to "unfunded mandates") and should seek adequate funding for the department.

Conclusions

- Adoption of standards, criteria, policy directives and hiring procedures for selection of a new director, after an opportunity for public input, is necessary for the Commission to meet in executive session and to maintain the anonymity (if requested) of applicants.

- Four comments were received from the public. Most comments addressed qualities desired in a director. Several comments suggested specific experience in environmental management and understanding of the issues facing municipalities.

- The Commission may direct DEQ to immediately begin recruitment following adoption of hiring standards and procedures.

Proposed Findings

No findings are required for this action.

Recommendation for Commission Action

It is recommended that the Commission adopt the standards, criteria, policy directives and hiring procedures submitted to the Commission on October 21, 1994, with any modifications, during the December 2, 1994, Commission meeting. It is also recommended that the Commission direct DEQ to implement the adopted hiring procedures.

DEQ believes the recommendations from the public have considerable merit. After review of these comments, DEQ also believes that current language under "Standards" is adequately broad to include the intent of the commenters. Although the Department is not recommending any changes, the Commission may wish to add language to the "Standards" section, remembering the intent of the existing broad language.

Attachments

A. Chance to Comment, with Standards, Criteria, Policy Directives and Hiring Procedures
B. Letters from the Public

Approved:

Section: _____

Division: _____

Report Prepared By: Paul Burnet

Phone: 229-5776

Date Prepared: November 23, 1994

PGB:pgb
E:\WP51\EQCAGEND
November 23, 1994

Oregon Department of Environmental Quality

A CHANCE TO COMMENT ON...

STANDARDS, CRITERIA, POLICY DIRECTIVES AND HIRING PROCEDURES IN HIRING DIRECTOR OF DEPARTMENT OF ENVIRONMENTAL QUALITY

Date Issued: October 27, 1994
Comments Due: November 23, 1994

WHO IS AFFECTED:

Comments on the standards and procedures used to hire a director will be considered by the Environmental Quality Commission (EQC) prior to initiating the recruitment and selection process.

WHAT IS PROPOSED:

The proposed standards, criteria, policy directives and hiring procedures attached to this form will be used by the EQC to recruit, screen, interview and select a director for the Department of Environmental Quality. The opportunity to comment on these standards and procedures is being presented prior to recruitment so that the EQC may, in compliance with ORS 192.660 (Public Meetings) use these standards to evaluate, interview and select a director while meeting in executive session. This process will also allow the EQC to honor requests for anonymity by candidates, and will permit the EQC to attract and retain highly qualified candidates.

WHAT ARE THE HIGHLIGHTS:

STANDARDS are the minimum qualifications which an individual must meet to be considered for a position. CRITERIA are used to measure the qualifications of the candidates. POLICY DIRECTIVES are the instructions from the EQC to DEQ to conduct a proactive recruitment for a director. HIRING PROCEDURES describe the general steps used to recruit for the position.

HOW TO COMMENT:

Opportunities to provide public comment are scheduled as follows:

Written comments are strongly encouraged. There will also be an opportunity to provide oral comments during the December 2, 1994 EQC meeting in Portland.

(over)

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

FOR FURTHER INFORMATION:

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

11/1/86

Written comments must be received by 5:00 p.m. on November 22, 1994 at the following address:

Department of Environmental Quality
Office of the Director
811 S. W. 6th Avenue
Portland, Oregon, 97204

A copy of the standards and procedures may be reviewed at the above address. A copy may be obtained from the Department by calling Human Resources at (503) 229-5382 or calling in Oregon toll free 1-800-452-4011. Persons with hearing impairment can receive help by calling the Department'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 on December 2, 1994. Following consideration of public comments, the EQC is expected to adopt the standards and procedures (with revisions, as appropriate) and direct DEQ to use the standards and criteria in implementing the policy directives and hiring procedures.

ACCESSIBILITY INFORMATION:

This publication is available in alternate format (e.g. large print, braille) upon request. Please contact Paul Burnet at 229-5776 to request an alternate format.

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, or equivalent training and experience.
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.

Attachment B - Comments from the Public

P. O. Box 12519
1149 Court Street NE
Salem, OR 97309-0519

Telephone:
Salem 503/588-0050
Portland 503/227-5636
Oregon 800/452-7862
FAX 503/588-0052

Portland Office
503/227-3730
FAX 503/227 0115

ASSOCIATED OREGON INDUSTRIES

November 22, 1994

Paul Burnet
Department of Environmental Quality
811 SW Sixth
Portland, Oregon 97204

Re: Standards and Criteria for Selection of Director of Oregon Department of Environmental Quality

Dear Mr. Burnet:

Associated Oregon Industries appreciates the opportunity to comment on the proposed Standards and Criteria for Director of Oregon Department of Environmental Quality. AOI comments on behalf of our 2000 primary members statewide.

AOI agrees with the standards and criteria set forth in the proposed package but believes the Director should have more substantial educational experience than proposed. Environmental issues are difficult and AOI believes the director should have demonstrated intellectual discipline akin to at least a master's degree (or the equivalent.) In addition, AOI believes the proposed criteria do not reflect all the critical skills necessary for a successful Director. AOI would add to the standards the following:

1. **Vision.** Has vision for DEQ in the context of environmental protection and government service.

2. **Consensus Builder.** Able to work with disparate interests to achieve consensus on public policy issues. (While this may seem similar to Proposed Standard #2, "knowledge and experience" do not necessarily equate to "ability" to build consensus.)

3. **Motivator.** Able to motivate and foster loyalty among DEQ employees and stakeholders. (Again, "knowledge and experience" does not necessarily mean one can successfully motivate others.)

4. **Balanced Viewpoint.** Desires strong environmental protection at least cost burden to the state and regulated community.

5. **Communicator.** A strong communicator with experience in the political process.

6. **Perceptive.** Able to discern and understand the concerns of environmental, governmental and business entities during the development and implementation of laws and regulations.

7. **Integrity.** Does the "right thing" notwithstanding political heat.

8. **Educable.** Has the ability to learn and understand technical issues.

While AOI admits our proposals contain many intangibles, these intangibles often determine success or failure. They can be melded into one "umbrella" standard - does the candidate have leadership abilities? Without the ability to lead the agency, and the state, in setting environmental policy, any new director will fail and the agency will founder.

Sincerely,

James M. Whitty
Legislative Counsel

JMW

Public Works

City of Eugene
858 Pearl Street
Eugene, Oregon 97401
(503) 687-5262

November 21, 1994

Department of Environmental Quality
Office of the Director
811 S.W. Sixth Avenue
Portland, Oregon 97204

Standards, Criteria, Policy Directives and Hiring Procedures in Hiring Director of Department of Environmental Quality

The following are comments from the City of Eugene on the standards and procedures to be used to hire the new director of the Department of Environmental Quality.

While we agree with the list of standards and criteria which are planned to be used in hiring the new director of the Department of Environmental Quality, we would encourage the EQC to consider the following additional items, which are of importance to municipalities such as the City of Eugene. An adopted goal of the Eugene City Council is to be an exemplary environmental community - the nationally-recognized West Eugene Wetlands Plan, and the issuance to Eugene of the state's first Municipal Stormwater Permit are examples of Eugene's willingness to be proactive in environmental matters.

In addition to the listed standards, we suggest that the new Director:

- Have expertise and understanding of the issues and concerns of municipalities, and the particular fiscal constraints that are experienced by local governments.

- Be supportive of innovative approaches to environmental management. Future progress in solving remaining environmental problems may require new solutions beyond the traditional permit approaches. Watershed management, pollution trading, and pollution prevention programs will require the development of partnerships and incentives to achieve the desired improvements. Strict liability and regulatory requirements currently do not allow the implementation of some of these flexible approaches.

- Be supportive of the use of advisory committees and a collaborative process with the regulated and environmental communities to further effective rulemaking, such as is taking place with the current triennial review of water quality standards.

- Recognize the necessity to equitably regulate both point and non-point sources of water pollution, to include non-point sources in water quality management plans, and to develop the role of non-point sources in the funding strategy for the water quality program.

- Understand the importance of sound science and realistic risk assessment in the development of today's complex environmental regulations and permit conditions.

- Have the skills and ability to be an effective advocate at the legislature to pursue adequate funding for the Department's programs. A well-funded and staffed DEQ is important to the regulated community, to ensure effective and equitable regulation and enforcement.

Thank you for the opportunity to comment.

Sincerely,

Christine Andersen

Christine Andersen
Public Works Director

CITY OF EUGENE

PUBLIC WORKS DEPARTMENT
ADMINISTRATION DIVISION

FAX TRANSMISSION

Date: November 21, 1994

To: DEQ, OFFICE OF THE DIRECTOR
Fax No: 229-5850

From: James Ollerenshaw
Phone No: (503)687-5076
Fax No: (503)683-6826

This transmission contains 3 page(s) including this cover sheet.
If you do not receive all pages, please call (503)687-5076

MESSAGE:

Comment on:

Standards, Criteria, Policy Directives and Hiring Procedures in Hiring Director of Department of Environmental Quality.

UNIVERSITY OF OREGON

November 3, 1994

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
NOV - 7 1994
OFFICE OF THE DIRECTOR

Mr. Paul Burnet
Oregon Department of Environmental Quality
811 S.W. 6th Avenue
Portland, OR 97204

Dear Mr. Burnet:

At your suggestion I am putting into writing my suggestions for minimal qualifications for the new director of the Oregon Department of Environmental Quality. I must stress that I have been in Oregon for 15 years teaching environmental planning and management. I am the founding director of both the U. of O. environmental studies program and the Institute for a Sustainable Environment. I have a network of graduates that work in the DEQ so I am very familiar with DEQ policies and programs.

I believe it is reasonable to assume the next DEQ director have a science background with a minimal BA/BS in some field of natural resource or environmental management (more optimal MA/MS). It is reasonable to require 10-15 years of progressive professional experience with particular focus on standards and enforcement. In the decades to come, with a growing economy and changing public demands for environmental quality, I believe regulatory experience will be essential to a successful DEQ director.

I appreciate very much this opportunity to comment on DEQ director qualifications. Keep up the good work.

Sincerely,

John H. Baldwin

Dr. John H. Baldwin, Director
Institute for a Sustainable Environment

INSTITUTE FOR A SUSTAINABLE ENVIRONMENT
130 Hendricks Hall · Eugene OR 97403-1209 · Telephone (503) 346-3895 · Fax (503) 346-2040

oregon association of CLEAN WATER agencies

Working with more than 70 community wastewater treatment agencies to protect Oregon's water

17321 Boones Ferry Rd.
Lake Oswego, Oregon 97035
(503) 697-7511 **FAX (503) 635-1383**

November 22, 1994

Mr. Bill Wessinger, Chair
Environmental Quality Commission
811 SW Sixth Avenue
Portland, Oregon 07204-1390

Re: Comments on Criteria for Selection of Agency Director

Dear Mr. Wessinger:

The Oregon Association of Clean Water Agencies is an association of cities and special districts involved in the operation of sanitary sewage treatment facilities. Our members are subject to the regulations of the Environmental Quality Commission. Tthey are, therefore, very interested in the selection of the individual who will be guiding the administration of those regulations. At its most recent meeting our board of directors discussed the selecection process and asked me to submit its concerns to you for consideration by the Commission.

1. ACWA believes that the agency director must have previous direct experience working on environmental issues. Although administrative experience and ability are important, the issues in which the Commission and Department are involved are so frequently controversial that the Director must have credibility to step in where necessary to make recommendations and lead parties to a solution. Preferably, the candidate's past experience should include experience with both water and air quality issues. Given the continuing trend toward coordination of resource planning issues, it would also be desirable for the candidate to have experience in or exposure to watershed and basin planning approaches.

2. ACWA has been very pleased at the relationship DEQ has forged in the past few years with municipalities and with others in the regulated community. As you are well aware, the agency has become much less confrontational in its regulatory approach. This has been largely due to the Director's decision to work with the regulated community to prevent violations rather than to act primarily in the role of inspecting and punishing violators. To continue to reap the benefits of that approach, the second key consideration

for the Commission should be to identify a candidate who has a similar collaborative style. The agency and the state's citizens will be much better served if the regulated community trusts the agency's and its decision makers. A confrontational approach results in municipalities and others trying to hide what might conceivably be viewed as violations. Instead they should be encouraged to believe that when they call the agency, the persons responding will try to cooperate with them to develop a solution rather than to punish or to make an example.

