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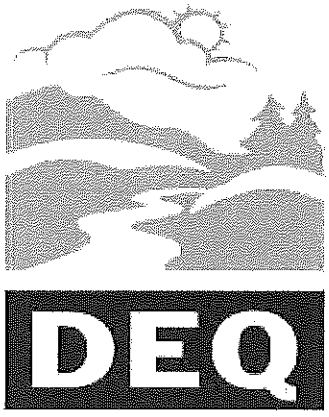
# OREGON
# ENVIRONMENTAL QUALITY
# COMMISSION MEETING
# MATERIALS 03/03/1995




State of Oregon
**Department of Environmental Quality**

# REVISED AGENDA

## ENVIRONMENTAL QUALITY COMMISSION MEETING

March 3, 1995
DEQ Conference Room 3A
811 S. W. 6th Avenue
Portland, Oregon

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**Friday, March 3, 1995: Regular Meeting beginning at 8:30 a.m.**

*Notes:*

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

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

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A. Approval of Minutes

B. Approval of Tax Credits

C. †**Rule Adoption:** Criteria and Procedures for Determining Conformity of General Federal Actions to State or Federal Air Quality Implementation Plans

D. †**Rule Adoption:** Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

E. †**Rule Adoption:** Air Quality Prevention of Significant Deterioration (PSD) Amendments and Related Forest Health Restoration

F. **Informational Item:** Legislative Report - Underground Storage Tank (UST) Program Review

G. **Informational Item:** Environmental Partnerships for Oregon Communities

H. **Action Item:** Rulemaking Petition - National Pollutant Discharge Elimination System (NPDES) Permits/Mining

I. **Action Item:** Request for Commission action on Memorandum of Understanding between EQC and the Oregon Department of Agriculture Re: Combined Animal Feeding Operations

J. Commissioner Reports (Oral)

K. Director's Report (Oral)

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

*The Commission has set aside April 13-14, 1995 for their next meeting. The location has not been established.*

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

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

*February 23, 1995*

| | |
|---|---|
| Approved | ✓ |
| Approved with Corrections | |

*Minutes are not final until approved by the EQC*

# ENVIRONMENTAL QUALITY COMMISSION

Minutes of the Two Hundred and Forty Second Meeting
January 20, 1995

## WORK SESSION

The Environmental Quality Commission work session and regular meeting was convened at 8:30 a.m. on Friday, January 20, 1995, in Conference Room 3A, Oregon Department of Environmental Quality (DEQ), 811 S. W. Sixth Avenue in Portland, Oregon. The following Commission members were present:

William Wessinger, Chair
Emery Castle, Vice Chair
Henry Lorenzen, Commissioner
Linda McMahan, Commissioner
Carol Whipple, Commissioner

Also present were Michael Huston, Assistant Attorney General, Oregon Department of Justice, Lydia Taylor, Interim Director, DEQ, and other DEQ staff.

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

**1. Informational item: legislative and informational update on rigid plastics container law and related issues.**

The Department of Environmental Quality was asked by the 1993 legislature to prepare two reports concerning the rigid plastic container law to be presented to the 1995 legislature. In addition, the Department had a consultant prepare a report determining the rigid plastic container recycling rate for compliance purposes.

At the December 2, 1994, Commission meeting, the Commission requested the Department develop an executive summary of the *Implementation of Rigid Plastic Container Law* report including information on what percentage of current recycling of rigid plastic containers is due to Oregon's bottle bill. Additionally, the Commission asked for recommendations.

The Department made six recommendations:

1. Keep federal regulation of containers and the federal exemption.

2. Relax the five-year requirement for those containers in existence on January 1, 1995; allow existing containers to demonstrate a 10 percent source reduction from whenever the original product was introduced even if less than five years previously. Do not relax the five-year requirement for new containers.

3. Exempt low-volume product manufacturers from compliance.

4. Redefining the overall pyrolysis process as recycling would have broad implications for the state's recycling and recovery programs which currently are based on the solid waste management hierarchy. County programs to meet the statewide recovery goal have been established under a statute which excludes energy recovery from counting toward the rate unless there is no viable recycling market. Pyrolysis does not need any particular encouragement. If pyrolysis proves economically viable where conventional recycling does not, counties may under current law direct their recovered materials to pyrolysis and have them count toward the recovery rate.

5. Keep the definition of rigid plastic container the same.

6. Retain the basic structure of the program with some changes. The Department should be granted explicit statutory authority to require specific recordkeeping measures from processors for this program in order to increase the accuracy of the recycling rate determination. The program should be allowed to operate for at least two years to get established. At that time the level of the required rigid plastic container recycling rate should be reexamined to see whether it is increasing incrementally or stagnating.

Bob Danko, Pat Vernon and Deanna Mueller-Crispin from the Department's Waste Management and Cleanup Division presented this material to the Commission. Commissioner Whipple asked staff if they believed the recommendations would be challenged. Mr. Danko said that product manufacturers and others would introduce bills to exempt the containers that are regulated under federal law. Commissioner Lorenzen asked about recycling pesticide containers. Mr. Danko said that the pesticide industry and users have the ability to continue the programs that are in place now. Ms. Mueller-Crispin said that there are proposed federal regulations that would designate which containers may be refillable or nonrefillable where that option may not be available now.

Ms. Mueller-Crispin provided an overview of the report titled *Pyrolysis of Plastics*. She said that pyrolysis as a technology is feasible, it has potential advantages for plastics because plastics would not require sorting and organic contaminates are not a problem. However, she said, pyrolysis is more energy intensive than mechanical recycling as energy is lost at each stage in the process and requires some type of subsidy to keep the process going. She added that there is a large market for recycled resins.

Commissioner Lorenzen said he disagreed with the conclusion that pyrolysis should not be allowed. He said one thing that was left out of the report is that if pyrolysis would be economically viable without subsidies there is potential for increasing the amount of plastics that would be diverted from the waste stream.
Commissioner Castle said he agreed with Commissioner Lorenzen.
Commissioner McMahan said that pyrolysis merits further study. She said she would like the report left as is but that it should be left open for future review.
Commissioner Whipple said that anything is preferable to plastics ending up in the landfill. She said that it would be short sighted to preclude the opportunity for pyrolysis. She added, however, that she did not see any reason to change the report at this time. Commissioner Lorenzen stated the report as written has a fairly negative attitude toward pyrolysis and that it would be helpful to stress some of the potential benefits such as being able to achieve rate of diversion of plastics from the waste stream. Interim Director Taylor said that the Department could look at the report and add those issues that Commissioner Lorenzen commented upon.

**2. Informational item: overview on criteria to determine conformity to state or federal implementation plans on transportation.**

Transportation conformity ensures that state/local transportation plans and funding are consistent with state/local air quality plans. The Commission will be considering the proposed rules for adoption at the March 3, 1995, EQC meeting.

This information was presented to the Commission by Greg Green, Administrator of the Air Quality Division, and Annette Liebe, Air Quality Division. Ms. Liebe provided a brief summary of advisory committee progress and a slide presentation on this issue. A photocopy version of this presentation is included as part of the meeting record.

Commissioner Lorenzen asked Ms. Liebe to explain the Oregon Department of Transportation (ODOT) objection. She said that they objected to the requirement that transportation control measures be implemented regardless of eligibility of federal funding: first, that it was not appropriate to tie up federal funds for failure to implement projects not eligible for federal funds; second, the Department's existing authority to compel compliance with State Implementation Plan (SIP) requirements is adequate to lead toward implementation where federal funding is not available. She added that the ODOT also commented that they would like the Department to review the indirect source program. The Department responded with a commitment to do so and to eliminate requirements of the indirect source program that are duplicative.

Mr. Green explained that when a large-scaled highway is planned, the emissions resulting from that project must conform to the emissions budget that is established in the SIP or maintenance plan. If that cannot be accomplished, the Department must create mitigating factors where emissions will be reduced in some other area or take the risk of losing federal highway funds.

**3. Informational item: sixth annual Environmental Cleanup Report and four-year plan projection.**

Mary Wahl, Administrator of the Waste Management and Cleanup Division, and Mike Rosen, Northwest Regional Office, presented this report to the Commission. Ms. Wahl discussed the current proposal to rewrite of the cleanup law, funding the orphan sites and heating oil tanks. Mr. Rosen discussed the Department's strategy for cleaning up brownfields and how the voluntary cleanup program has been involved. He also talked about liability and economic redevelopment strategies.

## REGULAR MEETING

Chair Wessinger called the meeting to order.

**A. Approval of minutes.**

Commissioner Castle moved approval of the December 2, 1995, regular meeting minutes; Commissioner McMahan seconded the motion. The motion was unanimously approved.

**B. Approval of tax credits.**

The Department recommended issuance of the following tax credit applications.

| Application Number | Applicant | Description |
|---|---|---|
| TC 4290 | Cascade Corporation<br><br>($94,402) | An air pollution control facility consisting of a gas-fired convection paint curing oven (with piping) installed to comply with VOC permit requirements. |
| TC 4324 | Mr. & Mrs. Gary J. Kropf<br><br>($104,000/70 percent) | A field burning air pollution control facility consisting of a John Deere 8770 300 hp tractor. |

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

**C. This item was removed from the agenda.**

**D. This item was removed from the agenda.**

**E. Rule adoption: adoption of hardboard particulate emissions rules revision.**

In setting emission standards for the hardboard industry, it was incorrectly assumed that the exhaust from vents above the hardboard presses were negligible. The Department proposed to correct this oversight by changing the emission limit to be the sum of the vent emissions and the lesser of baseline non-vent emissions or 1.0 lb/ksf (the original limit), and in no case could the emission limit exceed 2.0 lb/ksf.

Actual current emissions will not increase, and it is the intent of the Department to hold existing hardboard sources to what their baseline emissions would have been had the press vent emission been properly accounted for at the time.

Andy Ginsburg of the Department's Air Quality Division was available to answer any questions of the Commission.

Commissioner Whipple moved approval of the particulate emissions rule revision; Commissioner Lorenzen seconded the motion. The motion was unanimously approved.

**F. Action item: variance for Coos County Municipal Solid Waste Incineration facility.**

Coos County will be unable to comply with the requirements of Oregon Administrative Rule (OAR) 340-25-860 through 885, incinerator regulations by the March 13, 1995, deadline specified in OAR 340-25-885. Coos County is requesting a nine-month variance pursuant to Oregon Revised Statutes (ORS) 468A.075 to meet the requirements of the incinerator regulations.

Steve Greenwood, Administrator of the Western Regional Office, and Gary Grimes of the Western Regional Office, Medford, were available to answer questions.

Commissioner McMahan moved approval of the variance for coos County Municipal Solid Waste Incinerator; Commissioner Castle seconded the motion. The motion was unanimously approved.

**G. Informational item: 1995-1997 budget briefing.**

Garlene Logan, Management Services Division, provided a brief presentation of the Department's 1995-1997 budget. A copy of the overhead slide presentation has been made a part of the meeting record.

**PUBLIC FORUM**

- Dan Aspenwall told the Commission he opposed both the three basin rule change as written by the DEQ and the Bornite permit. He said he had a copy of the permit for the Bornite project which he believed was an illegal document. Mr. Aspenwall said he did not understand how the Department could put effort toward a permit that is currently illegal. Mr. Aspenwall talked about the following issues:

- That the three basin rule change could only be understood in the context of the Bornite project and that the rule change is far broader than what is needed to accommodate the reasons for the rule change.

- That the Department is understaffed and cannot keep up with the maintaining water quality standards in half of the surface miles of stream; adding three more basins which are essential for providing drinking water would further strain the Department's credibility.

- That the size of the Bornite mining project is not consistent with the fees charged by the Department and that the magnitude of discharge is inconsistent as well.

- That public comment is not reaching the Commissioners and that public hearings should be held before the Commissioners so that they can hear comments first hand.

Mr. Aspenwall concluded by saying that he is losing faith and that the Department cannot reasonably claim that high quality waters rule will protect waterways. He said that while the rules may be better than nothing, they cannot be said to work well in the spirit to which they were intended. He urged the Commission to resist weakening the three basin rule and not to issue National Pollutant Discharge Elimination Systems (NPDES) permits for industrial, mining, agricultural and residential development outside of the urban growth boundary. He added that the Bornite project does not pass the long-term cost test.

- James Bradley, North Santiam Watershed Council, told the Commission he supported what Mr. Aspenwall said. He said development is not synonymous with progress. He said that several of the changes to the three basin rule proposed by the Department flout the stated intent of the rule by allowing discharges that would lower water quality. Mr. Bradley said that it made no sense to trade off a productive and irreplaceable asset nor was it reasonable to gamble it away. He asked the Commission to protect Oregon and Oregonians as the framers of the three basin rule intended.

- Frank Gearhart, Three Basin Alliance, said that he would like to emphasize again that the Commission owes it to the public to listen to the public and not to receive second- or third-hand comments with the Department's comments as rebuttal. He said that he believed the public should come first and foremost. Mr. Gearhart talked about mining operations in Idaho and the health impact as

a result of those operations. He said that in his opinion the Department had violated statutes. He said that Dr. Osterud, a public health doctor for Clackamas County, indicated that he had not be notified of the proposed three basin rule change and that other counties had not received information. Mr. Gearhart concluded by saying that the state needs to be increasing the water quality in the basins not decreasing it.

- John Charles, Oregon Environmental Council (OEC), spoke to the Commission about a proposal developed by the OEC. The proposal called for using all emissions fee revenues for tax-free rebates to every resident of the metropolitan region to compensate them for their personal and property losses associated with pollution. He said it was the hope of the OEC that the proposal would create a powerful financial incentive that people will be strongly motivated to reduce their pollution in order to receive more in rebates than they contribute in emissions fees. Also, with this proposal the implementation of the employer-based commuter trip reductions and parking ratio programs would be deferred indefinitely. He asked the Commission for feedback on this concept.

  Commissioner Lorenzen expressed concern that there would be too much of a disconnect between paying the originals taxes and what would be received back some time later. He said that what might be considered instead of paying the money back to the population as a whole would be to pay the automobile owners directly so that those who drive less or have less polluting cars would come out net ahead. They would invest in less polluting cars, electric cars, other technology; there would be a closer connect to what they pay and what they get.

  Commissioner Castle said that the Commission needs to take seriously the number of vehicle trips traveled per household. He said that air quality cannot not be improved by regulating people who drive to work.

**H. Commission report.**

There were no Commission reports.

**I. Director's report.**

Three Basin Rule Hearings. Approximately 400 people attended the public hearings on the three basin rule. Hearings were held in Eugene, Salem and Oregon City. Most of the testimony was focused on the proposed mine and potential threat to drinking water.

New Natural Resources Coordinator in Governor's Office. Governor Kitzhaber has appointed Paula Burgess to the new Natural Resources Policy Advisory in the Governor's Office. Burgess has previously worked in state government at the Department of Forestry and was a key player in developing the Forest Plan.

Cities Reach Attainment With Clean Air Standards. It looks very promising that Klamath Falls, Medford, Grants Pass, Eugene and LaGrande have met the deadline for attaining $PM_{10}$ air quality standards. The deadline was the end of 1994. Each community must now develop a maintenance plan to demonstrate how it will maintain air quality standards for ten years.

The DEQ is planning awards ceremonies to recognize the achievement in each of the five communities the week of February 27. Commission members would be very welcome at any of those ceremonies.

Tax Credits. KOIN-TV ran a story this week on the tax credit program. The Interim Director was interviewed for the story and was asked how the Commission viewed the tax credit program. Jim Whitty from Associated Oregon Industry (AOI) was also interviewed for the story.

Tax Credit Suit - Gerald E. Phelan v. State of Oregon. Mr. Phelan applied for tax credits under the field sanitation and straw utilization provision of the program. Based on information provided by Mr. Phelan, the applications for storage shed facilities were rejected by the Commission because the facilities earned sufficient income to not be entitled to a credit under the cost allocation methodology.

Mr. Phelan brought suit on the basis that competitors were granted tax credit for similar facilities. His complaint was later amended indicating that his original application was submitted erroneously in that he, as sole proprietor of a leasing business, and not his corporation should have been allowed to apply for the tax credits.

The state argued that, except for material recovery facilities, only the operator of pollution control facilities can be afforded tax credit under the statutes because Phelan's corporation, not his sole proprietorship, actually operate the facilities. Moreover, straw utilization is not considered a material recovery process under the solid waste recycling statutes.

Judge Norblatt ruled in the plaintiff's favor on a technical interpretation of the law. The judge ruled that because ORS 468.150 was not made a part of the body of the Pollution Control Facilities Tax Credit Program (ORS 468.155-190) by legislative action, but only by legislative counsel opinion, that the body of the pollution control statutes do not apply to ORS 468.150.

After consulting with the Attorney General's Office, the Department has requested an appeal of the decision.

Hearing Authorizations:

- **Sludge Rule Amendments.** The proposed rules encourage the beneficial recycling of treated domestic wastewater biosolids and domestic septage through land application programs. The rule modifications would make state rules consistent with recently amended federal regulations. Concurrent with the rule making, the Commission will be asked to authorize the Department to seek primacy for the land application portion of the federal biosolids program.

- **$PM_{10}$ Control Strategy for Lakeview.** Lakeview has been designated by the U. S. Environmental Protection Agency (EPA) as a moderate $PM_{10}$ nonattainment area. This requires the state to develop an emission control strategy which will reduce $PM_{10}$ emissions and comply with Clean Air Act standards. The plan includes voluntary woodburning curtailment and a woodheating public information program, along with restrictions on residential open burning. A Special Protection Zone around Lakeview would provide necessary protection from forest slash burning smoke during the winter heating season.

Olivia Clark, Assistant to the Director, provided the Commission with a legislative update. She discussed bills concerning fees, stringency, efficiencies and compensation for taking.

There was no further business, and the meeting was adjourned at 12:20 p.m.

# Environmental Quality Commission

☐ Rule Adoption Item
X Action Item
☐ Information Item

**Agenda Item B**
**March 3, 1995 Meeting**

**Title:**
Approval of Tax Credit Applications

**Summary:**
New Applications - Thirteen (13) tax credit applications with a total facility cost of $1,038,087.00 are recommended for approval as follows:

- 8 Water Quality facilities with a total facility cost of: $681,699
- 5 Field Burning related facility recommended by the Department of Agriculture with a total facility cost of: $356,388

There are no applications with claimed facility cost exceeding $250,000 presented in this report.

**Department Recommendation:**
Approve issuance of tax credit certificates for 13 applications as presented in Attachment A of the staff report.

The Department also requests that the Commission:

Grant a request by Willamette Industries, Inc. for an extension (to June 29, 1995) to file an application for a Pollution Control Facilities Tax Credit for a pollution control facility located in Dalles, Oregon.

Revoke tax credit certificates 2158 and 2320, both Metrofueling, Inc., and 2642, Precision Castparts, Inc.; and

Approve the transfer of the remaining value of tax credit certificates 2257 and 2335 from Marion L. Knox to Knox Seed, Inc., the current owner and operator of the facilities.

Report Author | Division Administrator | Director

March 3, 1995

†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:** March 3, 1995

**To:** Environmental Quality Commission

**From:** Lydia Taylor, Interim Director

**Subject:** Agenda Item B, March 3, 1995 EQC Meeting

Approval of Tax Credit Applications

## Statement of the Need for Action

This staff report presents the staff analysis of pollution control facilities tax credit applications and the Department's recommendation for Commission action on these applications. The following is a summary of the applications presented in this report:

**Tax Credit Application Review Reports:**

| Application Number | Applicant | Description |
|---|---|---|
| TC 4260 | Molecular Probes, Inc.<br><br>($54,276) | A water pollution control facility for removing solvents from wastewater consisting of a Cascade LP 5003 air stripper, an influent tank, a pump, associated electrical and plumbing equipment and a building to house and protect the equipment. |
| TC 4264 | Johnson Controls Battery Group, Inc.<br><br>($100,817) | A water pollution control facility to eliminate lead contamination of storm water consisting of skirting and a 1,500 sq. ft. enclosure for four baghouses and three lead residue tanks. |

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

| | | |
|---|---|---|
| TC 4270 | Widmer Brewing Co.<br><br>($57,452) | A water pollution control facility for treating industrial wastewater consisting of two 500 gal. stainless steel tanks, pumps, level and pH controls, agitator equipment and associated electrical and plumbing equipment. |
| TC 4275 | Columbia Steel Casting Company, Inc.<br><br>($174,223) | A water pollution control facility for treating industrial wastewater discharge consisting of a 25hp pump, two 15hp pumps, pump platforms, 5,000' of piping, valves, two underground sumps, an evaporative spray manifold and automatic controls. |
| TC 4289 | Consolidated Metco, Inc.<br><br>($210,180) | A water pollution control facility for treating industrial wastewater consisting of a TFK-Autovap 1000 evaporator unit, a motorized oil mop system, storage tanks, pumps and associated electrical and plumbing equipment. |
| TC 4291 | Polk County Farmers' Co-op<br><br>($23,327) | A water pollution control facility consisting of a concrete pad, a concrete sump, an All American oil/water/solids separator and a building to house the equipment. |
| TC 4296 | Northwest Natural Gas, Company<br><br>($23,362) | A water pollution control facility for recycling wash water consisting of a Delta 1000A filtration and reclamation machine, pumps, a control system, a 20' x 40' concrete pad and a portion of a building to house and protect the equipment. |
| TC 4305 | Charbonneau Gold Club, Inc.<br><br>($38,062) | A water pollution control facility for recycling wash water consisting of a concrete wash pad, a sump pump, a Landa Water Maze Delta 1000 water purification unit and associated electrical and plumbing equipment. |

| | | |
|---|---|---|
| TC 4327 | Martin Richards ($85,450/19%) | An air pollution control field burning facility consisting of a Case IH 7120 2wd, 150hp tractor. |
| TC 4331 | Stanley Goffena ($11,222) | An air pollution control field burning facility consisting of a Rear's wheel rake. |
| TC 4332 | Robert McKee ($13,966) | An air pollution control field burning facility consisting of a John Deere 20' rotary chopper. |
| TC 4338 | Indian Brook, Inc. ($173,000) | An air pollution control field burning facility consisting of a Steffan model 1590 self-propelled baler, a Steffan wide base loader and a Caterpillar hay squeeze. |
| TC 4343 | Louis L. Kokkeler ($72,750) | An air pollution control field burning facility consisting of a John Deere model 8850 4wd 300hp tractor, a John Deere model 120 20' flail and an I. H. model 800 10 bottom moldboard plow. |

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

There are no review reports with facility costs that exceed $250,000 included in this report.

Background

There is no discussion of significant issues included in this report. However, Willamette Industries, Inc. requests an extension to file for a proposed Pollution Control Facilities Tax Credit until June 29, 1995. The facility, a plywood dry waste system located in Dallas, Oregon, was completed and placed into service on December 31, 1992. The request for a filing extension was received by the Department on December 29, 1994. Willamette Industries indicates that circumstances beyond their control including accounting and engineering complications prevented timely completion of the application for the proposed credit. The firm's letter requesting the extension is included in this report.

Also, Precision Castparts Corporation notified the Department that a water pollution control facility for which Pollution Control Tax Credit Certificate 2642 was approved is no longer in operation and will be permanently shut down. The Department has also determined that two Metrofueling, Inc. facilities for which tax credit certificates have been granted (certificates 2158 and 2320) have been replaced and are no longer in operation. The Department is recommending revocation of these tax credits.

In addition, the Department received a request from Marion L. Knox to transfer pollution control facility tax credit certificates 2257 and 2335 from Marion L. Knox to the recently incorporated Knox Seed, Inc., the current owner and operator of the facilities. The letter requesting the transfer is included in this report.

Authority to Address the Issue

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

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

**Alternatives and Evaluation**

None.