3. Finally, ACWA members believe it would be useful for the agency director to understand the issues facing municipalities. ACWA members have a genuine commitment to maintaining the quality of Oregon's streams and rivers. They share the agency's belief that these are critical to the Oregon quality of life and must be protected. However, just like state agencies, municipalities are facing funding restrictions that grow increasingly severe, and the voters' willingness to approve bonding for major improvements is much less reliable. In the face of that crunch, it is important that the agency director be committed to the concept of "no unfunded mandates" for municipalities. That is, agency directives to implement new programs and regulatory schemes must be accompanied by the funding to do so, because the funding simply is not there at the local level to assume the load. In addition, the agency must continue its commitment to adequately staff its own programs so that municipalities do not find themselves in the position of knowing that some regulations may apply but finding that the agency has not adequately staffed the program or has not adopted rules in a timely manner.

We appreciate the Commission's request for comments on the director selection process. On behalf of municipalities we would be pleased to participate in that process. Please contact me or ACWA Chair Cathryn Collis (823-7115) if we can assist in the process or if you have any questions.

Sincerely,

Kevin Hanway
Executive Director

cc: Paul Burnett

Telefax Transmission

DATE: 11 / 22 / 94

OF PAGES TO FOLLOW 2

TO: Paul Burnett
EQC

FROM: Kevin Hanway

WESTERN ADVOCATES INCORPORATED
17321 SW BOONES FERRY ROAD
LAKE OSWEGO OREGON 97035
PHONE: (503) 635-1224
FAX: (503) 635-1383

NOTES:

State of Oregon
Department of Environmental Quality Memorandum†

Date: November 25, 1994

To: Environmental Quality Commission

From: Lydia Taylor, Interim Director

Subject: Agenda Item I, December 2, 1994, EQC Meeting

Draft Report to the 1995 Legislature on Implementation of Rigid Plastic Container Law, including Status of Plastic Recycling;

Statement of Purpose

This Report is in response to direction from the 1993 Legislature to report to the 1995 Legislature on implementation of Oregon's Rigid Plastic Container Law, and, based on that implementation, any recommendations for statutory changes; and on the status of plastic recycling programs in Oregon. (Section 4, chapter 568, Oregon Laws 1993) The Environmental Quality Commission at its October 21, 1994 meeting when it considered adoption of rules implementing the Rigid Plastic Container Law also identified some issues of interest which had arisen during the rulemaking. Those issues are incorporated into the Report.

Through a budget note, the 1993 Legislature also required a Report on the success of all recovery technologies (including pyrolysis) which reduce the amount of solid waste now being diverted from landfills and on attaining the broad objectives of ORS 459.015. That Report will be the subject of an Information Item at the Commission's January 1995 meeting.

Authority of the Commission with Respect to the Issue

The Commission is authorized to adopt rules implementing the Rigid Plastic Container Law. At its October 21, 1994 meeting, members of the Commission expressed interest in considering recommendations to the 1995 Legislature concerning this Law. The 1995 Legislature may choose to amend the Law as a result of information in this report or upon request from affected persons. In that case, the Department rules would have to be amended in 1996 to incorporate any legislative changes.

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

Summary of Public Input Opportunity

A draft of the Report was sent to Implementation Task Force members for their comment. Their comments have been incorporated where appropriate. Several members of the public also requested copies of the draft report.

Intended Future Actions

The Commission's comments will be incorporated into the Report, and the Report will be distributed to the 1995 Session of the Oregon Legislature.

Department Recommendation

It is recommended that the Commission discuss the issues contained in the attached Report, and provide advice and guidance to the Department as appropriate.

Attachments

A. Report to the 1995 Legislature on Implementation of Rigid Plastic Container Law, including Status of Plastic Recycling in Oregon

Approved:

Section: E. Patricia Vernon

Division: E. Vernon (Acting)

Report Prepared By: Deanna Mueller-Crispin

Phone: 229-5808

Date Prepared: November 23, 1994

rptto
11/23/94

IMPLEMENTATION OF OREGON'S

RIGID PLASTIC CONTAINER LAW

REPORT TO THE 1995 OREGON LEGISLATURE

DRAFT

Department of Environmental Quality

November, 1994

Table of Contents

Purpose

The purpose of this Report is to comply with direction from the 1993 Oregon Legislature for the Department of Environmental Quality (Department, DEQ) to report to the 1995 Legislature on the implementation of Oregon's Rigid Plastic Container Law, and, based on that implementation, any recommendations for statutory changes. The Report is also to cover the status of plastic recycling programs in Oregon.

Summary of Public Input Opportunity

In the course of rule development for the Rigid Plastic Container Law, the Department established three Task Forces. They identified issues to be addressed in this Report (see page 3, "Rule Development/Implementation"). (Section 4, Chapter 568, Oregon Laws 1993) The Environmental Quality Commission (Commission) at its October 21, 1994 meeting also identified some issues of interest which had arisen during rulemaking. This Report incorporates those issues. A draft of this Report was sent to Implementation Task Force members who had the opportunity to comment on all the issues and options presented. Their comments have been incorporated where appropriate. Several members of the public also requested copies of the draft report.

Background

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 recycled content requirements for various commodities including paper and glass.

The Rigid Plastic Container Law, as a result of compromise, included a number of compliance alternatives for rigid plastic containers, including a minimum aggregate recycling rate, reuse, or recycled content requirements. The Law required the Department to report to the 1993 Legislature on whether to grant an exemption from the criteria established for rigid plastic containers that cannot meet the recycled content criterion and remain in compliance with United States Food and Drug Administration regulations. In that

Report[1] the Department recommended reducing the options to two (recycled content or reuse), with a recycling fee for product manufacturers unable to meet either of those options. The recycling fee would be assessed on product manufacturers, and would help create a level playing field within the market between manufacturers who meet and do not meet the standards. It would be based on the estimated number of non-complying containers sold in Oregon. Funds from the recycling fee would be used to enhance plastics recycling programs and stimulate markets for recycled plastics.

The 1993 Legislature did not enact the Department's recommendation, but did amend the Law adding certain exemptions and delaying enforcement action by DEQ.

The Law requires that by January 1, 1995 rigid plastic containers comply with one of the following options:

a. Use 25% recycled content, or

b. Meet a 25% recycling rate, or

c. Be reusable/refillable, or

d. Be reduced (exemption provision under ORS 459A.660(3)(d)).

Under the recycling rate option, the 25 percent recycling rate can be met by rigid plastic containers as a whole, by a certain type of container, by a certain resin type, or by an individual company (or brand).

In analyzing the statute and its implementation during rulemaking and in preparing the 1993 Report to the Legislature and this Report, it became evident that not all the options are available to all product manufacturers. For example, the minimum recycled content may not be available to food and cosmetic manufacturers for health and safety reasons. As a practical matter, the recycling rate option will probably be the principal compliance option chosen by most product manufacturers.

Many of the issues addressed in this Report stem from the concern of the regulated community that provisions of the rules and/or statute prevent or make very difficult their compliance with some of the options provided in the Law. Industry has argued that the Oregon Law is federally preempted in some respects and that various types of products should therefore be exempted from the Law because not all product manufacturers can avail

[1] "Rigid Plastic Container Exemption Report," Report to the Legislature by Oregon Department of Environmental Quality, December, 1992. See attached Executive Summary.

themselves of all options (see body of Report). If all containers that cannot use recycled content were exempted from compliance, this would exempt a very large part of the rigid plastic container wastestream. It should be noted that if rigid plastic containers in the aggregate are being recycled in Oregon at a 25 percent rate, *all* rigid plastic containers are deemed to comply with the Law. A "recycling rate for compliance purposes" will be determined by the Department by January 1, 1995. If that rate is at least 25 percent, then the compliance difficulties cited in this Report are much diminished, both for 1995 and as long as the recycling rate remains at or above 25 percent. If the recycling rate for compliance purposes is at least 20 percent but less than 25 percent, the Department also has the option initially of determining that a substantial investment has been made to achieve the rate and that it will likely be met within two years. A positive determination would result in a two-year exemption from the requirements of the Law.

In considering options for the future shape of the Rigid Plastic Container Law, the Department suggests that the following basic approaches exist:

1. Leave the Law as it is, considering "fixes" discussed in this Report to make it work better.

2. Retain existing "options" law, but increase the recycling rate so plastics is comparable to other packaging materials.

3. Change the Law to a straight "recycled content" law, with a recycling fee on containers which cannot comply (per 1993 Legislative Report).

4. Mandate curbside recycling of rigid plastic containers.

5. Change the Law to include a recycling fee for otherwise non-compliant rigid plastic containers to be used for market enhancement for plastics.

Rule Development/Implementation

DEQ established three Task Forces in November 1993 to help develop rules to implement the Law. The Task Forces met approximately monthly until September 1994. Their membership was diverse, and included representatives of the regulated community. A number of major issues arose during rule development which could not be resolved either because of conflicting interests among the affected parties, or because they could not be accommodated under Oregon Law.

At its final meeting on September 14, 1994 the Implementation Task Force considered issues which should be included in this Report to the Legislature. They felt these included issues which arose during the rule development and which needed to be addressed and resolved, but which could not be done by rule either because of lack of consensus among affected parties or because of the specificity of the statute itself. As a representative of the Attorney General's office pointed out at the October 21, 1994 EQC meeting, statute establishing the Rigid Plastic Container law is very specific, spelling out definitions, mandates and exemptions; it is not a "delegated" law in the sense of providing broad discretion for the EQC to fashion interpretive rules. Issues identified for inclusion in this Report are:

1. Exemptions for FDA, FIFRA, US DOT and USDA-regulated packaging (federal preemption).

2. Use of "reduced container" exemption by products and containers introduced after January 1, 1990.

3. Compliance or exemption for point-of-sale packagers such as take-out food vendors.

4. Pyrolysis of plastics and definition of recycling.

5. Definition of "rigid plastic container:" any container meeting the basic criteria and holding between 8 oz. and 5 gallons vs. "complete package."

6. Compliance for newly-introduced products and containers.

7. Corporate averaging: allowing a company to achieve compliance by averaging across product lines and/or across compliance options (e.g. use over 25% recycled content in some containers to balance out other containers which cannot use recycled content because of federal regulations, for an overall "average" of 25% recycled content).

8. Hazardous materials in containers which may enter the rigid plastic container recycling stream.

9. Compliance and enforcement: timing.

10. Enforcement: other issues.

11. Timing of waste composition study: Annual? Fiscal year, calendar year, other?

12. Enforceability of data collection.

13. "Appeal" process (waste composition study/recycling rate).

The first five of the above issues were identified by the Commission at its October 20, 1994 work session as areas requiring additional discussion. Staff discussed these more fully at the October 21 regular EQC meeting. The Commission was especially interested in receiving additional information on use of pyrolysis as a technology, and a related policy issue, how pyrolysis should be considered in the solid waste management hierarchy. The Chair stated that the Commission should note revisions needed from a practical and enforcement standpoint.

Issues and Discussion/Options

This Report discusses the issues listed above, focusing on why they are a problem, why they could not be resolved by rule, and giving options to address them. A number of the issues and options were presented to and discussed by the Rigid Plastic Container Task Forces in their work developing the rule. Concepts in this Report are not, however, restricted to those which were subject to Task Force discussion. Others were identified during the public comment process and still others have been included to give the Legislature a more complete picture of possible ways to achieve reuse, reduction and recycling of rigid plastic containers.

1. FEDERAL REGULATION OF CONTAINERS AND FEDERAL PREEMPTION.

While there are no federal packaging standards applying specifically to rigid plastic containers as a general class, a number of federal regulations apply to packaging of various categories of consumer products. Many of these regulations severely restrict or prevent use of some of the compliance "options" for rigid plastic containers in the Law. The Department's Rigid Plastic Container Exemption Report to the 1993 Legislature examined federal regulations affecting the use of recycled content in rigid plastic containers; that Report noted that over half of the rigid plastic containers sold in Oregon contain state or federally regulated products. A Department memo to the Implementation Task Force (February 9, 1994) further discussed "Compliance with Rigid Plastic Container Law When also Regulated by Federal Government."