**Summary of Any Prior Public Input Opportunity**

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

**Conclusions**

- The recommendations for action on the attached applications are consistent with statutory provisions and administrative rules related to the pollution control facilities and reclaimed plastic product tax credit programs.

o Proposed March 3, 1995, Pollution Control Tax Credit Totals:

| Certificates | Certified Costs* | Certified Allocable Costs** | No. |
|---|---|---|---|
| Air Quality | $ 0 | $ 0 | 0 |
| CFC | 0 | 0 | 0 |
| Field Burning | 356,388 | 287,174 | 5 |
| Hazardous Waste | 0 | 0 | 0 |
| Noise | 0 | 0 | 0 |
| Plastics | 0 | 0 | 0 |
| SW - Recycling | 0 | 0 | 0 |
| SW - Landfill | 0 | 0 | 0 |
| Water Quality | 681,699 | 681,699 | 8 |
| UST | 0 | 0 | 0 |
| | $1,038,087 | $968,873 | 13 |

o Calendar Year Totals Through January 20, 1995:

| Certificates | Certified Costs* | Certified Allocable Costs** | No. |
|---|---|---|---|
| Air Quality | $ 94,402 | $ 94,402 | 1 |
| CFC | 0 | 0 | 0 |
| Field Burning | 104,000 | 72,800 | 1 |
| Hazardous Waste | 0 | 0 | 0 |
| Noise | 0 | 0 | 0 |
| Plastics | 0 | 0 | 0 |
| SW - Recycling | 0 | 0 | 0 |
| SW - Landfill | 0 | 0 | 0 |
| Water Quality | 0 | 0 | 0 |
| UST | 0 | 0 | 0 |
| | $198,402 | $167,202 | 2 |

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

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

## Recommendation for Commission Action

The Department recommends that the Commission approve certification for the tax credit applications as presented in Attachment A of the Department Staff Report. The Department also recommends the approval of Willamette Industries, Inc's. request for an extension of time to file a pollution control facilities tax credit application for a plywood dry waste facility located in Dallas, Oregon. In addition, the Department recommends revocation of certificate 2642 (Precision Castparts, Inc.) and certificates 2158 and 2320 (Metrofueling, Inc.) because the facilities no longer function to prevent or control pollution. The Department further recommends the transfer of two pollution control facility tax credits, certificates 2257 and 2335, from Marion L. Knox to Knox Seed, Inc., as requested by the current certificate holder.

## Intended Followup Actions

Notify applicants of Environmental Quality Commission actions.

## Attachments

A. Pollution Control Tax Credit Application Review Reports.

**Reference Documents (available upon request)**

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

Approved:

Section:

Division:

Report Prepared By: Charles Bianchi

Phone: 229-6149

Date Prepared: February 14, 1995

Charles Bianchi
MAREQC
March 3, 1995

CB

Willamette Industries, Inc.
Executive Offices

3800 First Interstate Tower
Portland, OR 97201
(503) 227-5581

December 27, 1994

State of Oregon
Department of Environmental Quality
Management Services Department
811 SW Sixth Avenue
Portland, OR 97204

Re: Willamette Industries, Inc.
Extension Request for Filing Application for Final Certification
NC 2822 - Dallas Plywood Dry Waste System

Gentlemen:

Willamette Industries, Inc. hereby requests an extension of 180 days until June 29, 1995, pursuant to OAR 340-16-020(1)(e), to complete and receive approval for the above-referenced Application for Final Certification of Pollution Control Facility for Tax Relief Purposes.

Per our books and records, Willamette's Dallas Plywood Project #237 - Dry Waste System (NC 2822) was totally completed and placed in service on December 31, 1992. Since the completion of this project, Willamette as been trying to gather and document data which breaks down the project between components eligible for the pollution control credit and those not eligible. Of the approximately $500 thousand project, only a portion appears eligible for the credit. We have experienced difficulty in documenting the eligible portion of this project in a manner which will satisfy the Certified Public Accountants who certify to the eligible costs of the project. Our environmental engineering staff, who complete these applications, have also had tremendous time pressures placed upon them recently with work involving Title V Federal Air Permits, the EPA Section 114 Questionnaires, and measuring and maintaining compliance with the various DEQ requirements. Because of this difficulty and time constraints, we are unable to meet the two year deadline for filing the DEQ's Application for Final Certification pursuant to OAR 340-16-020(1)(d) of December 31, 1994.

We therefore request an extension of 180 days until June 29, 1995, pursuant to OAR 340-16-020(1)(e), to complete and receive approval for the above-reference Application for Final Certification of Pollution Control Facility for Tax Relief Purposes. Please note that we intend to file the application within 90 days of today's date, but we are requesting a 180 day extension in case the DEQ requests additional information.

Cordially,

WILLAMETTE INDUSTRIES, INC.

Jim Aden
Assistant Tax Manager

Certificate No. 2158
Date of Issue 5/25/90
Application No. T-2554

State of Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

**POLLUTION CONTROL FACILITY CERTIFICATE**

| | |
|---|---|
| Issued to:<br>Metrofueling, Inc.<br>P.O. Box 2099<br>Salem, OR 97308 | Location of Pollution Control Facility:<br>16650 SW 72nd<br>Portland, OR 97224 |
| As: ( ) Lessee (x) Owner | |
| Description of Pollution Control Facility:<br>EBW 705-5 spill containment manholes with recovery vessels. | |
| Type of Pollution Control Facility:<br>( ) Air ( ) Noise (x) Water ( ) Solid Waste ( ) Hazardous Waste ( ) Used Oil | |
| Date Facility was completed: 4/15/89 | Placed into Operation: 4/15/89 |
| Actual Cost of Pollution Control Facility: $1,389.00 | |
| Percent of actual cost properly allocable to pollution control: 100 Percent | |

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 25th day of May, 1990.

EQC.10A (5/90)

Certificate No. 2320
Date of Issue 12/14/90
Application No. 3197

Facility ID 3605

State of Oregon

DEPARTMENT OF ENVIRONMENTAL QUALITY

# POLLUTION CONTROL FACILITY CERTIFICATE

| Issued to: | Location of Pollution Control Facility: |
|---|---|
| Metrofueling, Inc.<br>P.O. Box 2099<br>Salem, OR 97308 | 16650 SW 72nd Avenue<br>Tigard, OR |

As: ( ) Lessee (X) Owner

Description of Pollution Control Facility:

Automatic tank gauges with alarm and an oil/water separator.

Type of Pollution Control Facility:
( ) Air ( ) Noise (X) Water ( ) Solid Waste ( ) Hazardous Waste ( ) Used Oil

Date Facility was completed: 12/31/89 Placed into Operation: 1/90

Actual Cost of Pollution Control Facility: $12,394.00

Percent of actual cost properly allocable to pollution control: 97 Percent

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed _____

Title William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 14th day of December, 1990.

Precision Castparts Corp.
4600 S. E. Harney Drive
Portland, Oregon 97206-0898
Phone (503) 777-3881
Fax (503) 652-3593

January 16, 1995



Ms. Lydia Taylor
Acting Director
Oregon Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, Oregon 97204

RE: Pollution Control Facility Certificate No. 2642

Dear Ms. Taylor:

During a routine review of the active Pollution Control Facility Certificates issued to Precision Castparts Corp. (Precision) we learned that the facility addressed by certificate no. 2642 (certificate enclosed) was no longer in operation. Condition 2. of this certificate requires Precision to notify the Department of Environmental Quality if the facility ceases to operate.

The pH monitoring system was inactive at the time of our internal review. This review took place during third quarter 1994. Since the original need for the facility no longer exists, Precision does not intend to repair the pH monitor so it can be placed back into service. Thus, the monitor will be permanently shut down.

Please contact me at 777-7455, should you have any questions.

Sincerely,

Paul Siebenaler

Paul Siebenaler
Environmental Engineer

enclosure

cc: Rene Dulay, Water Quality



TAXCREDI.WPD

STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY

Certificate No. 2642
Date of Issue 9/18/91
Application No. T-3250

# POLLUTION CONTROL FACILITY CERTIFICATE

| Issued To: | Location of Pollution Control Facility: |
|---|---|
| Precision Castparts Corporation<br>Large Structures Business Operation<br>4600 SE Harney Drive<br>Portland, OR 97206 | 4600 SE Harney Drive<br>Portland, OR 97206 |

As: ( )Lessee (x)Owner

Description of Pollution Control Facility:

pH monitoring system consisting of pH digital controller, chart recorder, 2 pH prober and an audible alarm system.

Type of Pollution Control Facility:
( )Air ( )Noise (x)Water ( )Solid Waste ( )Hazardous Waste ( )Used Oil

Date Facility was Completed: 3/01/89 Placed into Operation: 3/01/89

Actual Cost of Pollution Control Facility: $17,639.00

Percent of Actual Cost Properly Allocable to Pollution Control: 100%

Based upon the information contained in the application referenced above, the Environmental Quality Commission certifies that the facility described herein was erected, constructed or installed in accordance with the requirements of subsection (1) of ORS 468.165, and is designed for, and is being operated or will operate to a substantial extent for the purpose of preventing, controlling or reducing air, water or noise pollution or solid waste, hazardous wastes or used oil, and that it is necessary to satisfy the intents and purposes of ORS Chapters 454, 459, 467 and 468 and rules adopted thereunder.

Therefore, this Pollution Control Facility Certificate is issued this date subject to compliance with the statutes of the State of Oregon, the regulations of the Department of Environmental Quality and the following special conditions:

1. The facility shall be continuously operated at maximum efficiency for the designed purpose of preventing, controlling, and reducing the type of pollution as indicated above.
2. The Department of Environmental Quality shall be immediately notified of any proposed change in use or method of operation of the facility and if, for any reason, the facility ceases to operate for its intended pollution control purpose.
3. Any reports or monitoring data requested by the Department of Environmental Quality shall be promptly provided.

NOTE: The facility described herein is not eligible to receive tax credit certification as an Energy Conservation Facility under the provisions of Chapter 512, Oregon Law 1979, if the person issued the Certificate elects to take the tax credit relief under ORS 316.097 or 317.072.

Signed: _____

Title: William P. Hutchison, Jr., Chairman

Approved by the Environmental Quality Commission on the 18th day of September, 1991.

MY101930 (9/91)

Marion L. Knox
35136 Hwy 34
Lebanon, OR 97355
January 18, 1995

Charles Binchi
Tax Credit Coordinator
Department of Envirometal Quality
811 S.W. 6th Ave.
Portland, OR 97204

Dear Sir;

I request that you transfer the Pollution Control Facility Certificate, numbers 2257 and 2335, from Marion L. Knox to Knox Seed, Inc.. I incorporated my farming operation on May 1, 1994 and transferred the farm equipment into this corporation. The address for Knox Seed, Inc. is the same as for Marion L. Knox.

Thank you.

Sincerely,

Marion L. Knox

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Molecular Probes
4849 Pitchfork Ave.
Eugene, OR 97402

The applicant owns and operates a specialty chemicals manufacturing lab in Eugene, Oregon.

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

2. Description of Facility

The claimed facility is an air-stripping system to remove solvents from waste water before discharging to the sanitary sewer. The system consists of a Cascade LP 5003 stripper, an influent holding tank, a pump, associated electrical and plumbing equipment and a building to house the equipment.

Claimed Facility Cost: $54,276
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadlines in that installation of the facility was substantially completed on January 9, 1994 and the application for certification was found to be complete on October 17, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose of the facility is to comply with a requirement imposed by the Metropolitan Wastewater Management Commission (MWMC) of Eugene, to reduce water pollution. The city is required to comply with a federal mandate to implement a wastewater pretreatment program. The applicant is required to comply with an Administrative Compliance

Order issued April 30, 1993. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Molecular Probes has a wastewater discharge permit number M-100E, issued by MWMC for its discharge to the sanitary sewer system. The company exceeded its permit limitation for chloroform for several months. As a result of these violations Molecular Probes was issued an Administrative Compliance Order by MWMC requiring the installation of a pretreatment system. Since installing the air-stripper system Molecular Probes has been in compliance with their discharge permit.

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

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

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

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

   There is no return on investment for this facility as the facility generates no income.

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

   A vacuum system to prevent solvent from entering the process water was evaluated but it did not consistently reduce solvent levels below permitted levels.

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

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

5) Any other factors which are relevant in establishing the portion of the actual cost of the facility

properly allocable to the prevention, control or reduction of air, water or noise pollution or solid or hazardous waste or to recycling or properly disposing of used oil.

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Metropolitan Wastewater Management Commission of Eugene to reduce water pollution and the facility accomplished this reduction by the use of a treatment system to reduce industrial waste as defined in ORS 468B.005.

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

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $54,276 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4260.

William J. Perry:WJP
e:\wp51\taxgen\molecula.tcr
(503) 686-7838
January, 1995

Application No.T-4264

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Johnson Controls Battery Group, Inc.
Battery Division
5757 N. Greenbay Avenue
Milwaukee, WI 53209

The applicant owns and operates a lead-acid battery manufacturing plant in Canby, Oregon.

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

2. Description of Facility

The facility includes skirting, a 1,500 square foot enclosure for four bag houses and three lead residue tanks.

Claimed Facility Cost: $100,817
(Accountant's certification was provided).

3. Procedural Requirements

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

The facility met statutory deadline in that construction of the facility was substantially completed in June 1, 1994 and the application for certification was found to be complete on January 23, 1995, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent a substantial quantity of water pollution. This prevention is accomplished by preventing storm water from contacting stored lead materials and products.

Johnson Controls Battery Group, Inc. (JCBGI) has a National Pollutant Discharge Elimination System (NPDES) General Permit 1200L which specifies the development and implementation of a Storm Water Management Control Plan (SWMCP). One of the best management practices (BMP) specified in the SWMCP is the provision for cover

or enclosure of all storage and manufacturing areas within the plant. JCBGI identified in its SWMCP four (4) baghouses for waste lead and three (3) lead residue tanks located outside of the manufacturing building as potential sources of storm water contamination.

JCBGI elected to provide enclosure of the material storage areas, implement preventive maintenance procedures and establish spill prevention and response procedures. The implementation of these BMPs eliminated the contamination of storm water with lead in the plant.

b. Eligible Cost Findings

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

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

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

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

   There is no return on investment for this facility.

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

   There are no known alternatives.

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

   There are no savings from the facility. The cost of maintaining and operating the facility is $1,890 annually.

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

recycling or properly disposing of used oil.

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to prevent storm water from being contaminated with lead materials and accomplishes this purpose by covering lead product storage areas.

c. The facility complies with DEQ permit conditions.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $100,817 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4264.

Elliot J. Zais
MW\WC13\WC13194.5
(503) 229-5292
1 Feb 95

Application No.T-4270

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Widmer Brewing Company
929 N Russell
Portland, OR 97227

The applicant owns and operates a brewery in Portland, Oregon.

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

2. Description of Facility

The facility consists of two 500 gallon stainless steel tanks, pumps, level controls, pH controls, agitator equipment, and associated plumbing and electrical system.

Claimed Facility Cost: $57,452
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadlines in that installation of the facility was substantially completed on September 1, 1992 and the application for certification was found to be complete on September 1, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose is to comply with a requirement imposed by the City of Portland to control water pollution. The city is required to comply with a federal mandate to implement a wastewater pretreatment program. The applicant is required to comply with a Compliance Order, CO-1992-004, issued by the Bureau of Environmental Services, City of Portland on August 28, 1992. This prevention is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

loading in the soils had been observed to date.[39]

This example in no way diminishes the seriousness of the situation at Summitville. There are significant environmental problems there that never should have been allowed to happen. However, the exaggeration in the MPC Report does not further any good purpose; it is misinformation, and frustrates a reasoned examination of Summitville and the lessons that should be learned from it.

## 11. MPC's Descriptions of Current Mining Practices Are Inaccurate.

Throughout the document, MPC describe past mining practices in ways that suggest they are current, and describes current mining practices in ways that are inaccurate and misleading. For instance, on page 14, the Report states that overburden, or mine waste, is deposited "downslope or wherever else is convenient." In truth, numerous state and federal laws apply to the placement and management of waste rock. MPC's assertion is simply not accurate. States typically require miners to submit a plan that includes a proposal for construction and management of waste rock repositories. A number of federal laws also apply. Section 404 of the Clean Water Act prevents placement of this material into any stream, including ephemeral streams that carry water only during spring runoff, without a permit from the Corps of Engineers.[40] Section 402 of the Clean Water Act similarly prohibits discharges of waste rock, or from waste rock, without a permit from EPA or an authorized state.[41] Requirements of the Clean Air Act also apply.

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[39] *Study Group* at page 52.

[40] 33 U.S.C. § 1344 (1988).

[41] 33 U.S.C. § 1342 (1988).

Moreover, the Report overestimates the amount of waste generated by hardrock mining. On page 13, the report states that for every ton of raw ore extracted, 100 tons of waste may be generated. The hardrock mining industry could not remain competitive with foreign producers if each ton of ore produced generated 100 tons of waste. In general, hardrock mines must reevaluate operations if the "stripping ratio" of waste to ore exceeds 4 to 1. A 100 to 1 ratio would be nearly impossible to justify.

On page 16 of the Report MPC describes the process by which acidic mine water is generated, and suggests that acid generation always occurs and that the acidic runoff is allowed to flow unregulated into streams. Neither assertion is true. Acid mine drainage can be a problem at sites where the ore and waste rock contain sulfides, but may not be if the rock contains naturally high pH materials that "buffer" the acid. This is a site-specific determination that requires the expertise of engineers, metallurgists and others. Many mine sites do not pose a serious potential for acid generation. In cases where there is potential for acid generation, miners typically are required to address it, among other ways, by adding buffering materials, covering or revegetating waste rock, or mixing waste rock and ore based on its mineralogic characteristics. The MPC account is not useful or accurate because it does not acknowledge or address these and many other facets of modern environmental regulation.

## 12. The Report's Economic Assumptions and Cost Estimates Contain Fatal Flaws.

To finance a pay-as-you-go abandoned mine land program, the Report suggests (among other funding sources) a 12.5% gross royalty, noting this is the same rate charged to producers of oil and gas on public lands. Coupled with a $100 annual rental fee, the Report assumes a yield of about $400 million annually.[42] There are numerous problems with this ostensibly straightforward calculation.

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[42] *Report* at page 9.

First, the domestic hardrock mining industry likely could not survive a 12.5% gross royalty in its current size. Even the Department of Justice in a recent draft study acknowledged receipts resulting from a 12.5% royalty may be "negative" because of reduced corporate tax revenues and costs of administering a royalty program.[43]

Second, the Report also attempts to draw parallels between the hardrock mining and coal industries where parallels do not exist. MPC asserts that since the coal industry has adopted an abandoned mine reclamation program, a similar program could easily be adopted by the hardrock industry. The Report ignores the competitive differences between the two industries. The United States is the dominant coal producer in the world and therefore defines the worldwide coal market. In addition, coal typically is purchased under long-term contracts with built-in escalating clauses and automatic pass-throughs for reclamation costs to utility customers that operate in a monopoly environment. The domestic hardrock industry, in contrast, must compete with international mineral producers and sell products at prices set by international supply and demand. As a consequence, cost increases cannot be passed through readily in the cost of hardrock minerals.

Finally, the Report states, without corroborating analysis or details, that every $1 million of reclamation money will create 26 jobs, and that a nationwide program would create 10,000 jobs.[44] 10,000 jobs assumes funding at the $400 million level, which as described above is unrealistic. Additionally, it is disingenuous to compare (as the Report does) reclamation jobs with mining jobs, in term of pay, benefits or permanence. Few reclamation jobs would be comparable to the high-paying jobs generated by the mining industry.

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[43]"Potential Weakness in Mining Bill Criticized," The Washington Post, May 23, 1993, Sec. A, p. 10.

[44]*Report* at pp. 8-9.

**Women's Mining Coalition**
*A Grassroots Coalition Supporting Responsible Changes to the Mining Law*

1375 Greg Street, #106
Sparks, NV 89431

Telephone: 702/356-0616
Facsimile: 702/356-5982

August 4, 1993

The Honorable Richard S. Lehman
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C. 20515-6201

Dear Chairman Lehman:

I appreciate the opportunity to share my views and experience of remining inactive mine sites with you and the members of your subcommittees. My written testimony is attached for your review. I am an independent small miner, and represent a segment of the mining industry that has emulated the spirit and drive of American ingenuity since our nation was founded. I am here on behalf of Women In Mining and the Women's Mining Coalition.

My company, and many others like it, have taken responsibility for not only our actions, but also for the actions of historical mine operation that flourished over 120 years ago. We have demonstrated that remining and environmental restoration are effective remediation and safeguarding tools, and I thank you for the opportunity to share my story with you.

Very Truly Yours,

Maxine Stewart

Maxine Stewart
General Manager
Solution Gold, Ltd.

STATEMENT OF MAXINE STEWART
SOLUTION GOLD, LTD.

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATION

HEARING ON UNRECLAIMED HARDROCK MINES
AUGUST 5, 1993

Good morning, Chairman Miller and distinguished members of the Joint Subcommittee. I thank you for the opportunity to address the subcommittee on the subject of abandoned mines. I would like to share with you some of my first-hand experience with the challenges associated with abandoned and inactive mines. I applaud your efforts to address these challenges in a reasonable manner and feel that we share many common concerns in our approaches to effective solutions.

Let me start by giving you a brief review of my background within the mining industry generally and my experience and expertise in the areas of reclamation and remining specifically.

I have been a part of the hardrock mining industry for nearly 25 years and currently am the General Manager of a small company called Solution Gold, Ltd., operating in Colorado. We are in the business of remining - or reclamation mining. Remining is really recycling and environmental restoration all in one. I call it the art of mining backwards - because you essentially put things back the way they were - often times back in better condition. In many cases, the clean-up pays for itself.

We do not mine any "new" ore, but collect rock from historic mining sites for reprocessing at a centralized "remining and repository" facility. In essence, we have privatized an abandoned mine reclamation program without imposing an additional burden on the mining industry and without costing the American taxpayers a single dollar. Let me emphasize what I just said, not only have we privatized these types of clean-ups, but we have consistently done it at a profit.

Let me contrast this with what has happened with the Superfund program. As a local technical advisor to the Region 8 Superfund Program, I have been trying for the last six years to encourage EPA to accept remining as one of their approved technologies. I am personally familiar with the Superfund sites in my local mining district which have been under study since 1982, and as of today, not one has been cleaned up.

While I am not criticizing EPA ,I am criticizing our "legislative system" that has so encumbered existing federal regulatory programs to the extent that they cannot function properly or economically.

Case in point, three years ago I requested EPA approval of our facility as an "Off-Site Repository for Superfund Related Mine Waste" in our local area. After three years, and nearly a million dollars in engineering and design adjustments - to meet RCRA Sub-Title D landfill requirements in addition to mining permit requirements - the approval was granted. Now if we can just get EPA to finish the study and issue remediation orders, we can clean'up two counties with wastes over 120 years old.

In addition to my industry experience, I also serve in regulatory and advisory capacities at both the state and federal levels. I currently am Chairman of the Colorado Mined Land Reclamation Board which oversees state mine land reclamation programs and environmental restoration and mitigation projects. I have a working knowledge of the needs of existing programs dealing with inactive mine sites.

Given my experience and hands-on involvement in abandoned mine land programs, I would like to share with you a three-part solution which I believe can effectively and responsibly address the current challenges involving abandoned and inactive mines.

First, I can say with confidence that only a well run interactive state program can balance differing values while protecting health, safety and the environment. I encourage you to work with the states to solve their own problems at home.

Second, if you really want to fix things, pass legislation that frees participants from future liability when they actually clean-up or safeguard mining sites. Industry would jump at the opportunity of remining and cleaning up historic mine sites, if the issue of CERCLA liability could be resolved. This would create opportunities for mining companies, environmental organizations, regulatory agencies and the general public to freely participate in joint restoration projects.

I know of several state programs, that had the dollars in hand to remediate inactive mine sites. Unfortunately, these programs were halted and no clean-ups were performed because the states couldn't get EPA to say that they would have indemnification from future Superfund liability. These were NOT Superfund sites, but EPA could not say that they would not make them Superfund sites. To date, the unwritten rule is: if you touch it, you may become liable for it. Even if you clean it up, you may still be considered a "Potentially Responsible Party". What kind of incentive is that for any state or private party?

My third, and final recommendation is for a program that encourages reclamation through remining. My experience tells me that whatever problems may exist could be mitigated in fewer years and at a great savings to the taxpayer. Privatization of clean-ups can not only save time, but can save literally billions of dollars that now are spent in studying these problems to death.

In summary, I would like to reiterate my recommendations and site some examples of existing cooperative clean-up projects. My three recommendations for a sensible inactive mines program are:

1. States should have primacy in implementing programs. Mine sites are unique by type, climate, geology, and hydrology and require local knowledge and expertise for effective remediation.

2. Future CERCLA liability for remedial projects must be resolved before any programs can be enacted.

3. Remining should be the cornerstone of any inactive mine program. Remining not only solves many of the problems, but can usually generate enough revenues to pay for project costs.