During the public comment period on the proposed rules, affected industries submitted information to the Department describing how federal regulations impede compliance with various "options" of the Rigid Plastic Container Law, and stating their belief that federal regulations preempt state Law in this area.

Following is a summary of these federal regulations, and then a summary of the preemption issue.

A. 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. Neither has the FDA issued guidelines for use of recycled content in cosmetics.

B. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Pesticides are covered under FIFRA and must be registered. Proposed federal rules would regulate some aspects of packaging of pesticides. The proposed federal regulation would specifically regulate certain container design requirements for non-refillable and refillable pesticide containers. (See also Section 8, Recycling of Hazardous Material Containers)

C. Hazardous Materials Transportation Act. Regulates the transportation of hazardous materials. In general the regulatory environment for hazardous material packaging is very detailed. 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.

D. US 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.

Federal Preemption. A number of affected persons commented that some or all of the federal regulations noted above "occupy the field" vis-a-vis packaging of the products they regulate.

In particular, language in 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 Rigid Plastic Container Law specifically spells out several exemptions, including drugs, medical devices, medical food and infant formula. No other exemptions were specified for products regulated under the above federal regulations. The Attorney General's Office researched this issue and has provided the Department with written advice that FIFRA, the Food, Drug, and Cosmetic Act (FDC), and US DOT's regulations for hazardous materials do not preempt ORS 459A.655. The "short answers" provided stated that:

a. Oregon Law (ORS 459A.655) does not clearly impose "additional" or "different" packaging requirements proscribed by FIFRA.

b. The FDC 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.

c. Because Oregon Law does not directly regulate the transportation of hazardous materials, the US DOT Act and regulations do not appear to preempt it. Conflicts with the federal rules would occur only if US DOT regulations mandated use of a specified rigid plastic container for sale of a product and that container failed to comply under Oregon Law.

While federal preemption is not necessarily a legal issue (based on the above Attorney General's advice), the Department agrees that certain of the existing compliance options may be precluded by these federal laws. The recycling rate option is available to all product manufacturers.

Others have argued the preemption issue differently. For example, they point out that all containers (included rigid plastic containers) used to ship hazardous materials must meet prescribed US DOT standards. They maintain that this requirement and similar provisions under FIFRA create de facto if not de jure preemptions.

Options:

a. Keep Law as it is. The Attorney General has advised the Department that federal preemption is not necessarily an issue.

b. Declare that products regulated by FIFRA and/or US DOT are exempt from regulation under the Rigid Plastics Container Law.

c. Change the implementation date for FDA and/or US DOT-regulated products to offer additional time for compliance other than with the recycling rate option (e.g. two years). These products may be able to comply if given more time. (Packaging holding foods and cosmetics has a two-year compliance waiver and US DOT-regulated products a one-year exemption in California.)

d. Provide additional compliance options for federally regulated products (e.g. a reduced container compliance *option*, recycling fee [see discussions in Sections 2 and 3]). (Not discussed by Task Forces)

e. Exempt federally regulated containers in cases where the only realistically available compliance option is the recycling rate, since individual manufacturers do not totally control that rate.

2. REDUCED CONTAINER EXEMPTION

Problems with use of the recycled content compliance option were noted in the previous Section for some types of products (notably food and cosmetics products). Manufacturers of some of these products have said that, if the overall recycling rate is not met, the only realistic option they have is to switch to a "reduced container," which would allow a five-year exemption. In their view, this exemption does not

work for products introduced after January 1, 1990, effectively leaving them with no compliance options (other than the aggregate recycling rate, over which the product manufacturer has little control). The impediment is the statutory requirement for a five-year comparison to be made in order to calculate the container's 10 percent "reduction."

A container reduced by 10% as compared to the same container used for the same product **five years previously** is eligible for a five-year exemption. (ORS 459A.660(5)(d)) This means that if a product and container were not in existence on January 1, 1990, that product is not eligible to use the "reduced container" exemption on the effective date of the Law (January 1, 1995). The container could potentially qualify for a "reduced container" exemption once five years had expired after its introduction, so that the required five-year comparison could be made. However, the container would have to use another compliance option in the meanwhile.

The legislative intent of the exemption was interpreted differently by different DEQ 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 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. Requiring a non-reduced container to be on the market for five years before reducing its weight (to qualify for the exemption) seems to thwart the intent of the Law which is to reduce the amount of waste packaging material. The "solid waste management hierarchy" (ORS 459.915(2)) places source reduction before recycling; use of the reduced container exemption would follow that priority. Other Task Force members felt the exemption was meant to be one-time for products in existence on January 1, 1990. They said that the problem with plastics in landfills is based on their volume, not their weight, and that the real problem is that plastics recycling lags behind recycling of other packaging materials. During the public comment process some members of the public said that a 10 percent reduction in container weight does little to solve the problem of low recycling rates for plastics and thus should not qualify for an exemption. Expanding use of the exemption, in their view, would not contribute to recyclability or demand for recycled content. They would prefer this exemption to be eliminated, or to require a larger reduction (e.g. 20%) to qualify.

The Oregon Attorney General's Office 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.

Product manufacturers have noted that a new product introduced into the market today cannot use the "reduced container" exemption. They reason that there should be some compliance option (other than recycling rate) for new products in containers prevented from using recycled content or unable to be reused or refilled. Suggestions have ranged from allowing some period of time from the product's introduction (e.g. one to five years) for the manufacturer to develop a "reduced container," to establishing a compliance waiver (e.g. one year) for newly-introduced products. See Section 6 for further discussion of newly introduced products.

Options:

a. Leave Law as it is. The "source reduction" exemption was apparently meant for containers in existence when the original law was passed. Containers introduced after January 1, 1990 must use one of the "compliance options" rather than being allowed to use an exemption.

b. Modify the "reduced container" exemption. Allow a container introduced after January 1, 1990 and reduced by 10% by January 1, 1995 to qualify for the exemption. This removes the "prejudice" against containers not in existence on January 1, 1990, but does not address containers introduced after the effective date of the Law.

c. Modify the "reduced container" exemption. Allow a container introduced after the effective date of the law a given period of time (e.g. 60 days as allowed by California, or one year, etc.) to make a 10% reduction. This allows newly introduced containers, for which it may be difficult or impossible to use other compliance options, to qualify for this exemption.

d. Remove the reduced container *exemption* altogether. Change it to an on-going compliance option (with some given period of time in which newly introduced containers could come into compliance); the option could be renewable if the container met additional reduction criteria.

e. Increase the required weight reduction (e.g. from 10% to 20%). Some feel that 10% is not significant enough and an increase would make this exemption more comparable to other options in addressing plastics in the waste stream. (Not discussed by Task Forces)

3. COMPLIANCE FOR POINT-OF-SALE PACKAGERS.

Oregon statute defines a "product manufacturer" as "the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon." A "package" is "any container used to protect, store, contain, transport, display or sell products." In general terms a product manufacturer is a person who puts a product into a rigid plastic container for sale. This includes retailers such as food vendors who use rigid plastic containers for take-out foods and deli products. The product manufacturer is the person responsible for keeping records and reporting to the Department on compliance with the Law. (See DEQ Discussion Paper: "Reduced Container Exemption," February 3, 1994)

The foodservice, grocery and plastic industries have commented on the difficulty or impossibility of compliance with the Law by point-of-sale packagers (foodservice industry, take-out foods, etc.), and even to determine whether the containers they use comply with the Law. 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. These are often small businesses, and documentation of compliance could be extremely burdensome.

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 believes that legislative intent appears clear to include single-service containers, while recognizing that small point-of-sale packagers may have few resources to implement the Law. The rigid plastic container rules as adopted ease the compliance burden for small product manufacturers in two ways:

a. Recordkeeping. 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.

b. Penalty schedule. The enforcement schedule 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.

Although not discussed by the DEQ Task Forces, a recycling fee might be one option for addressing compliance for rigid plastic containers, such as those used by point-of-sale packagers, which now cannot avail themselves of some of the existing options. Similar to the concept put forward in the Department's 1993 Report to the Legislature, a recycling fee could be assessed on packaging not meeting reduction, reuse, recycled content or recycling goals. It is meant to promote those goals. Its rationale is that the price of packaging (especially packaging using virgin materials) doesn't include all the true costs of producing and using the packaging (e.g. resource extraction, packaging production, disposal). The fee could be used to support recycling programs for point-of-sale rigid plastic containers or to otherwise promote markets for plastic recycling. The fee would normally be assessed on the container manufacturer (in the case of point-of-sale packagers) or on the product manufacturer. Containers complying with recycled content requirements (or other specified options) would not be subject to the fee; other containers would. For example, the State of Florida has imposes a fee with a unit charge of $.01 for each packaging item not meeting recycling or recycled content goals. (Note: as of October 1994, 60% of Florida's container industry had met those goals and qualified for exemptions to the fee.)

Options:

a. Leave Law as it is. There are equity issues involved in treating products equally (e.g. potato salad sold in a rigid plastic container in the dairy section of a grocery store vs. bulk potato salad sold in the deli section and put into a rigid plastic container for sale). The public perceives single-service food containers to be a disposal problem. The rules offer relief to small-volume product manufacturers.

b. Exempt small point-of-sale packagers. Could either exempt on number of rigid plastic containers sold, overall sales volume, or other factors. Would further relieve small businesses from burden of recordkeeping, potentially switching type of packaging used, etc.

c. Exempt all point-of-sale packaging by stating that a container must "store" a product to be regulated under the Law. The California rule states that a container "stores" a product if it "normally holds the product for more than seven days."

d. Put a recycling fee on point-of-sale containers, exempt them from further compliance, and use fee proceeds to increase recycling options for single-service rigid plastic containers. (Not discussed by Task Forces)

(Note: Options dealing with food packaging discussed in other Sections, such as FDA regulation, would address point-of-sale packaging concerns as well.)

4. 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, monomers for plastic products and synthetic materials for clothing.

There was discussion during the 1993 Oregon legislative session as to whether pyrolysis of plastics should be classified as "recycling." The Legislature declined to make that declaration, but, in a budget note, required the Department to report to the 1995 Legislature on the success of all recovery technologies (including pyrolysis) which reduce the amount of solid waste now being diverted from landfills. A report on "Recycling Technologies and the Impact of Recycling" will be the subject of an Information Item at the Commission's January 1995 meeting, and will include a section on pyrolysis at the Conrad Industries Facility in Centralia, Washington.

This question also arose during development of the rigid plastic container rules: can the pyrolysis of rigid plastic containers count toward the rigid plastic container 25% recycling rate compliance option? The Attorney General's Office 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. This provision is included in the Department's adopted rule.

Representatives of the plastics industry and others in the regulated community strongly disagree. They argue that pyrolysis constitutes recycling because it creates a "new product" (liquid hydrocarbons), pursuant to the statutory definition of "recycling." They maintain that some rigid plastic containers cannot be physically recycled into new products by pelletizing and remelting; these may be of "mixed" resins or be very contaminated. Pyrolysis may accept such plastics, with the possible exception of vinyl chlorides (#3 resin). They argue that encouraging pyrolysis would contribute to diverting plastics from landfills by returning plastics to the material from whence they originated, a liquid petroleum product which can be directly substituted for virgin petroleum. Therefore, they believe that all products of pyrolysis are appropriately included in calculating the recycling rate.

Members of the recycling community and the public have questioned the need to reduce plastics to their original feedstock (through pyrolysis) and then reprocess them into plastic materials, when they can be pelletized and remelted directly into plastics. The Environmental Quality Commission received petitions with approximately 26,000 signatures on this issue in spring of 1994.

The Department's "Recycling Technologies and the Impact of Recycling" Report to the 1995 Legislature will contain further discussion of pyrolysis and its impacts.

Options:

a. Leave Law as it is. Current recycling and solid waste law relies on distinctions between energy recovery and recycling in establishing requirements on which the State's waste reductions goals are based.

b. Modify the solid waste management hierarchy to classify all products of pyrolysis (including those that utilize the heat content or other forms of energy) as "recycling" rather than "energy recovery."

c. Change the rigid plastic container "rate" compliance option from "recycling rate" to "*material recovery* rate," and increase the rate. This would automatically include energy recovery as well as recycling in the *rate*. (Not discussed by Task Forces)

5. DEFINITION OF RIGID PLASTIC CONTAINER: "COMPLETE PACKAGE"?

The definition of "rigid plastic container" determines which containers must comply with the Law, and which containers are to be counted in calculating the rigid plastic container recycling rate.