Because states were reluctant to perform remedial projects because of unresolved CERCLA liability, my company offered a private proposal for a project that would restore 37 acres of historic mine land disturbance that was adjacent to our mine. We were awarded a grant, through the EPA program, that required matching dollars, and in 1992, we were able to restore an entire small watershed.

Our grant was for $52,000. Matching contributions of money and services from our company, Boy Scouts, service organizations and vendors amounted to nearly $200,000. This year's water quality sampling shows more than a ten-fold improvement in water quality over pre-existing baseline data. Soil erosion losses have been reduced from more than 200 tons per acre per year, to less than 10.

In Nevada, the "Adopt An Orphaned Mine" program has safeguarded numerous inactive mine hazards. With the protection of a "Good Samaritan Law", they have been able to perform joint projects with Scouts, spelunking clubs, vendors and mining industry volunteers.

Colorado has been able to involve Trout Unlimited, Coors Brewery, the Volunteers for Outdoor Colorado, Search and Rescue Teams, soil conservation districts, water conservation organizations and numerous state and federal agencies in performing projects through the Nonpoint Source Program.

Women In Mining, a non-profit educational organization started in Colorado, began a joint program with the Bureau of Land Management called Operation Respect nearly 15 years ago. This program teaches awareness and safety in inactive mine areas, and is credited with saving many lives. Versions of this program now exist in most western states.

In closing, I would like to invite you to visit my operation, Solution Gold's Druid Mine, near Central City, Colorado. Last year over 300 groups toured our operation to observe remining and environmental restoration. The groups included foreign governments interested in remining, federal and state agencies including EPA, BLM, USBOM, USGS, environmental groups, schools, state legislators and many members of the media and public.

As you can see, companies like mine and many others have been addressing these problems for some time. Our experience demonstrates that effective solutions have been found and continue to be used. Sensational allegations about the nature and extent of the problem do not lead to solutions, but only add to the confusion and misunderstanding about this issue.

I thank you for the opportunity to testify, and would encourage your committee and any other interested parties to come and visit a little remining operation in Colorado that has already cleaned up two small watersheds and working on its third. Thanks again!

**Women's Mining Coalition**
*A Grassroots Coalition Supporting Responsible Changes to the Mining Law*

1375 Greg Street, #106
Sparks, NV 89431

Telephone: 702/356-0616
Facsimile: 702/356-5982

August 4, 1993

The Honorable Richard S. Lehman
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C. 20515-6201

Dear Chairman Lehman,

Thank you for this opportunity to share my views on unreclaimed hardrock mines with you and members of the Subcommittee on Energy and Mineral Resources. Attached please find a copy of my testimony, which is given on behalf of the Women's Mining Coalition, a grassroots organization dedicated to responsible mining law reform.

As a geologist and the Environmental Coordinator for Crown Butte Mines, Inc. of Billings, Montana, I would like to emphasize that historic mining districts continue to be investigated by mining companies for mineral potential. With modern mining and reclamation techniques, historic mining districts and unreclaimed hardrock mines can be reinvestigated, mined and reclaimed with a minimum of impacts.

Thank you again for the opportunity to testify.

Sincerely,

Nancy Winslow
Environmental Coordinator
Crown Butte Mines, Inc.

STATEMENT OF NANCY WINSLOW
CROWN BUTTE MINES, INC.

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OVERSIGHT HEARING ON UNRECLAIMED HARDROCK MINES
August 5, 1993

My name is Nancy Winslow and I am a geologist and the Environmental Coordinator for Crown Butte Mines, Inc. based in Billings, Montana.

I would like to thank the Joint Subcommittee for the opportunity to testify on behalf of the Women's Mining Coalition, which is a grass-roots organization supporting responsible changes to the federal mining laws.

The mining industry employs over 8,000 women nationwide and also indirectly employs thousands of other women. Many of these women are the primary bread-winners of their family. We are concerned about the health of the U.S. mining industry because it has afforded us excellent opportunities for advancement in professions that range from driving trucks, to underground mining, engineering and geology. Approximately 20 percent of mining industry jobs are held by women.

If the U.S. mining industry is forced overseas, the jobs from the mines will move with them (see attached Wall Street Journal article). Even for women engineers and geologists who are accustomed to traveling, cultural barriers prevent us from working in other countries. I know of no American women geologists working overseas, but approximately 70% of the male mineral exploration geologists I know from Montana are currently working in either Central or South America.

As part of the hearing today on unreclaimed hardrock mines, I would like to emphasize that:

- Mining and reclamation techniques developed during the past 25 years are much different than those of the past;
- Most historic mining sites are not hazardous and provide valuable information to geologists as exploration tools;
- Historic mining districts continue to have mineral resource potential and many are being re-mined or re-investigated with modern technology; and,

- Most historic mining sites do not negatively affect water quality. Many sites that do impact water quality are being cleaned-up under current environmental laws.

I'm sure that the members of the subcommittee have heard much about the impacts of historic mines. Some testifying today have asserted that unsound mining practices are continuing today on a grand scale. They are wrong. In the earlier days of mining, all you needed was a pick or a bulldozer to start a mine. Today, the permit application and environmental impact assessment process takes millions of dollars and years to complete. The results of this extensive planning are more efficient mine plans, extensive environmental safeguards and effective impact mitigation plans.

If nothing else I say today makes an impact, I would like to leave you with the message that modern mining and environmental awareness is vastly different than that of the past. Before we indict the miners of the past, we must remember that they were following accepted mining practices of the day. To them, an open pit or a producing mine shaft was a beautiful thing--a symbol of their success as prospectors and providers for their family. In other words, "if you don't produce ore, you don't eat." Growing up in a family of miners, I am very familiar with this credo. As a fifth-generation Montanan, my descendants were some of the first gold prospectors that came to Montana in the 1860's gold rush. My great-great grandfather drove shipments of gold on the stagecoach from Virginia City to Bozeman. My grandfather and father mined copper in Butte. Other family members raised vegetables and beef for the miners.

Survival was the main focus of the early miners, and through the last 130 years, their gain was America's gain. The nation benefitted from the affordable metals in the past--through two World Wars and a phenomenal improvement in our standard of living. In fact, during several of the foreign wars, the federal government encouraged and financed mining operations as part of the strategic metals program.

As America's environmental consciousness has been raised in the last 25 years, so has the mining industry's. Unlike mining companies decades ago that were solely concentrated on resource production, mining companies today have an "eye for the future". Environmental safeguards are built-in to modern mining operations and all mining sites are reclaimed. Currently, under existing environmental law, mine managers and regulators plan for "future compatible uses of the land", where multiple-use activities can successfully resume after mining.

## THE NEW WORLD PROJECT

As the Environmental Coordinator for the Crown Butte Mines, Inc. New World Project, I have become acutely aware of both modern mining practices and the costs that industry bears to help ensure that mines are environmentally-sound. The New World Project is a proposed gold, silver and copper mine located in south-central Montana.

For the past four years, my company has collected environmental baseline data and for the past three years has refined its Hard Rock Permit Application in coordination with state and federal agency guidance. The 11-volume New World Mine Permit Application and environmental data summary takes up two shelves on my bookcase--and we just have started the Environmental Impact Statement (EIS) process required by the National Environmental Policy Act (NEPA). During the past four years, Crown Butte has spent $2,500,000 on environmental compliance costs and permitting--all before the EIS is even finished or the permit to mine is even contemplated by the state and federal agencies.

Prior to current mining practices and prior to Crown Butte stepping in, the New World Project area was a historic mining district dating back to the 1800's. Historic mining continued intermittently on into the early 1950's and left the historic district unreclaimed.

Beginning in 1987, Crown Butte began exploring the New World mining district. During exploration phases of the project, Crown Butte voluntarily reclaimed twice as much land than was required by the state and federal exploration permits. Like many other companies, Crown Butte is using modern reclamation technology and going the extra mile in reclaiming old historic mines sites.

Crown Butte's exploration geologists saw the remaining potential in the mining district. The discovered significant additional deposits just 100 feet beyond where the old-timers had quit tunneling. While the ore deposit was being defined, Crown Butte began cleaning-up the site, leaving historically significant cabins and mine ruins intact, a requirement of the National Historic Preservation Act.

Reclamation during exploration phases of the project not only included re-contouring and reseeding the exploration roads created by Crown Butte, but it also included reclamation of a number of other historic sites as well. Clean-up of historic sites included:

- Re-contouring and reseeding roads created by historic mining;
- Re-contouring an old open pit mine dating from the 1950's;

- Constructing drainage ditches around historic sites to prevent water infiltration;

- Funding U.S. Forest Service vegetation studies and a native seed nursery that will provide site-specific information on high-altitude reclamation outside the proposed mine area.

In recognition of these efforts during the mineral exploration phase of the project, Crown Butte received the Excellence Award for reclamation from the Forest Service during 1992. We are proud of this achievement and personally gratified that our efforts were recognized. Region One of the Forest Service has given this award only one other time during the last 10 years. Figure 1 is a drawing illustrating the disturbances reclaimed by Crown Butte.

The New World Mine will be a "Showcase Operation", where the latest and best technology will be used for construction, operation and reclamation. The company will continue to provide financial assurances for reclamation in the form of a reclamation bond held by both the U.S. Forest Service and Montana Department of State Lands.

At the New World Project, all mining will be underground and no open pits are planned. Gold, silver and copper will be recovered using environmentally-safe processes. The mine will not be visible from the access roads leading to the local community. Figure 2 is a photograph of the project site from an airplane looking northwest. Figures 3, 4 and 5 illustrate computer simulations of the project during operations and after reclamation.

Under existing environmental and mining laws, the New World area can be mined and restored to a far better condition than existed when we began exploring the property. Revenues from the mine production will pay for water treatment and reclamation. The mine provides a unique and exciting opportunity to not only fund additional reclamation of historic sites and improve the environment, but to produce a valuable commodity, provide state and county taxes, help reduce the national trade deficit and provide high-paying jobs that complement the local tourism-based economy.

## OTHER HISTORIC MINING DISTRICTS IN THE NORTHWEST

The proposed New World Mine illustrates the innovative techniques that can be used for reclamation in a historic mining district. However, many of these disturbances in historic sites are valuable to geologists and prospectors. During my tenure as an exploration geologist in the northwest U.S., every project I was involved with were historic mining sites that were the best source of information regarding mineral

potential. The old-timers were very diligent. These sites are invaluable to modern geologists that need to look at fresh rock faces and "see" under the vegetation.

Many of the historic mining areas and ghost towns are the quintessential picture of the "Old West", where unique old buildings and prospects add to the beauty and character of the area. Congress sought to preserve the historic character of the old mining districts under the National Historic Preservation Act.

According to an industry prospector computer data base[1] there are about 21,000 mining-related sites in Montana, but that number includes the thousands of small holes dug along the barren quartz veins scattered throughout the state. Of all 21,000 disturbances, only about 270, or 1% of the 21,000, are being studied by the Montana Abandoned Mines Program for possible water quality impacts[2]. A CERCLA-level inventory last year on the Deer Lodge National Forest by the Montana Bureau of mines indicated that only about 1.5% of the historic disturbances on the Forest have water quality problems[3].

Existing environmental laws can and are being implemented to clean-up the sites with significant environmental impacts. For example, the sites requiring priority clean-up are already designated state or federal Superfund sites and many mining companies will pay the costs of the clean-up. Sites with poor water quality are currently being reviewed by the EPA as part of the Clean Water Act. Open holes and tunnels that are hazardous for hikers and animals are being sealed or backfilled and mining companies are voluntarily fencing or sealing hazardous areas.

In summary, I would like to emphasize that mining and reclamation techniques today are much different than those of the past when resource production, not environmental protection, was the main focus of the industry. However, most historic mining sites do not pose a threat to the environment and do provide valuable information to geologists as exploration tools. Historic mining districts are the best places to look for minerals. With modern technology, historic districts can be reinvestigated, mined and reclaimed with a minimum of impacts.

Thank you for the opportunity to comment.

Nancy Winslow
Environmental Coordinator
Crown Butte Mines, Inc.

1. Paul Fredericks, 1993, personal communication, MINERAL LOGIC prospector computer database, Missoula, Montana.

2. Victor Anderson, 1993, personal communication, Montana State Abandoned Mines Program, Helena, Montana.

3. Robin McCulloch, 1993, personal communication, Montana Bureau of Mines and Geology, Butte, Montana.

*Going South*

# U.S. Mining Firms, Unwelcome at Home, Flock to Latin America

## Citing Environmental Woes, They Step Up Spending In Newly Friendly Lands

## Richer Ores Also Play a Role

By Mari Charlier
*Staff Reporter of The Wall Street Journal*

LA JOYA, Bolivia — In the thin air of the Altiplano, a barren plateau some 12,000 feet above sea level, shiny new mills, drill rigs and rumbling 85-ton trucks signify more U.S. jobs lost to foreign nations.

But there isn't much hue and cry back home. These jobs are in a mine — the Kori Kollo gold mine operated by Houston's Battle Mountain Gold Co. — and mining isn't welcome now in much of the U.S.

After nearly three centuries, the U.S. mining industry is looking to Latin America for its future operations. In 1992, the number of U.S. and Canadian mining companies exploring or operating in Latin America doubled from the year before. While exploration spending slipped 13% in the U.S. in the past two years, it more than doubled in Latin America.

### Environmental Opposition

And as existing mines play out, the companies are leaving the U.S. with the blessing, if not open encouragement, of the Clinton administration and Congress, which are proposing even stiffer environmental regulations and new royalties on metals on public lands. Mining's critics contend that the U.S. won't lose much economically. The shrinking industry now employs only about 500,000 U.S. workers and, critics predict, will return after plucking the easy deposits elsewhere.

Battle Mountain's contrasting experiences in the U.S. and Bolivia illustrate why mining companies are leaving. In the state of Washington, the company and a partner have been battling for 18 months environmentalists who oppose their Crown Jewel gold mine. The necessary mining permits are still at least six months away. But here in Bolivia, Battle Mountain was welcomed as a source of jobs and tax revenue and seen as a protector of the environment. The company received all needed permits the day it got the go-ahead from lenders.

"A U.S. mining company has to go international or it runs a very high risk of going out of business," says Kenneth Werneburg, Battle Mountain's president.

### Better Prospects

In moving south, miners are also following their noses. In the U.S., most of the high-quality and cheap-to-mine ore has been extracted. But in South America, where dictatorships, leftist governments and constitutional provisions held down exploration for years, democratic reforms have now stabilized once-volatile political environments, and the mountainous terrain seems a bonanza awaiting modern exploration techniques.

"In the U.S., there are 10 geologists for every prospect," says Les Van Dyke, a Battle Mountain spokesman. "In Bolivia, there are 10 prospects for every geologist."

That may change soon. One recent morning, the Plaza Hotel cafeteria in La Paz was serving geologists from Amax Gold Inc., executives from a Salt Lake City mining-service firm and managers from Battle Mountain's joint-venture company in Bolivia. Having breakfast there the next day were representatives of Tucson's Arimetco International Inc., San Francisco's Mineral Resources Development Inc. and Denver's Minproc Technology Inc.

And U.S. companies aren't merely looking around. Newmont Mining Corp., of Denver, will spend $18 million of its $30 million exploration budget next year overseas — much of it in Latin America. Cyprus Minerals Corp. has leased some Bolivian prospects for exploration and is considering joint-venture offers from state-owned companies in Chile and Peru. Phelps Dodge Corp. has begun building a $560 million copper mine in northern Chile. Amax Gold recently purchased interests in two gold projects in Chile and is exploring for more in Bolivia. Both Coeur d'Alene Mining Corp. and American Resource Corp. recently constructed major gold mines in Latin America.

### Green Movements

Certainly, it isn't all golden south of the border. Some opposition to foreign investment lingers on, especially in areas where mining unions have been strong. The state-owned Corporacion Minera de Bolivia (Comibol) has laid off tens of thousands of superfluous miners, and the Comibol union fears that foreign investment will cause further loss of members and clout.

In addition, an environmental movement is arising. A Chilean environmental agency forced Phelps Dodge to relocate a port for a new copper mine after complaints from a nearby scallop farm. And, aided by $67,000 appropriated by the U.S. Congress, a U.S. agency and some European countries proposed an environmental law for Bolivia last year that would have killed all mining projects in the country; a less-stringent law was passed.

Since 1988, however, eight job-hungry Latin American countries have rewritten their mining laws to encourage foreign investment. Peru eliminated price controls, lifted foreign-exchange restrictions and started privatizing state ventures. Mexico abolished mining royalties. Gonzalo Sanchez de Losada, chairman of Bolivia's biggest private mining company, was recently elected the country's president. And many miners, once strongly socialistic, have changed their minds about foreign investment and capitalism, thanks to such successes as Kori Kollo.

In the U.S., rural Western counties, already reeling from declines in the number of farms and ranches and cutbacks in the defense industry, will be the hardest hit by the flight of the mining companies. Their departure mirrors what happened earlier in the oil industry, where the U.S. has lost 500,000 jobs in the past decade. And as in the case of oil, the U.S. will have to import more metal, to the detriment of its already-lopsided balance of trade.

Miners haven't had much success countering their critics in Washington, where the sparsely populated states in which they operate have little political clout, especially with the environmental orientation of the Clinton administration. Jim Hill, a Newmont Mining spokesman, says "our biggest political risk is in the U.S.," even though the company's Peruvian mining project requires heavy security against the Shining Path guerrillas.

U.S. indifference to mining is just fine with Latin Americans. At a recent mining conference in Miami, Fausto Miranda Paz, a Mexican attorney, joked that his country, a major beneficiary of U.S. mining investment, should make campaign contributions to the legislators proposing high royalties in the U.S. "We are very grateful," he said. This summer, Peru, Bolivia and Argentina have sent or will send official mining delegations to Denver to court U.S. companies.

### Problems in the U.S.

The industry's problems in the U.S. are evident in Olympia, Wash., where the permitting process for the Crown Jewel mine owned by Battle Mountain and Crown Resources Corp. is dragging on and on. Environmentalists make no bones about what is happening. "We will certainly challenge it every step of the way," says Christopher Carrel, executive director of the Washington Wilderness Coalition.

The coalition of 22 environmental groups has assailed the project at three public hearings and subsequently submitted 600 pages of comments to which the companies, under the law, must respond. "It's not a lot of fun to hike around an open pit," Mr. Carrel says. Besides, he adds, the group isn't convinced the cyanide solutions used to process ore can be contained safely, and worries about water supplies.

The group proposed a 40-page bill that would have lengthened the state's permitting period to at least five years — a sure-fire project-killer, the companies say. When the bill didn't pass the legislature, the coalition sponsored newspaper ads and radio spots advocating declaration of a state of emergency, which would have triggered a moratorium on mining. The governor wouldn't do that, but the group is still pushing him to sign a moratorium until stiffer regulations are enacted.

Even without new legislation, the Crown Jewel mine must receive 56 different permits from 32 different agencies to proceed. Preparing the 1,000-page environmental-impact statement alone is occupying 250 people, 100 more than the mine itself would employ. It also is adding $5 million to Battle Mountain's initial development costs, which total $70 million.

## Getting Started in Bolivia

All this frustration, along with falling reserves at its Fortitude, Nev., gold mine, hastened Battle Mountain's decision to look south for new prospects. In 1989, the company found Kori Kollo, which was a small mine here owned by Zeland Mines Ltd., of Panama, and had been mined off and on since the 1700s. With Battle Mountain funding, however, a gold deposit of 4.7 million ounces was defined, and Inti-Raymi SA – as the partnership between Zeland and Battle Mountain is known – promptly started negotiations with townspeople to buy the land around the deposit.

When Inti-Raymi officials rang the ancient church bells at the tiny village of Chuquina to call a town meeting, only two people showed up. The adobe huts had long since been abandoned; their owners had moved to hunt for jobs in the cities. In nearby La Joya, just 25 residents remained, barely scratching out a living by farming and small-stakes mining.

All that changed after Inti-Raymi agreed to relocate Chuquina, supplying materials and architects for new homes, a new school, a new church, a government building and a hospital. It also brought in water, sewers and electricity. In return for the community-owned land in La Joya, it brought in electricity, drilled water wells, remodeled the old La Joya church and built a new school and first-aid clinic.

Today, Chuquina's population is back to 500 and La Joya's 1,000, mostly because of work at the mine. All but two of the 550 jobs there are held by Bolivians.

They are an obliging work force. After all, pay at Kori Kollo averages about $400 a month, compared with an average Bolivian factory worker's $100 a month. And mining jobs are scarce; in the past five years, Comibol employment has dwindled to 6,000 from 35,000. Not surprisingly, Inti-Raymi's recent negotiations with two unions were resolved in just two days.

Battle Mountain has also been pleased with its operations here. It was able to recruit some of the country's best mining engineers and geologists, who ensured a quick startup. Miners were easily trained, and construction crews were efficient. While the company has spent about $235 million, including development costs, for its 85% stake in the mine, low labor costs have kept cash operating costs low – about $180 an ounce, compared with a U.S. average of about $240 an ounce.

Inti-Raymi also completed the processing mill two months ahead of schedule, despite the difficult terrain – the Altiplano is ringed by 20,000-foot peaks – and the lack of paved highways – Bolivia, a country the size of France and Spain combined, has just 1,000 miles of them. Battle Mountain built a 45-mile power line and, to bring in supplies, a 250-mile gravel road from La Joya to Arica, on the Chilean coast. It built a town for its managers and an airstrip.

Battle Mountain and Zeland also are trying to avoid the ruthless, colonialist image that long plagued the industry in Latin America and led to the nationalization of mines in the 1950s and 1960s. The joint venture's Inti-Raymi Foundation has started $1.8 million in charitable projects, introducing better strains of grain and livestock, improving water systems and building 14 schools. Twenty women, many of whom used to pan for gold to support their families, now weave scarves at a cooperative set up by the foundation.

Sitting at a primitive loom, Nancy Quispe De Lopez, 32 years old, recalls once being unable to find a teaching job, but now she earns $100 a week, more than a teacher makes, weaving in a new brick building close to La Joya's maze of adobe homes. Combined with her husband's mining pay, her earnings enable the family to put fresh fruit on the table – a luxury on the barren plains.

Local residents also hail Battle Mountain's environmental policies. The company says it follows U.S. Environmental Protection Agency standards at Kori Kollo, as demanded by most international lending agencies and banks. It has constructed a closed system that recycles the chemicals and water used in the mining and milling. That is a change in South America, a continent overrun by lone-wolf prospectors who have poisoned streams with mercury and whose hydraulic jets have washed tons of mountain soil into rivers.

Even Philip Hocker, president of the Mineral Policy Center, a U.S. environmental group, concedes that the big U.S. and Canadian companies have generally followed good environmental practices abroad. "There is a faction within the industry that understands that they cannot go on operating badly," he says. However, he remains skeptical of smaller companies, especially those with bad environmental records in the U.S.

But for the foreseeable future, Bolivia's hunger for economic development and jobs will probably carry more weight than environmental concerns anyway. "The needs of this country are very different" than those in the U.S., says Mario Mercado, who runs Zeland. "Work, taxes, roads and schools – this is what the mining industry offers."

Widmer Brewing Company was issued an Industrial Wastewater Discharge Permit No. 400-080 by the City of Portland for its industrial wastewater discharge to the city sanitary sewer. A compliance schedule was included to that permit for the installation of a wastewater pretreatment system. However, Widmer was not able to meet its compliance dates due to equipment delivery delays. As a result of the noncompliance for its schedule, Widmer entered in a Compliance Order with the City to complete installation of the pretreatment system and implement a monitoring program for the discharge to the sewer.

According to the Bureau of Environmental Services, the facility is in compliance with its permit for discharge of neutralized wastewater to the sanitary sewer. The equipment appeared to be operating satisfactorily during observation of the claimed facility on September 1, 1994.

The City of Portland is implementing a pretreatment program approved by the Department as required by the federal National Pollutant Discharge Elimination System (NPDES) permitting program.

b. Eligible Cost Findings

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

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

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

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

   There is no return on investment for this equipment.

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

   There are no practical alternatives. Manual adjustment of pH is not effective.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $12,000 annually.

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

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

The actual cost of the facility properly allocable to pollution control is 100%.

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the City of Portland to control a substantial quantity of water pollution and accomplishes this purpose by the use of treatment works for industrial waste as defined in ORS 468B.005.

c. The facility complies with City of Portland Industrial Wastewater Discharge permit conditions and compliance order.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $57,452 with 100% allocated to pollution control be issued for the facility claimed in Tax Credit Application No. T-4270.