The following are defined in the Law: (ORS 459A.650)

(1) "Package" means any container used to protect, store, contain, transport, display or sell products.

(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.

The rules establish criteria that **any** package must meet to qualify as a "rigid plastic container:"

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 Task Forces felt further refinement might be helpful to clarify whether some other items would be regulated or not, but consensus was not reached regarding additional criteria. 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. Two approaches were put forward for public comment. The first, or more inclusive, approach (supported by a majority of the Implementation Task Force) did not require that a rigid plastic container be a "complete package." The second, or less inclusive, approach (supported by representatives of the plastics industry) required a "complete package."

Members of the recycling community and the general public preferred the first approach which included a broader range of rigid plastic containers. They commented that this would help keep these items out of landfills. They felt that the public expected the whole package to be counted, and that there was no reason why a container must completely contain a product. They also commented that adoption of this approach would simplify the Department's waste composition study (see Section 11), as the surveyors would not have to worry about exemptions. Comment was also received that the definition should also include lids outright, as they are part of the container and are generally as easy to recycle as the bottom of containers.

Representatives of the plastics industry and the regulated community preferred the second approach, with its concept that the product must be contained in a "complete package" to be covered by the Law. They felt this eliminated ambiguity, in that it excludes items not normally considered containers in and of themselves (e.g., cookie trays or other types of trays which "brace" or support a product, but require additional packaging for the product to be "contained"). Some also commented that the definition should require a container to be capable of multiple reclosure, as required by the California rigid plastic packaging container program, as this is an

important distinguishing attribute of rigid plastic containers. They said this would provide concrete guidance for determining which containers are regulated.

The Department recommended, and the Commission adopted as rule, the first approach with the broader definition of "rigid plastic container." The adopted definition includes trays and lids, if they otherwise meet the criteria for a "rigid plastic container." The following considerations were taken into account by the Department in arriving at its recommendation. The Department did not believe that the notion of a "complete container" is necessarily inherent in the law. The first approach better conforms to the public's perception of a "rigid plastic container," as expressed during the public comment process. It encourages recycling and will facilitate waste sort decisions. Some elements of the California law pertaining to what qualifies as "rigid plastic container" are less broad than Oregon Law which includes the concepts of "protect, store, contain, transport, display *or* sell products" [emphasis added]. Trying to make Oregon's definition conform to California's would require an unjustified degree of interpretation. In considering the issue, some members of the Commission commented that the definition in the first approach might not correspond to what they would have chosen. However the broader definition was supported because it matches what the public perceives as rigid plastic containers.

Options:

a. Leave Law as it is. The statutory definition of "rigid plastic container" as clarified in the adopted rule is implementable, will meet public expectations, and will contribute to state recycling goals.

b. Change definition of "rigid plastic container" to match California's. This would cover a narrower universe, but would still regulate the vast majority of rigid plastic containers. (Note: the California definition excludes "point-of-sale" packaging. See discussion in Section 3 above)

c. Broaden definition to include all lids, lids are an intrinsic part of many containers and should be recycled. (not discussed by Task Forces)

6. NEWLY INTRODUCED PACKAGES

Product manufacturers have pointed out that compliance options for new products are limited under the Oregon Law as currently written. The refill/reuse option and the source reduction exemption require a base against which to measure. Since containers must comply on the date of introduction, new products and containers are

precluded from using these options, leaving only the recycled content or the recycling rate option. Especially in the case of FDA-regulated products, use of recycled content is expensive and time-consuming, and may not be possible. They note that this acts to constrain introduction of new products in rigid plastic containers into the Oregon market.

Product manufacturers have further emphasized that introduction of new consumer products into the marketplace is the result of extensive market research, product development and technological innovation; test marketing of a new product is done with risk and expense. Not all new products are successful. Manufacturers have said they need time to understand how the product will perform in the marketplace before making an additional economic commitment to add recycled content.

As mentioned under Section 2 ("Reduced Container Exemption") above, product manufacturers believe there should be some provision allowing newly introduced products to comply with the Law. They recommend a "grace period" for new products is needed. This is allowed under the California program.

Options:

a. Leave Law as it is. This may inhibit new products in rigid plastic containers from being introduced into the Oregon marketplace if the 25 percent aggregate recycling rate is not met.

b. Allow a one-year "grace period" for any container introduced after the effective date of the Law to comply with any option. This offers a phase-in period for new products and containers.

7. CORPORATE AVERAGING.

Corporate averaging would allow a firm to average across product lines (and perhaps across compliance options) to achieve compliance. It is most often mentioned in conjunction with the 25 percent 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 because of federal regulations or technical constraints. Some product manufacturers also supported allowing averaging across *all* compliance options, as allowed in California.

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.

Some Oregon manufacturers have expressed opposition to the concept of corporate averaging. Corporate averaging may tend 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 for recycled content. Smaller manufacturers feel they would be at a competitive disadvantage if their product had to use less advantageous (or more expensive) packaging just because their product lines did not give them the ability to use corporate averaging. Or worse yet, they might have to discontinue some product lines if no complying plastic package could be found. They do not want other manufacturers with more lines to be able to use different rules. The recycling community expressed doubt as to whether corporate averaging would produce better markets for post-consumer recycled plastics in Oregon, and oppose its use if it results in no change from the status quo.

Other product manufacturers have argued that allowing averaging across compliance options would facilitate use of corporate averaging by "food-only" manufacturers (whether large or small). This would let them average refill/reuse achievements or any "excess" source reduction (beyond 10 percent, in cases where such reductions are feasible) with containers incapable of using those or other options. They believe this would provide maximum flexibility for manufacturers while maintaining the overall intent of the Law. Members of the recycling community have questioned whether any option other than perhaps recycled content should be considered for corporate averaging. They point out that source reduction is an exemption, and its test is whether <u>this</u> container is reduced compared to one five years earlier; they conclude that averaging across container lines would not be appropriate to qualify for this exemption.

Allowing corporate averaging by container manufacturers might partially address this sort of potential inequity. A container manufacturer might produce "Oregon-compliant" containers by averaging 100% recycled content in, for example, paint buckets with 0% recycled content in food containers. Both large and small product manufacturers could purchase the same complying food containers.

Corporate averaging was discussed by the Department's three Task Forces in the course of rule development. (See DEQ Discussion Paper, "Company-wide/Multiple-

Packaging-Line Averaging," 3/7/94) 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 use of corporate averaging to calculate compliance.

The Department did not find an application of corporate averaging which would ensure equity for both large national and small local manufacturers. Therefore the Department did not recommend (and the Commission did not adopt) any provision for corporate averaging in the rigid plastic container rules.

Options:

a. Leave Law as it is. A solution that would not create a competitive disadvantage for either small or large product manufacturers is not readily apparent.

b. Allow corporate averaging for product manufacturers across product and/or container lines for the recycled content option only. This would encourage broadest use of recycled content.

c. Allow company-wide multiple-product-line averaging for all compliance options. This would provide greatest flexibility to manufacturers and promote efficient use of their resources.

d. Allow corporate averaging for container manufacturers across container lines for the recycled content option only.

e. Allow corporate averaging as in Option b., but extend it "beyond corporate boundaries" by the following: any "excess" recycled content (i.e. beyond the average 25 percent needed for compliance) could be used by another, separate, corporation which was unable to comply on its own. Tonnage of the "excess" content would be determined by the first corporation, and that amount would be available for the second corporation to "average" into its containers. This "excess" (or "credit") could be sold at market price. This would allow large corporations with various types of containers to invest in technology to increase recycled content as much as possible, and give them an economic incentive for doing so. It would give smaller firms which may not be able to use recycled content in their containers a compliance option they do not have under existing Law. (Not discussed by Task Forces)

f. Allow corporate averaging, but increase the required amount of recycled content for containers that can use it (e.g. detergent containers). This would create flexibility for product manufacturers but would still require some additional effort from those manufacturers and support markets for recycled plastic material. (Not discussed by Task Forces)

8. RECYCLING OF HAZARDOUS MATERIAL CONTAINERS.

As noted in above Section 1, Federal Preemption, Oregon law does not exempt from regulation under the rigid plastic container Law those containers which may contain hazardous materials. Neither did the Oregon Attorney General find a specific federal preemption for those products; thus they are regulated under the adopted rule.

Some members of the Department's Task Forces expressed concern about regulating rigid plastic containers containing hazardous materials. If included under the rigid plastic container rules, they believe that such containers may be encouraged to enter the plastic container recycling stream. Even though operators of such programs explicitly exclude these containers, the public may nevertheless bring them to recycling depots or include them in curbside collections. This is not a desirable result, as such containers inevitably include residues which may contaminate the entire recycling stream. Such containers might also create health hazards for persons handling them in general plastic recycling programs. If such containers are to be recycled, this should be done through special programs where they are handled properly and it can be assured that they go to an end use where any residues are not a problem.

Operators of recycling programs believe that the public would include this sort of container in plastic recycling collections whether or not they are regulated under the Oregon Law. They reason that if such containers are required to meet one of the compliance options, the product manufacturers using these containers may be more likely to create appropriate, separate, recycling programs for these containers which, together with their residues, would otherwise end up in landfills or illegally discarded.

<u>Options:</u>

a. Leave Law as it is. The current program structure indirectly encourages establishing separate recycling programs.

b. Encourage (e.g. through recycling fees which could be used for grants to enhance collection and recycling programs) separate recycling programs for

rigid plastic containers holding problematic products such as pesticides or oil. (Not discussed by Task Forces)

c. Mandate separate recycling programs for such containers. (Not discussed by Task Forces)

d. Exempt rigid plastic containers holding problematic products from regulation under this Law.

9. COMPLIANCE AND ENFORCEMENT: TIMING

The Law contains contradictory language concerning when enforcement is to occur and when records showing compliance must be kept. This affects compliance dates and the timing of DEQ's calculation of the rigid plastic container recycling rate for calendar year 1995. As a result, the issue of timing of compliance and enforcement was the subject of much discussion during the public comment period on the proposed rule.

Compliance Timing Problems. All rigid plastic containers must comply with the Law on and after January 1, 1995. Product manufacturers and container manufacturers must maintain records demonstrating how all rigid plastic containers comply with the Law, beginning March 1, 1995. The Department may take enforcement action, audit or request copies of the records kept by a manufacturer after: (1) January 1, 1996; **and** (2) after DEQ has calculated rigid plastic container recycling rates 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.)

Because of federal regulations to which their product packaging is subject, some product manufacturers have very limited ability to use most compliance options, leaving the 25% aggregate recycling rate as their most valid compliance option. For all compliance options other than the recycling rate, the product manufacturer is in control and clearly can and must demonstrate that a container complies on and after January 1, 1995. However, a manufacturer choosing to comply by relying on the aggregate recycling rate is faced with contradictory statutory dates: he or she must comply with the Law on January 1, 1995, and keep records of which compliance option is used by March 1, 1995. The Department must calculate an aggregate rigid plastic container recycling rate for calendar year 1995, which, logistically, cannot be completed until mid-1996. If that aggregate recycling rate must be used to determine compliance, a product manufacturer must base his or her actions, on January 1, 1995, on a rate that will not be determined for another year and a half.

Then, if in mid-1996 it is calculated that the 25 percent rate is not met, the manufacturer could be subject to retroactive enforcement actions for being out of compliance. The timing contradiction is true not only 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. There would be no way of avoiding a retroactively applied recycling rate, and retroactive enforcement.

This appears not to comport with the plain language of the statute.

Department/Task Force Solution. The recycling rate compliance option in statute states that an individual container complies 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)) This language appears to envision fixing a date for calculating a recycling rate in order to allow affected parties to prospectively determine their compliance with the Law and whether the packaging they are using is in compliance. With encouragement from the Task Forces, the Department devised an administrative solution to the above dislocation in timing. This solution is for the Department to 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."

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."