James R. Sheetz, P.E.
MW\WC13\WC13176.5
(503) 229-5740
25 Jan 95

Application No.T-4275

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

COLUMBIA STEEL CASTING CO., INC.
PO BOX 83095
PORTLAND OR 97283

The applicant owns and operates a steel casting foundry in Portland, Oregon.

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

2. Description of Facility

The facility consists of one 25-hp pump, two 15-hp pumps, about 5000 feet of piping, numerous valves and pipe fittings, two large underground sumps, pump platforms, evaporative spray manifold, and automatic controls. The system is a complete closed-loop recycling system for contact and non-contact process cooling water.

Claimed Facility Cost: $174,223
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadline in that construction, erection, or installation of the facility was substantially completed on September 30, 1992 and the application for certification was found to be complete on September 2, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the principal purpose is to comply with a requirement imposed by the Department to prevent water pollution. The requirement is to comply with a Department order. This prevention is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

On November 8, 1990 Columbia Steel Casting Company (CSCC) made an application for a National Pollutant Discharge Elimination System (NPDES) for an unpermitted discharge of contact and non-contact process cooling water into the Columbia Slough. A Stipulated Final Order (SFO) was proposed to supplement the permit with compliance conditions. The proposed SFO required CSCC to install a complete recycle wastewater treatment system by December 30, 1992.

However, the claimed facility was installed and operated prior to the issuance of the NPDES permit and the SFO. The Department confirmed the elimination of the discharge by an inspection of the facility.

b. Eligible Cost Findings

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

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

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

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

There is no return on investment for this facility as there is income generated by the facility.

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

The method chosen is an acceptable, reasonable cost method for reducing water pollution.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $18,266 annually.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the principal purpose of the facility is to comply with a requirement imposed by the Department to prevent water pollution and accomplishes this purpose by redesign to eliminate industrial waste as defined in ORS 468B.005.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $174,223 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4275.

Elliot J. Zais:crw
MW\WC13\WC13177.5
(503) 229-5292
25 Jan 95

Application No.T-4289

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Consolidated Metco, Inc.
13940 N. Rivergate Blvd
Portland OR 97203

The applicant owns and operates an aluminum casting manufacturing facility at 10448 Highway 212 in Clackamas, Oregon.

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

2. Description of Facility

The facility is an evaporative wastewater treatment system consisting of a TFK-Autovap 1000 evaporator unit, a motorized oil mop system, storage tanks, pumps, and associated electrical and plumbing system.

Claimed Facility Cost: $210,180
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met the statutory deadline in that construction and installation of the facility was substantially completed on August 28, 1993 and the application for certification was found to be complete on September 13, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent wastewater discharge. This prevention is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Wastewater generated from the production plant is skimmed with an oil mop, filtered and then pumped into large fiberglass tanks. From the tanks it is metered to the evaporative device, Autovap, where it is vaporized using waste furnace heat. The evaporation capacity of the unit 50-60 gallons per hour. Typically, 1000 gallons of wastewater is evaporated per day. A concentrate is left behind and drained to a storage tank for disposal.

Consolidated Metco, Inc. (ConMetco) had a Wastewater Discharge Permit issued by the Clackamas County Service District # 1 (District) for the discharge of industrial wastewater to sanitary sewers. The discharge permit effluent limits for phenol, zinc, and oil and grease were tightened by the District to meet the federal categorical standards for metal molding and casting industry discharge to municipal wastewater treatment facilities. The existing wastewater treatment system of the facility could not meet discharge permit limits. The company elected to install a treatment system with zero discharge to the sanitary sewer. On July 18, 1994 the District advised ConMetco that it no longer need a waste discharge permit and that only sanitary wastes are to be discharged to the sewer system.

b. Eligible Cost Findings

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

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

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

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

   There is no return on this investment as there is no income generated by the facility

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

A. Chemical system - Estimated cost is $100,000. This system was not selected because of high labor and material maintenance costs, future uncertainties related to sludge disposal, and inability to assure treated wastewater would meet standards defined for discharge to the municipal treatment facilities.

B. Ultra-filter treatment system - Estimated cost is $150,000. This system was not selected because operating cost could not be defined, filter effectiveness was questionable when exposed to the plant's waste stream, and the manufacturer could not assure discharge would meet standards defined for discharge to the municipal treatment facilities.

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

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

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this by redesign to eliminate industrial waste as defined in ORS 468B.005.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $210,180 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4289.

Elliot J. Zais, PhD, PE
MW\WC13\WC13144.5
(503) 229-5292
19 Jan 95

Application No.T-4291

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Polk County Farmers' Co-op
P.O. Box 47
Rickreall, OR 97371

The applicant owns and operates a feed and farm supply store in Junction City, Oregon.

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

2. Description of Facility

The claimed facility consists of a concrete pad for washing trucks and equipment, a concrete sump for collection of effluent, an All American Oil Water/Solids Separator, and a building to house the equipment.

Claimed Facility Cost: $ 23,327
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadline in that installation of the facility was substantially completed on April 1, 1994 and the application for certification was found to be complete on October 25, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to reduce a substantial quantity of water pollution. This reduction is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Prior to the installation of the claimed facility wash water was discharged to the ground, and could cause pollution of surface or ground waters. The new system will remove oil and solids, and the wastewater will be discharged to the Junction City sanitary sewer

b. Eligible Cost Findings

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

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

A portion of the waste products are converted into a salable or usable commodity consisting of heavy oil. Customers are also charged for washing of their equipment at the facility.

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

The estimated annual percent return on the investment is calculated as follows:

Average annual cash flow: $ 2,129
Useful life of the facility: 10 years

Return on investment factor: $\frac{\$\ 23,327}{\$\ 2,129}$

$= 10.95$

From Table 1, OAR 340-16-030

Percent Return on Investment (ROI): = 0

From Table 2, OAR 340-16-030

Reference Annual Percent Return on Investment (RROI) for 1994:

RROI (1994) = 4.5

Percent of actual cost allocable to pollution ($P_A$)

$$P_A = \frac{RROI - ROI}{RROI} \times 100 = \frac{4.5 - 0}{4.5} \times 100 = 100\%$$

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

There are no alternatives evaluated by the applicant.

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

As stated in item 4b.2) above, there is an estimated positive cash flow of $ 2,129 which equates to a 0% return on investment in the facility.

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to reduce a substantial quantity of water pollution and accomplishes this purpose by the use of a system to treat industrial waste as defined in ORS 468B.005.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $ 23,327 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4291.

William J. Perry:crw
MW\WC13\WC13181.5)
(503) 686-7838
25 Jan 95

Application No.T-4296

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Northwest Natural Gas Company
220 NW 2nd Avenue
Portland OR 97209

The applicant owns and operates a service center facility in Tualatin, Oregon.

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

2. Description of Facility

The facility is a closed-loop wash water recycling system consisting of Delta 1000A filtration and reclamation equipment, pumps, controls, a 20 ft. by 40 ft. concrete pad and a portion of a building to contain the recycling system.

Claimed Facility Cost: $23,362
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadlines in that construction and installation of the facility was substantially completed on August 1, 1993 and the application for certification was found to be complete on September 15, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent a substantial quantity of water pollution. This prevention is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Vehicles and equipment are washed on a 20 ft. x 40 ft. concrete wash pad. All of the washwater is captured in a catch basin, passed through an oil/water separator, and then further cleaned by using a Landa Delta 1000A water filtration and reclamation system.

The facility does not have any waste discharge permit. There is no record of any past noncompliance.

b. Eligible Cost Findings

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

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

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

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

   There is no annual return on investment for this facility as no income is generated by the facility.

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

   RFG and other chemical systems were considered, but their cost exceeded the cost of the Landa system.

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

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

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

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

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

5. Summation

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

b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose by the recycling of vehicle and equipment wash water. This wash water is industrial waste as defined in ORS 468B.005.

c. The facility complies with DEQ statutes and rules regarding wash water operations.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $23,362 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4296.

Elliot J. Zais
MW\WC13\WC13140.5
(503) 229-5292
19 Jan 95

Application No.T-4305

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

1. Applicant

Charbonneau Golf Club Inc.
32020 SW Charbonneau Drive
Wilsonville OR 97070

The applicant owns and operates a golf course in Wilsonville, Oregon.

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

2. Description of Facility

The claimed facility consists of a concrete wash pad, sump pump, a Landa Water Maze Delta 1000 water purification unit, pressure washer, and associated plumbing and electrical system.

Claimed Facility Cost: $45,983
(Accountant's Certification was provided).

3. Procedural Requirements

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

The facility met statutory deadlines in that construction and installation of the facility was substantially completed on February 6, 1994 and the application for certification was found to be complete on September 30, 1994, within 2 years of substantial completion of the facility.

4. Evaluation of Application

a. The facility is eligible because the sole purpose of the facility is to prevent a substantial quantity of water pollution. This prevention is accomplished by the use of treatment works for industrial waste as defined in ORS 468B.005.

Prior to the installation of the recycle system wash water from the cleaning of golf course equipment was discharged to the ground and to nearby drainage ditches. The drainage ditches eventually discharge to the Willamette River.

The claimed facility collects, treats and recycles wash water for the golf course equipment cleaning station.

b. Eligible Cost Findings

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

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

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

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

There is no return on this investment as the claimed facility does not generate income.

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

Plumbing a drainage line from a collection pit directly into the sewer system was considered but would have resulted in exceeding the acceptable legal allowances from the sewer treatment plant.

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

There are no savings from the facility. The cost of maintaining and operating the facility is $1,500 annually.

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

The pressure washer is determined not part of pollution prevention equipment. The principal use of the pressure washer is for cleaning equipment.

The Landa Water Maze, the concrete pad and associated plumbing and electrical controls are considered as pollution control equipment.

| | | |
|---|---|---|
| Claimed facility cost: | | $43,983 |
| Ineligible cost | | |
| Pressure washer: | - | 5,921 |
| Adjusted facility cost: | | $38,062 |

5. Summation

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

b. The facility is eligible for tax credit certification in that the sole purpose of the facility is to prevent a substantial quantity of water pollution and accomplishes this purpose by the use of treatment works to eliminate industrial waste as defined in ORS 468B.005.

c. The facility complies with DEQ statutes and rules.

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

6. Director's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $38,062 with 100% allocated to pollution control, be issued for the facility claimed in Tax Credit Application No. T-4305.

Elliot J. Zais, PhD, PE
MW\WC13\WC13187.5
(503) 229-5292
26 Jan 95

Application No. T-4327

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Martin Richards
3459 SE Baldwin Drive
Madras, Oregon 97741

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

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

2. Description of Facility

The equipment described in this application is a Case IH 7120 2wd, 150hp tractor, located at 3459 SE Baldwin Drive, Madras, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $85,450.
(Accountant's Certification was provided).

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 130 acres of perennial grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the Jefferson County smoke management program and weather permitted.

The applicant states that the straw from all fields is now baled, stacked and sold. The remaining residue and stubble is then flail chopped and the fields are propane flamed. The tractor (119hp) the applicant owned when he purchased the flail was not large enough to pull the flail so this tractor (150hp) was purchased to ensure timely treatment of the fields.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on November 28, 1994; and the application for final certification was found to be complete on December 20, 1994. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

There are no savings or increase in costs as a result of the equipment.

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

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

| Implement | Acres Worked | Machinery Capacity | Annual Operating Hours |
|---|---|---|---|
| Baler | 130 | 4 | 33 |
| Flail Chopper | 130 | 6 | 22 |
| Harrow | 130 | 7 | 19 |
| Propane Flamer | 130 | 10 | 13 |
| Total Annual Operating Hours | | | 87 |

The total annual operating hours of 87 divided by the average annual operating hours of 450 produces a percent allocable of 19%.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 19%.

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

d. The portion of the equipment that is properly allocable to pollution control is 19%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $85,450 with 19% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4327.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
December 20, 1994

Application No. T-4331

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Stanley Goffena
22775 SW Broadmead Road
Amity, Oregon 97101

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

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

2. Description of Facility

The equipment described in this application is a Rear's 40' wheel rake, located at 22775 SW Broadmead Road, Amity, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $11,222.
(Accountant provided copies of the invoice and cancelled check).

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 1,500 acres of perennial grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the Jefferson County smoke management program and weather permitted.