Although not specifically provided for in the Law, the administrative approach of prospectively determining a "recycling rate for compliance purposes," is, in the view of the Department, the most fair way to implement the rigid plastic container Law and is consistent with legislative intent. However, since this approach is not in statute, it could be open to interpretation or challenge.

Advantages of "Recycling Rate for Compliance Purposes" Approach. The "recycling rate for compliance purposes" will be known by December 31, 1994. This 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. If the rate is met, any product manufacturer may use the aggregate recycling rate as the compliance option for all their rigid plastic containers, and many of the problems discussed elsewhere in this Report become moot.

Recordkeeping Dates. A related issue is the statutory date of March 1, 1995 by which manufacturers "shall maintain the records...that demonstrate for all rigid plastic containers of the manufacturer, how the manufacturer has complied with one or more of the requirements [options]...or for what reason, if any, the containers were exempt...during the preceding calendar year." It is unclear whether a manufacturer must show compliance only annually, or at any given time after the effective date of the Law. The Department's rule states that a product manufacturer must document that its containers "are in compliance," which implies that compliance must be continual (whenever the Department requests records). Clarification of statutory intent would clarify recordkeeping and timing of compliance by the regulated community.

Options:

a. Leave Law as it is. The issue is addressed administratively.

b. Amend the Law to incorporate a specific provision for calculating a recycling rate annually against which compliance would be determined. Would create explicit consistency between rule and the Law.

c. Amend the Law to clarify how the timing of recordkeeping requirements fits into overall compliance requirements (e.g. specify that compliance must be demonstrated once a year, for the previous calendar year; or that recordkeeping must demonstrate continual compliance). (Not discussed by Task Forces)

10. ENFORCEMENT: OTHER ISSUES

Two other concerns related to enforcement were identified that could not be fully addressed by rule:

a. Is there a third-party cause of action?

b. Enforcement of the Law against retailers (other than those qualifying as product manufacturers).

Third-party Cause of Action. Affected parties expressed concern that a third party could initiate an enforcement action against a product or container manufacturer. The Law neither establishes nor prohibits a third-party cause of action. Some Task Force members felt there should be clarification that a third party could not bring such a suit.

Enforcement against Retailers. The Law provides that unless exempted, any rigid plastic containers sold, offered for sale, or used in association with the sale or offer for sale of products in Oregon must comply with one of the recycling (etc.) options. Product and container manufacturers are specifically required to keep records documenting compliance by their containers. Civil penalties are established for any person violating the Rigid Plastic Container Law or rules.

The issue arose of whether retailers who were not otherwise "product manufacturers" (such as a retailer who simply stocks products sold in rigid plastic containers, but who is not a "point-of-sale" packager) were subject to enforcement under this Law. Enforcement language in the statute does not specifically mention retailers. The Attorney General has advised that the Law does not appear to contemplate enforcement against persons other than product or container manufacturers. Thus, a retailer not otherwise a product or container manufacturer would probably not be subject to enforcement for selling a product in a noncomplying container [emphasis added]. (Memo from Larry Edelman, DOJ, to Jacquie Moon, DEQ, February 8, 1994, "Enforcement of ORS 459A.660 as Amended") Retailers wanted more assurance that they would not be subject to civil penalty for merely selling non-complying containers if they did not otherwise qualify as a "product manufacturer." A more positive response is not possible given current statutory wording.

Options:

a. Leave Law as it is. It is unlikely that either of these situations will arise.

b. Amend the Law to clarify that retailers who merely sell non-complying containers are not subject to enforcement actions.

c. Amend the Law to clarify that third-party actions either **are** or **are not** allowed.

11. WASTE COMPOSITION STUDY: TIMING

The Department is required by ORS 459A.035 to conduct a waste composition study at least once every two years. The study may include a measurement of the per capita waste disposal rate, or a statewide survey of the amount of waste reduced through material and energy recovery. This requirement was established to generate information which would be useful to entities needing more information about their wastestream in order to better target material recovery programs. It was not *specifically* created to provide information needed to calculate the rigid plastic container recycling rate, although it was part of the original legislation (1991 SB 66)

which also included the Rigid Plastic Container Law. The waste composition study has been budgeted for once a biennium ($180,000 per biennium).

The study must be conducted over a four-quarter period to capture seasonal variations in the wastestream. Currently DEQ and Metro cooperate in providing a state-wide waste composition study, with Metro's study covering the Portland metropolitan area. Because of the budgeting cycle, the study has been conducted on a **fiscal year** basis (July through June), with final results available in the fall. DEQ is required to calculate a **calendar year** rigid plastic container recycling rate, so the time periods do not coincide.

As can be seen from Section 9 above, calculation of a rigid plastic container recycling rate is essential to implementation of the Law. The recycling rate is calculated using an annual census of plastic processors (to determine the amount of rigid plastic containers recycled), and data from the waste composition study on the amount of rigid plastic containers disposed of in the wastestream. The rules also provide that adjustments to a previous composition study may be used as a substitute for a new composition study, since budgetary resources may not be available for annual composition studies. Task Force members stressed the importance of having information that is as current as possible. If the waste composition study is not updated annually, this may result in calculation of an inaccurate -- too low -- recycling rate (assuming that the real rate increases over time, as anticipated). Such an erroneously low rate could have severe economic consequences for manufacturers relying on the rate for compliance.

The regulated community strongly supported annual studies if at all possible, to correspond to the annual determination by the Department of the recycling rate for compliance purposes.

Options:

a. Leave Law as it is. Current rule addresses differences in timing between waste composition study and calculation of recycling rates.

b. Change the Law to ensure comparable timeframes for the various studies to be conducted in implementing the Law.

c. Allocate additional resources to increasing the accuracy of the rigid plastic container recycling rate. Options for increasing accuracy:

i. Conduct the waste composition study every year.

ii. Devote more resources to obtaining better plastics recycling data (assisting processors with data tracking, etc).

d. Require industry to pay for studies (including consulting contracts) to determine rigid plastic container recycling rates. (not discussed by Task Forces)

12. ENFORCEABILITY OF DATA COLLECTION

Another element essential to determining the recycling rate is the total weight of rigid plastic containers recycled in Oregon. The rigid plastic container rule states that the Department may use an annual recycling census of all parties directly involved in brokering, processing, or recycling post-consumer rigid plastic containers on which to base this weight. The Department will request that respondents submit information on the total amount of rigid plastic they receive.

Members of the regulated community were concerned about the Department's authority to require reporting of this information, and about the accuracy of the information. The Department does have authority, for purposes of calculating waste recovery rates, to require reporting from recycling facilities on type and amounts of recycled material collected. (ORS 459A.050(6)) The Department also has authority to bring an enforcement action against a company misreporting information in response to a recycling survey. (ORS 468.953) Violation would be subject to civil penalty.

The practical problem remains that the accuracy of some records may be poor, which may or may not be evident to the Department from the recycling numbers reported. Likewise, the Department may not be able to tell if information has been omitted or if misrepresentation has occurred.

Options:

a. Leave Law as it is. DEQ has authority to require reporting and enforce accuracy. The DEQ will continue to seek ways to increase the accuracy of the data.

b. Allocate additional budgetary resources to increase accuracy of reporting. (See Option 11.d above)

13. "APPEAL" PROCESS

As part of implementing the Law, the Department will conduct a waste composition study at least every two years, will determine a "rigid plastic container recycling rate for compliance purposes" by January 1, 1995 and each year thereafter. It will also calculate a calendar year aggregate rigid plastic container recycling rate annually on a calendar year basis beginning with calendar year 1995.

Methodologies for conducting the above are spelled out in the rigid plastic container rules (OAR 340-90-380 and -390). The rigid plastic container recycling rates are of great importance to the regulated community. Members of the plastics industry and recyclers helped the Department in developing the methodologies included in rule. The rule specifies that the Department shall publish a report discussing potential errors associated with calculation of the total tons of municipal solid waste disposed of in Oregon, information on the recycling and disposal data collection and analysis methodologies and margin of error for the percent composition of rigid plastic containers.

The Recycling Rate Task Force helped the Department in developing rules to calculate the recycling rates. The Department will call on their advice again as the calendar year 1995 recycling rate is calculated in 1996. The Department hired a contractor to develop the "rigid plastic container recycling rate for compliance purposes," and brought together an advisory Work Group to give input into that process. The Work Group's membership overlaps with that of the Recycling Rate Task Force.

The issue has arisen of how a recycling rate determined by DEQ could be appealed if an affected person does not agree with its results. The Attorney General's Office has advised that a product manufacturer could seek to challenge a rate if the Department used the rate to bring an enforcement action for non-compliance (i.e., the manufacturer relies on the recycling rate as a compliance option, but the DEQ-determined rate is less than 25%). Some persons felt that DEQ should provide a mechanism to receive public comment or challenge on the recycling rate before it is officially published, which would allow adjustments for errors or omissions to be made.

<u>Options:</u>

a. Leave Law as it is. Administrative processes exist to address these concerns.

b. Change Law to require publishing of a draft of the calendar year aggregate recycling rate with a public comment period.

Options: Future of the Program

The above are issues that could generally not be solved in the rules because the Rigid Plastic Container Law is so specific. The variety and complexity of the issues points to the variety and complexity of the material.

The American Plastics Council has devoted considerable resources over the past several months to increasing the rigid plastic container recycling rate. Their actions and the actions of others have resulted in increasing recycling opportunities for rigid plastic containers, as can be seen in the following Section, "Status of Plastics Recycling Collection Programs in Oregon." The Department will determine a rigid plastic "recycling rate for compliance purposes" by December 31, 1994. If this rate is at least 25 percent, all rigid plastic containers will be deemed to be in compliance with the Rigid Plastic Container Law starting January 1, 1995. This would alleviate many of the implementation problems discussed in this Report.

Still, assuming the recycling rate is met, it must remain at 25 percent in subsequent years for compliance to continue. The new recycling programs and the stability of plastics processors are vulnerable to a market still in its developmental stages, as evidenced by recent business difficulties or failures of some plastic processors. There needs to be thought on how best to maintain an on-going market for recycled plastics once the initial program structure is in place.

The Department suggests that options for dealing with the above include: (Only Option 1 was discussed by the Task Forces)

1. Retain existing "options" structure, but consider legislative changes to address issues identified in this report.

2. Retain existing "options" law, but increase the recycling rate (e.g. from 25 to 40%) effective three to five years in the future. The present law has caused a significant increase in the opportunity to recycle plastics, and a higher rate would likely have the same effect. This would make plastics meet the same recycling rate required of other packaging materials.

3. Remove the "options" aspect and change to a straight "recycled content" law, with fees on containers which do not or cannot comply (per 1993 DEQ Report

to the Legislature). The same conditions and arguments hold true as were presented in that Report. This would considerably simplify the Law, eliminating the need for language to deal with every special circumstance.

4. Mandate curbside pickup of some or all rigid plastic containers for recycling. Could be considered either in addition to or instead of existing mandated manufacturer compliance. Integrate rigid plastic container and solid waste collection with market development programs. It would be essential to establish a source of funding to support the recycled plastics market (as it currently will not sustain itself) if elimination of the manufacturer mandate is considered.

   Mandating curbside is the most direct way to increase the recovery rate for plastics, and would contribute to market development by guaranteeing a steady source of "raw material".

5. Change to a recycling fee program for rigid plastic containers similar to Florida program, including provision of exemptions from the fee if a certain recycling rate is achieved. This fee could be used for market enhancement for plastics. (See discussion in Section 3, Point-of-Sale Packagers)

Status of Plastic Recycling Programs in Oregon

LOCAL COLLECTION PROGRAMS

Plastics collection in Oregon has expanded greatly in recent years. The following quotation is taken from a document which was produced in late 1990:

> *"In Oregon, at least seven curbside programs and more than 20 drop-off depots accept milk jugs. Several drop sites also take dairy tubs and detergent and shampoo bottles...As 1990 ends, Oregon programs collect mostly HDPE...several drop-off depots in the Portland area accept LDPE, PS, PP and PVC."* (Decisionmaker's Guide to Recycling Plastics, produced jointly by the Oregon Department of Environmental Quality (DEQ) and the US Environmental Protection Agency (EPA) Region X, December, 1990.)

Information from annual County Recycling Reports (1993), as updated in October and November, 1994, by Department staff and the American Plastics Council, indicates that there now are over 50 curbside programs in 17 counties, and drop-off depots in 31 out of

the 36 Oregon counties. Collection program introduction or expansion is anticipated in at least eight counties in 1995.

As in 1990, the majority of local curbside programs collect milk jugs. Milk jugs also are the material most commonly collected at drop-off depots, followed by other types of HDPE.

While opportunities to recycle plastics are greatest in the Willamette Valley, all counties west of the Cascade Mountains offer at least one curbside and/or depot collection program. Thirteen counties located east of the mountains have at least one depot taking some type of plastic resin. There also are three local curbside programs in Eastern Oregon. However, residents in five other Eastern Oregon counties are provided no collection opportunities for plastics other than the #1 PET collected under the state's bottle deposit law (Oregon Bottle Bill, 1971).

1. DATA COLLECTION

Under the 1991 Recycling Act (SB66, 1991 Oregon Legislature), the state was given the authority and resources to collect data on materials collected and recovered for recycling. Data has been collected each year since 1992. Resources also were directed towards an annual waste composition study to determine which materials remained in the wastestream. The results of those studies indicate the following:

Plastics Recovery Rates. In 1992, annual resin recovery rates ranged from a high of 3,329.23 tons for #1 PET beverage containers to a low of 25 tons for #3 PVC. In 1993, material rates remained consistent: a high of 4,404.2 tons for #1 PET beverage containers to a low of 12.0 tons for #3 PVC. (See chart, next page) The annual recovery rates for 1994 will be available in the third quarter of 1995.

Resin Types Recovered, by Tons, 1992 and 1993:

	1992	1993
#1 PET Beverage	3,329.23	4,404.2
#1 PET Other*	58.5	-
#2 HDPE Milk Jugs	1,940.4	2,616.5
#2 HDPE Other	1,841.5	1,806.9
#3 PVC	25	12
#4 LDPE	1,196	1,405.7
#5 PP	359.9	340
#6 PS	471.3	399.

**Reporting methods changed*

2. PLASTICS IN THE WASTESTREAM

Results of the Oregon Solid Waste Characterization and Composition Study, 1992-93, indicated that municipal waste in the state (by weight) consisted of approximately 7.8 percent plastic in 1992. Among the four waste substreams (generator categories) studied, plastic made up 8.8 percent of commercial hauler loads surveyed and 6.9 percent of residential hauler loads surveyed. This study was conducted outside the Portland metropolitan area, as Metro, the regional government serving the Portland area, conducted a composition study in that area.

Conclusions and Recommendations

Local programs grew more rapidly as the Department began implementing the plastics portion of the 1991 Recycling Act. Most of the activity over the last four years occurred as rules were written and adopted in 1994. There were 20 new or expanded local plastics collection programs during that year, and eight new or expanded programs in six counties are anticipated for 1995. Clearly the existing law has helped focus attention on the delivery of plastics recycling opportunities at the local level.

To sustain this momentum, the state must work to insure a sustainable recycling system through upholding the 1991 Recycling Act and rules, and maintain a commitment to public education which both encourages responsible behavior and instructs participants in the proper techniques for recycling plastics. Data clearly indicate that recovery rates are increasing---and that there are still recoverable plastics still in the wastestream. These support the need to continue to develop and strengthen the infrastructure. The Department's commitment to collection and analysis is vital to formulating new policies and recommendations based on hard fact.

The level of communication and cooperation in information-gathering among all entities also has also been strengthened in the past four years. Valid data and sound cooperation among public and private groups on local, state, and federal levels can only serve to strengthen a shared commitment to preserving the environment through sound solid waste management.

Attachments

- o Executive Summary, "Rigid Plastic Container Exemption Report" to the 1993 Legislature, DEQ, December, 1992.
- o Local Plastics Collection Programs in Oregon.

Reference Documents (available upon request)

- DEQ memo to Implementation Task Force, "Compliance with Rigid Plastic container Law When also Regulated by Federal Government," 2/9/94.
- October 4, 1994 Report to the Environmental Quality Commission, Adoption of Rules to Implement Oregon's Rigid Plastic Container Law.
- Attorney General's 9/28/94 Memorandum to DEQ regarding federal preemption (included in above 10/4/94 Report).
- DEQ Discussion Paper: "Reduced Container Exemption," February 3, 1994)
- DEQ Discussion Paper: "Company-wide/Multiple-Packaging-Line Averaging," 3/7/94.
- Attorney General's 1/20/94 letter to Fred Hansen, "Recycling of Plastics and Pyrolysis.
- Memo from Larry Edelman, DOJ, to Jacquie Moon, DEQ, February 8, 1994, "Enforcement of ORS 459A.660 as Amended"

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EXECUTIVE SUMMARY
RIGID PLASTIC CONTAINER EXEMPTION REPORT

This report fulfills the requirements of Oregon Laws, Chapter 385, Section 34(e)(1) which states:

> "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 [ORS 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." (emphasis added)

This requirement is part of Senate Bill 66, referred to as the 1991 Recycling Act. The overall purpose of this Act is to increase the recovery of materials from Oregon's waste stream and to stimulate markets for recycled materials. Increased material recovery is to be achieved through improved recycling programs. Recycling markets are to be stimulated by requiring the utilization of recycled material in new products. The materials targeted to meet the recycled content requirement are newsprint, telephone directories, glass containers, and rigid plastic containers. This report deals only with the requirements for rigid plastic containers, and whether or not rigid plastic containers which hold products that are regulated by the US Food and Drug Administration (FDA) should be exempt from ORS 459A.655.

The Department submitted two draft reports for public comment during the Summer and Fall of 1992. Based on public comment and the Department's analysis, two points are very clear. First, Oregonians want increased plastics recycling opportunities and improved recycled plastics markets. Second, most of the industries which fall under FDA regulation (food, drug, cosmetic) say they cannot meet the recycled content criterion by the January 1, 1995 compliance date and remain in compliance with FDA or other federal regulations governing packaging; and, many affected parties claim they cannot meet the other criteria (options) for compliance: reuse, 25% recycling rate, or the statutory exemption if a 10% reduction in container weight is made.

The Department initially tried to address the relatively straightforward issue of whether to recommend an exemption; or if not an outright exemption then an extension of the January 1, 1995, compliance date.

From the volume of testimony received, it soon became clear that the issue is not straightforward and that basic changes are needed to this part of the law - changes which acknowledge the difficulty in obtaining FDA approvals but which also move the plastics industry toward achieving the SB66 recycling rates.

The Department recommends replacing the options in ORS 459A.655 with the requirement that all rigid plastic containers sold in Oregon contain 25% recycled content or be reusable by January 1, 1995. Any container manufacturer or product packager whose rigid plastic containers

are not reusable or do not meet the minimum content requirement by January 1, 1995 would be required to pay an annual licensing fee as of that date. Revenue from that fee would be used to improve plastics recycling in Oregon. The Department recommends setting the fee high enough to encourage manufacturers to aggressively attempt to gain FDA approval.

Some containers are exempt from meeting the options in ORS 459A.655. The Department recommends that the exemptions in ORS 459A.660(3)(a)(b)(c) be retained: (a) containers for prescribed medications; (b) containers for shipment outside the state; and (c) tamper resistant packaging. The Department recommends modifying ORS 459A.660(a) "the packages are used for medication prescribed by physicians" to "the packages are used for medication prescribed by licensed prescribing entities." The Department also recommends that containers for medical devices, infant formula and medical food be exempted to match the exemptions in the California law which is similar to this Oregon law.

The law currently requires manufacturers of rigid plastic containers to meet at least one of the criteria of ORS 459A.655 (25% recycled content, 25% recycling rate, or be reusable) by January 1, 1995. Unless the Legislature takes action and grants an exemption or, as recommended in the Department's report, makes basic changes to the law, the standards set forth in ORS 459A.655 will remain in place.

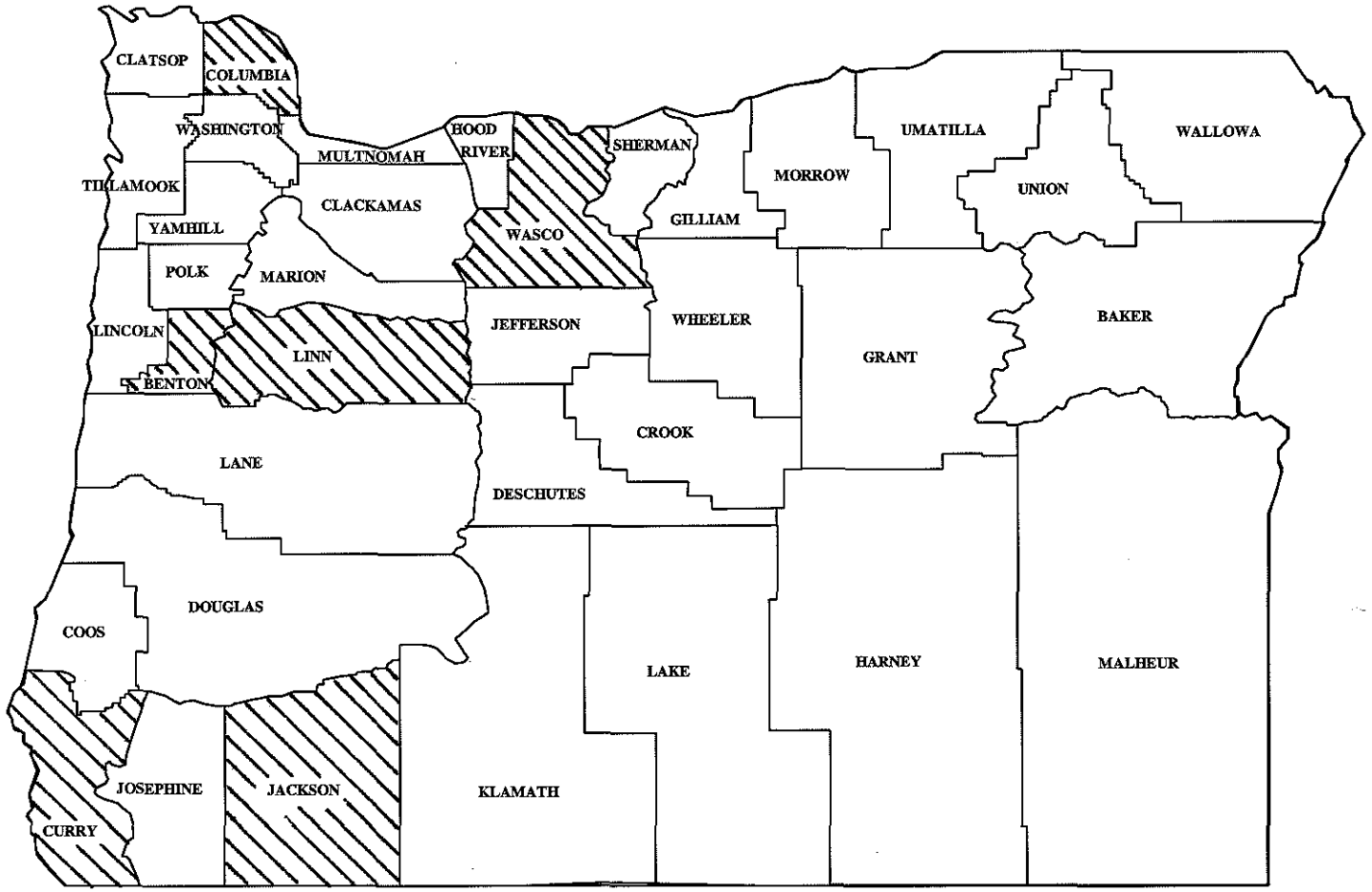
Attachment

LOCAL PLASTICS COLLECTION PROGRAMS IN OREGON

November, 1994

Collection of Resins #1 and #2
(refer to other listings for counties collecting these and additional resins).

Benton County: curbside, depot
Columbia County
    curbside: Rainier
Curry County: depot
    curbside: Brookings, Gold Beach
Jackson County
    depot: Ashland
Linn County
    curb, depot: Albany
Wasco County
    depot: The Dalles (#1 and #2 milk jugs)

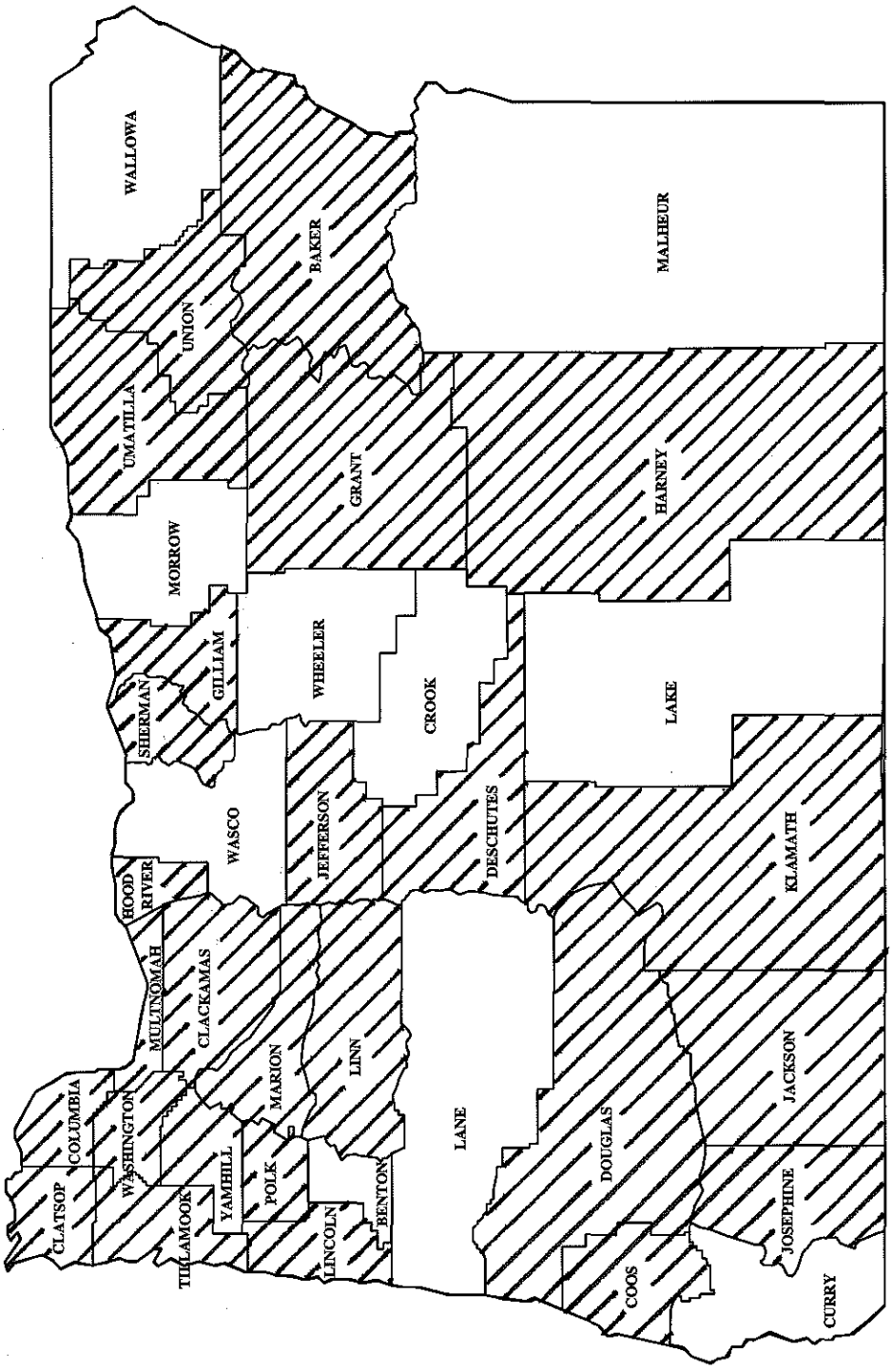


Resins #1 and 2

Collection of (only) Resin #2
(milk jugs unless otherwise noted; refer to other listings for counties collecting this as well as additional resins).

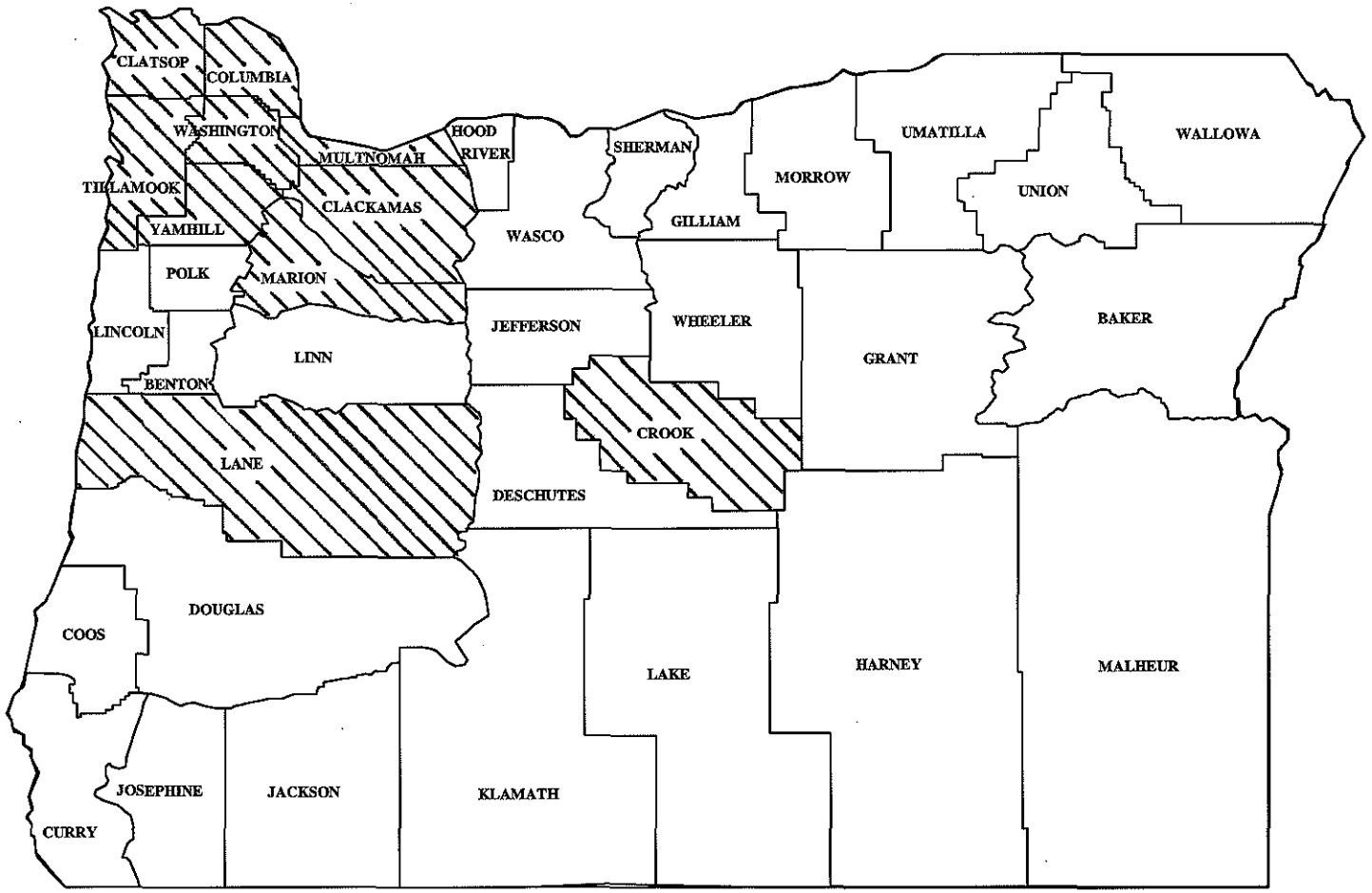
Baker County: depot
Clackamas County
curbside: Lake Oswego (all #2), Wilsonville
Clatsop County
depot: Astoria
Columbia County
depot: St. Helens
Coos County
curbside, depot: Coos Bay
Deschutes County
curbside, depot: Bend, Redmond
depot: Sunriver
Doulgas County
depot, Roseburg (all #2)
Gilliam County
depot: Arlington, Condon
Grant County: depot
Harney County: depot
Hood River County: depot
Jackson County: depot
curbside: Ashland, Central Point, Jacksonville, Medford, Phoenix, White City
Jefferson County: depot
Josephine County: depot
curbside: Cave Junction, Glendale, Gold Hill, Rogue River, Shady Cove
Klamath County: depot
curbside: Klamath Falls
Lincoln County: depot (all #2)
Linn County
curbside: Brownsville, Halsey, Harrisburg, Jefferson, Lebanon, Lyons, Scio, Sweet Home
Marion County
depot: Keizer
curbside: Aumsville, Aurora, Gervais, Hubbard, Mt. Angel, Scotts Mills, Silverton, Sublimity, Stayton, Woodburn
Multnomah County
curbside: Fairview, Gresham, Portland, Troutdale, Wood Village
Polk County
curbside, depot: Dallas, Independence, Monmouth
Sherman County
depot: Wasco
Tillamook County
curbside: Tillamook
Umatilla County
curbside, depot: Milton-Freewater
depot: Pendleton
Union County
depot: La Grande
Washington County
curbside: Aloha, Beaverton, Durham, Forest Grove, Hillsboro, King City, North Plains, Tualatin, Wilsonville
Yamhill County
curbside, depot: Amity, Carleton, Dayton, Dundee, Sheridan, Willamina, Yamhill
curbside: McMinnville, Newberg

Resin #2


WALLOWA
UNION
BAKER
MALHEUR
UMATILLA
GRANT
HARNEY
MORROW
GILLIAM
WHEELER
CROOK
LAKE
SHERMAN
WASCO
JEFFERSON
DESCHUTES
KLAMATH
HOOD RIVER
MULTNOMAH
CLACKAMAS
LINN
JACKSON
COLUMBIA
WASHINGTON
MARION
LANE
DOUGLAS
CLATSOP
TILLAMOOK
YAMHILL
POLK
BENTON
LINCOLN
JOSEPHINE
COOS
CURRY

Collection of Resins #1 through #7
(bottles unless otherwise noted)

Clackamas County
curbside: Canby, West Linn
depot, all #1-7, through Thriftway program in Gladstone, Lake Oswego, Milwaukie, Mollala, Oregon City, Sandy, West Linn, Wilsonville
Clatsop County:
depot, all #1-7, through Thriftway program in Seaside
Columbia County
depot, all #1-7, through Thriftway program in Scappose
Crook County
depot, all #1-7, through Thriftway program in Prineville
Lane County: depot, for bottles, trays and jars
curbside: for bottles, trays and jars, in Cottage Grove, Florence, Eugene, Springfield
Marion County
depot, all #1-7, through Thriftway program in Aumsville, Canby, Salem
Multnomah County
depot, all #1-7, through Thriftway program in Portland, Troutdale, Welches
Tillamook County
depot, all #1-7, through Thriftway program in Tillamook
Washington County
depot, all #1-7, through Thriftway program in Aloha, Beaverton, Tigard
Yamhill County
depot, all #1-7, through Thriftway program in McMinnville, Newberg


CLATSOP
COLUMBIA
WASHINGTON
MULTNOMAH
HOOD RIVER
TILLAMOOK
CLACKAMAS
YAMHILL
POLK
MARION
LINCOLN
LINN
BENTON
LANE
DOUGLAS
COOS
CURRY
JOSEPHINE
JACKSON
KLAMATH
WASCO
SHERMAN
GILLIAM
MORROW
UMATILLA
UNION
WALLOWA
JEFFERSON
WHEELER
GRANT
BAKER
CROOK
DESCHUTES
LAKE
HARNEY
MALHEUR

Resins #1 - 7

Collection of Resins #2,4,6
(refer to other listings for counties collecting these as well as additional resins).

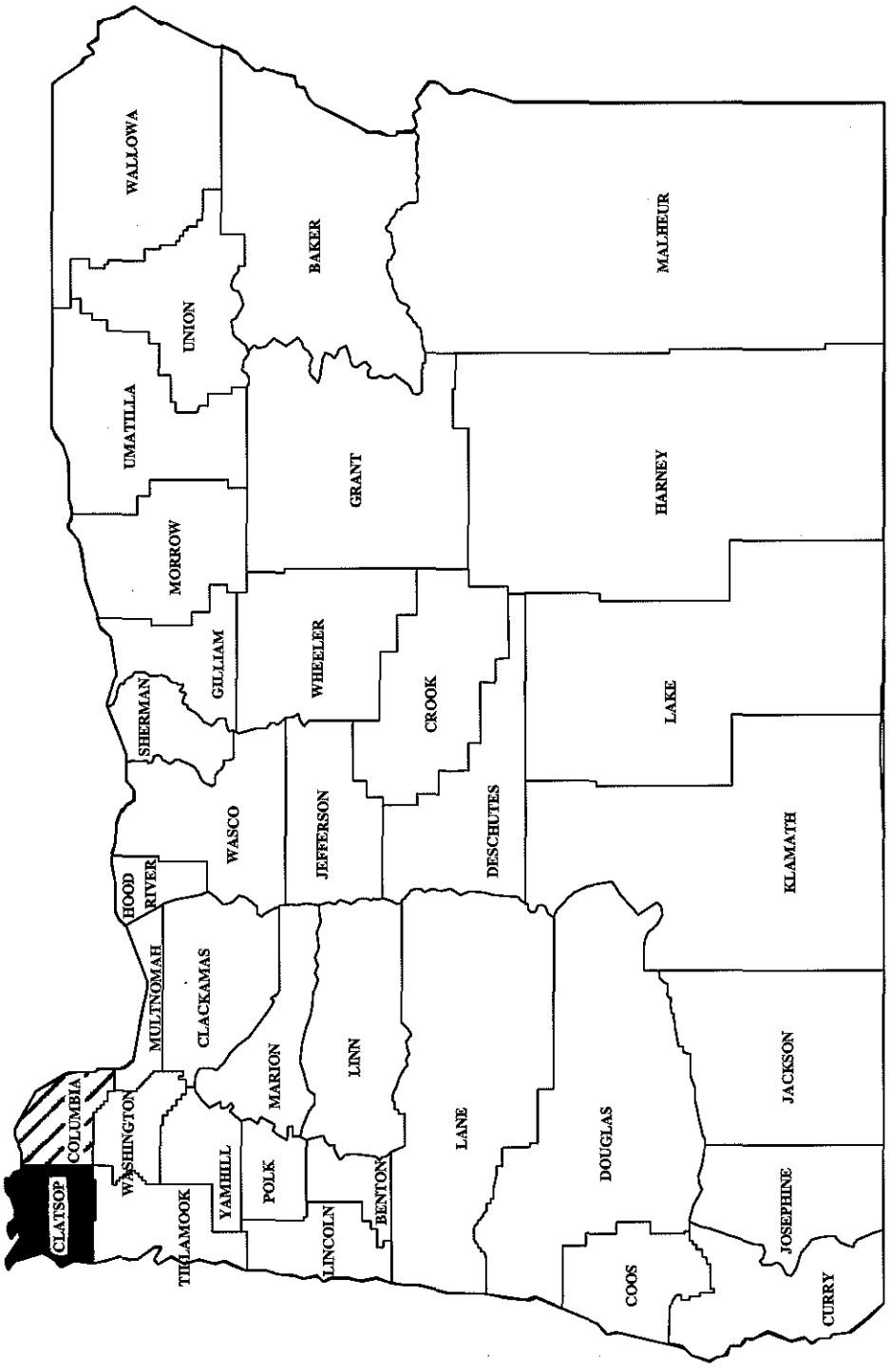
Clatsop County
curbside: Seaside

Collection of Resins #2,4,5

Columbia County
depot: Vernonia

Resins #2, 4, & 6

Resins #2, 4, 5, & 6:



Anticipated New or Expanded Programs for Resins #1-#7, 1995

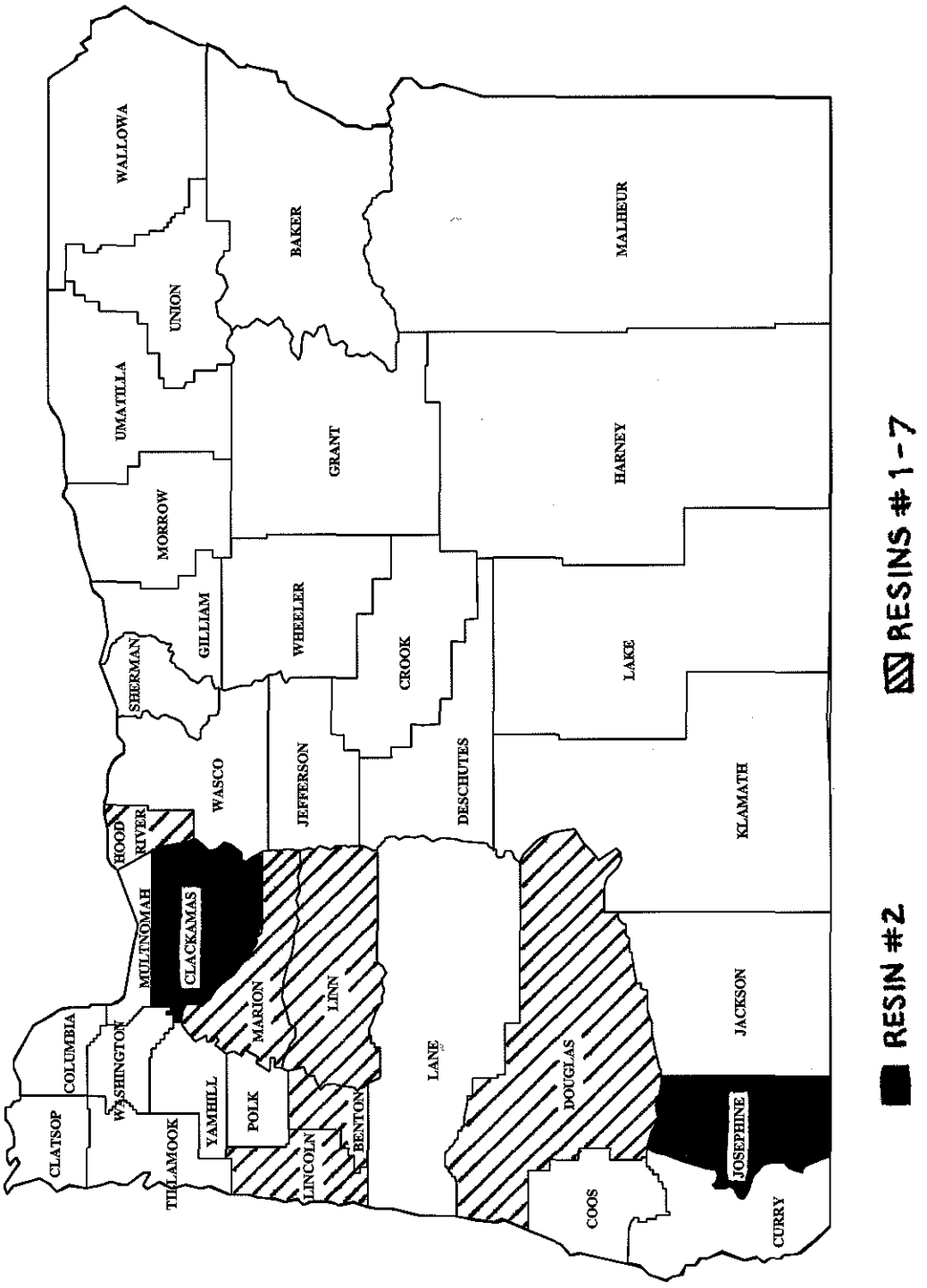
Benton County
    curbside, #1-7: Corvallis
Douglas County
    curbside, depot, #1-7: Roseburg
Hood River County: depot, #1-7
Lincoln County
    depot, #1-7, Newport
Linn County: curbside
Marion County: curbside

Anticipated New or Expanded Programs for Resin #2 (Milk Jugs), 1995

Clackamas County: curbside
Josephine County
    curbside: Grants Pass

plas

New or Expanded Programs, 1995
Resins #1 - 7, Resin #2



LOCAL PLASTICS COLLECTION PROGRAMS IN OREGON

The information below was compiled from 1993 County Recycling Reports submitted to the Department of Environmental Quality in February 1994. It was reviewed and updated by DEQ staff and the American Plastics Council in October and November 1994, then verified by DEQ staff telephone calls to each program in November, 1994. Programs that began or were expanded in 1994 are marked below, while those anticipated to begin or expand in 1995 are in parenthesis.

resin type

program location	*#2 (milk jugs)*	*#1,2*	*#1-7 bottles*	*#2,4,5*	*#2,4,6*
Baker County	depot				
Benton County Corvallis		depot/curb	('95 curb)		
Clackamas County	('95 curb)		depot, all #1-7: Gladstone, Lake Oswego, Milwaukie, Mollala, Oregon City, Sandy, West Linn, Wilsonville		
Canby			curb		
Lake Oswego	curb				
Wilsonville	curb				
West Linn			curb		

program location	*only #2 (milk jugs)*	*#1,2*	*#1-7 bottles*	*#2,4,5*	*#2,4,6*
Clatsop County Astoria Seaside	depot		depot, all #1-7		curb
Columbia County Rainier St. Helens Scappose Vernonia	depot	curb	depot, all #1-7	depot	
Coos County Coos Bay	curb/depot				
Crook County Prineville			depot, all #1-7		
Curry County Brookings Gold Beach		depot curb 10/94 curb 12/94			
Deschutes County Bend, Redmond Sunriver	depot curb/depot depot				
Douglas County Roseburg	depot (all #2)		('95 curb/depot)		
Gilliam County Arlington, Condon	depot				
Grant County	depot				
Harney County	depot				

program location	*only #2 (milk jugs)*	*#1,2*	*#1-7 bottles*	*#2,4,5*	*#2,4,6*
Hood River County	depot		('95 depot)		
Jackson County Ashland Central Point, Jacksonville, Medford, Phoenix, White City	depot curb 8/94 curb	depot 10/94			
Jefferson County	depot				
Josephine County Grants Pass Cave Junction, Glendale, Gold Hill, Rogue River, Shady Cove	depot ('95 curb) curb				
Klamath County Klamath Falls	depot curb				
Lane County Cottage Grove, Eugene, Florence, Springfield			depot 5/94, incl. trays and jars curb 5/94, incl. trays and jars		
Lincoln County Newport	depot (all #2)		(depot '95)		

program location	*only #2 (milk jugs)*	*#1,2*	*#1-7 bottles*	*#2,4,5*	*#2,4,6*
Linn County Albany Brownsville, Halsey, Harrisburg, Jefferson, Lebanon, Lyons, Scio, Sweet Home	 curb	 curb	('95 curb)		
Marion County Salem Aumsville, Aurora, Gervais, Hubbard, Mt. Angel, Scotts Mills, Silverton, Sublimity, Stayton, Woodburn	 curb		('95 curb) depot 9/94 depot, all #1-7: Aumsville, Salem, Canby		
Multnomah County Fairview, Gresham, Portland, Troutdale, Wood Village	 curb		depot, all #1-7: Portland, Troutdale, Welches		
Polk County Dallas, Independence, Monmouth	 curb/depot				
Sherman County Wasco	 depot				

program location	*only #2 (milk jugs)*	*#1,2*	*#1-7 bottles*	*#2,4,5*	*#2,4,6*
Tillamook County Tillamook	curb		depot '94, all #1-7		
Umatilla County Milton-Freewater Pendleton	curb/depot depot				
Union County LaGrande	depot				
Wasco County The Dalles		depot (#1 and milk jugs)			
Washington County Aloha, Beaverton, Durham, Forest Grove, Hillsboro, King City, North Plains, Tualatin, Wilsonville	curb '94		depot, all #1-7: Aloha, Beaverton, Tigard		
Yamhill County McMinnville, Newberg Amity, Carleton, Dayton, Dundee, Sheridan, Willamina, Yamhill	curb curb/depot		depot, all #1-7: Newberg, McMinnville		

Agenda Item J

There were no
Written materials
for this item.