The original alternative selected involved removing the bulk straw from the field by custom baler or by the applicant baling when the custom baler was unavailable, and propane flaming the remaining residue and stubble.

Propane flaming proved to be an unsatisfactory field sanitation method and was replaced by windrowing the remaining residue and baling off the fields a second time. The needle rake was required to windrow the shorter straw that remains after the first baling.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on August 1, 1994. The application was submitted on December 5, 1994; and the

application for final certification was found to be complete on December 20, 1994. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

There is an increase operating costs of $1,300 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $11,222 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4331.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
December 20, 1994

Application No. T-4332

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Robert McKee
24903 SW Perrydale
Amity, Oregon 97101

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

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

2. Description of Facility

The equipment described in this application is a John Deere 20 foot rotary chopper, located at 24903 SW Perrydale, Amity, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $13,966.
(Accountant provided copies of the whole goods invoice and cancelled check).

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 1,500 acres of perennial grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the smoke management program and weather permitted.

The initial alternative selected by the applicant involved removal of the straw by custom baler or by the applicant, when the custom baler's service was unavailable, and propane flaming the remaining residue and stubble.

The John Deere chopper enables the applicant to flail the residue and stubble into very fine particles that will decompose over the fall, winter, and spring seasons. This method allows the applicant to continue the reduction in open field burning without substituting propane flaming.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1994. The application was submitted on December 5, 1994; and the application for final certification was found to be complete on December 20, 1994. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a usable commodity by providing the means to reduce the residue and stubble into fine particles that decompose over the fall, winter, and spring seasons.

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

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

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

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

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

There is an increase operating costs of $2,350 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $13,966 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4332.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
December 19, 1994

Application No. T-4338

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Indian Brook, Inc.
13512 Doerfler Road SE
Silverton, Oregon 97381

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

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

2. Description of Facility

The equipment described in this application is located at 13512 Doerfler Road SE, Silverton, Oregon. The equipment is owned by the applicant.

| | |
|---|---|
| Steffan model 1590 self-propelled Big Baler | $125,000 |
| Steffan wide base Loader | 18,000 |
| Caterpillar Hay Squeeze | 30,000 |

Claimed equipment cost: $173,000.
(Accountant's Certification was provided.)

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 2,500 acres of perennial grass seed under cultivation. The applicant states that prior to initiating alternative fire sanitation methods as many acres were open field burned as the weather and smoke management program would permit.

One alternative the applicant has incorporated into the field management plan is to bale the straw immediately after harvest, load the bales, transport the bales to storage and market the bales to a straw broker. To decrease the acreage open field burned and increase the acreage baled the applicant purchased the equipment addressed in this application. The applicant projects the equipment capacity at 500 acres. In addition, the Big Baler and wide base loader will enable the applicant to bale steep terrain common to the Silverton area.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on June 25, 1994. The application was submitted on December 22, 1994; and the application for final certification was found to be complete on January 3, 1995. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing access to steep terrain for baling and loading operations.

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

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

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

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

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

There is an increase operating costs of $12,194 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $173,000 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4338.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
January 3, 1995

Application No. T-4343

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Louis L. Kokkeler
28180 Highway 36
Junction City, Oregon 97448

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

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

2. Description of Facility

The equipment described in this application is located at 28180 Highway 36, Junction City, Oregon. The equipment is owned by the applicant.

| | |
|---|---|
| John Deere Model 8850 4WD 300hp Tractor | $53,250 |
| John Deere Model 120 20' Flail | 12,500 |
| I.H. Model 800 10 bottom moldboard plow | 7,000 |

Claimed equipment cost: $72,750.
(Accountant's Certification was provided.)

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 2,100 perennial and 700 annual acres of grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the smoke management program and weather permited.

The functions of the alternative to open field burning selected by the applicant include 1) baling off the bulk straw by a custom baler, 2) flail chopping the remaining residue and stubble, 3) plowing down the flailed straw, and 4) preparing the seed bed by harrowing.

The alternative is used on 700 acres of annual grass seed fields and, due to the shorter stand life related to non-burning, 300 acres of perennial grass seed fields. The increase in annual ground preparation required purchase of the additional equipment addressed in this tax credit application.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on January 5, 1993. The application was submitted on January 4, 1995; and the application for final certification was found to be complete on January 12, 1995. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

There is an increase operating costs of $14,541 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

The percentage of the tractor allocable to pollution control is 100% as the alternative to field burning annual average operating hours (609) is greater than the established average annual operating hours (450).

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $72,750 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4343.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
January 12, 1995

State of Oregon
# Department of Environmental Quality Memorandum

**Date:** March 2, 1995

**To:** Environmental Quality Commissioners

**From:** Claudia Taylor

**Subject:** Tax Credit Review Reports for Field Burning

Attached are revised copies of the five Field Burning Review Reports for the March 3, 1995 EQC meeting. In the transmittal/retrieval/"cut & move" of these documents some errors were made. These errors have been corrected and new reports provided.

Thank you for your attention to this revision.

Application No. T-4327

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Martin Richards
3459 SE Baldwin Drive
Madras, Oregon 97741

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

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

2. Description of Facility

The equipment described in this application is a Case IH 7120 2wd, 150hp tractor, located at 3459 SE Baldwin Drive, Madras, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $85,450.
(Accountant's Certification was provided).

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 130 acres of perennial grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the Jefferson County smoke management program and weather permitted.

The applicant states that the straw from all fields is now baled, stacked and sold. The remaining residue and stubble is then flail chopped and the fields are propane flamed. The tractor (119hp) the applicant owned when he purchased the flail was not large enough to pull the flail so this tractor (150hp) was purchased to ensure timely treatment of the fields.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on November 28, 1994. The application was submitted on November 28, 1994; and the application for final certification was found to be complete on December 20, 1994. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

There are no savings or increase in costs as a result of the equipment.

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

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

| Implement | Acres Worked | Machinery Capacity | Annual Operating Hours |
|---|---|---|---|
| Baler | 130 | 4 | 33 |
| Flail Chopper | 130 | 6 | 22 |
| Harrow | 130 | 7 | 19 |
| Propane Flamer | 130 | 10 | 13 |
| Total Annual Operating Hours | | | 87 |

The total annual operating hours of 87 divided by the average annual operating hours of 450 produces a percent allocable of 19%.

The actual cost of the equipment properly allocable to pollution control as determined by using these factors is 19%.

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

d. The portion of the equipment that is properly allocable to pollution control is 19%.

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $85,450 with 19% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4327.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
December 20, 1994

Application No. T-4331

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Stanley Goffena
22775 SW Broadmead Road
Amity, Oregon 97101

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

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

2. Description of Facility

The equipment described in this application is a Rear's 40' wheel rake, located at 22775 SW Broadmead Road, Amity, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $11,222.
(Accountant provided copies of the invoice and cancelled check).

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 1,500 acres of perennial grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the smoke management program and weather permitted.

The original alternative selected involved removing the bulk straw from the field by custom baler or by the applicant baling when the custom baler was unavailable, and propane flaming the remaining residue and stubble.

Propane flaming proved to be an unsatisfactory field sanitation method and was replaced by windrowing the remaining residue and baling off the fields a second time. The needle rake was required to windrow the shorter straw that remains after the first baling.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on August 1, 1994. The application was submitted on December 5, 1994; and the

application for final certification was found to be complete on December 20, 1994. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

There is an increase operating costs of $1,300 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $11,222 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4331.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
December 20, 1994

Application No. T-4332

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

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1. Applicant

Robert McKee
24903 SW Perrydale
Amity, Oregon 97101

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

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

2. Description of Facility

The equipment described in this application is a John Deere 20 foot rotary chopper, located at 24903 SW Perrydale, Amity, Oregon. The equipment is owned by the applicant.

Claimed equipment cost: $13,966.
(Accountant provided copies of the whole goods invoice and cancelled check).

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 1,500 acres of perennial grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the smoke management program and weather permitted.

The initial alternative selected by the applicant involved removal of the straw by custom baler or by the applicant, when the custom baler's service was unavailable, and propane flaming the remaining residue and stubble.

The John Deere chopper enables the applicant to flail the residue and stubble into very fine particles that will decompose over the fall, winter, and spring seasons. This method allows the applicant to continue the reduction in open field burning without substituting propane flaming.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on July 1, 1994. The application was submitted on December 5, 1994; and the application for final certification was found to be complete on December 20, 1994. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a usable commodity by providing the means to reduce the residue and stubble into fine particles that decompose over the fall, winter, and spring seasons.

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

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

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

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

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

There is an increase operating costs of $2,350 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $13,966 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4332.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
December 19, 1994

Application No. T-4338

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Indian Brook, Inc.
13512 Doerfler Road SE
Silverton, Oregon 97381

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

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

2. Description of Facility

The equipment described in this application is located at 13512 Doerfler Road SE, Silverton, Oregon. The equipment is owned by the applicant.

| | |
|---|---|
| Steffan model 1590 self-propelled Big Baler | $125,000 |
| Steffan wide base Loader | 18,000 |
| Caterpillar Hay Squeeze | 30,000 |

Claimed equipment cost: $173,000.
(Accountant's Certification was provided.)

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 2,500 acres of perennial grass seed under cultivation. The applicant states that prior to initiating alternative fire sanitation methods as many acres were open field burned as the weather and smoke management program would permit.

One alternative the applicant has incorporated into the field management plan is to bale the straw immediately after harvest, load the bales, transport the bales to storage and market the bales to a straw broker. To decrease the acreage open field burned and increase the acreage baled the applicant purchased the equipment addressed in this application. The applicant projects the equipment capacity at 500 acres. In addition, the Big Baler and wide base loader will enable the applicant to bale steep terrain common to the Silverton area.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on June 25, 1994. The application was submitted on December 22, 1994; and the application for final certification was found to be complete on January 3, 1995. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

The equipment promotes the conversion of a waste product (straw) into a salable commodity by providing access to steep terrain for baling and loading operations.

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

Applicant claims gross annual income of $55,246 an annual operating expenses of $67,440 with an negative annual cash flow of $12,194. Therefore, there is no annual percent return on the investment as applicant claims a negative gross annual income.

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

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

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

There is an increase operating costs of $12,194 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

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

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $173,000 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4338.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
January 3, 1995

Application No. T-4343

State of Oregon
Department of Environmental Quality

TAX RELIEF APPLICATION REVIEW REPORT

---

1. Applicant

Louis L. Kokkeler
28180 Highway 36
Junction City, Oregon 97448

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

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

2. Description of Facility

The equipment described in this application is located at 28180 Highway 36, Junction City, Oregon. The equipment is owned by the applicant.

| | |
|---|---|
| John Deere Model 8850 4WD 300hp Tractor | $53,250 |
| John Deere Model 120 20' Flail | 12,500 |
| I.H. Model 800 10 bottom moldboard plow | 7,000 |

Claimed equipment cost: $72,750.
(Accountant's Certification was provided.)

3. Description of Farm Operation Plan to Reduce Open Field Burning

The applicant has 2,100 perennial and 700 annual acres of grass seed under cultivation. Prior to initiating alternatives to thermal sanitation the applicant open field burned as many acres as the smoke management program and weather permited.

The functions of the alternative to open field burning selected by the applicant include 1) baling off the bulk straw by a custom baler, 2) flail chopping the remaining residue and stubble, 3) plowing down the flailed straw, and 4) preparing the seed bed by harrowing.

The alternative is used on 700 acres of annual grass seed fields and, due to the shorter stand life related to non-burning, 300 acres of perennial grass seed fields. The increase in annual ground preparation required purchase of the additional equipment addressed in this tax credit application.

4. Procedural Requirements

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

Purchase of the equipment was substantially completed on January 5, 1993. The application was submitted on January 4, 1995; and the application for final certification was found to be complete on January 12, 1995. The application was filed within two years of substantial completion of the equipment.

5. Evaluation of Application

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

b. Eligible Cost Findings

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

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

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

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

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

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

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

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

There is an increase operating costs of $14,541 to annually maintain and operate the equipment. These costs were considered in the return on investment calculation.

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

The percentage of the tractor allocable to pollution control is 100% as the alternative to field burning annual average operating hours (609) is greater than the established average annual operating hours (450).

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

6. Summation

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

b. The equipment is eligible under ORS 468.150 as an approved alternative method for field sanitation and straw utilization and disposal that reduces a substantial quantity of air pollution as defined in ORS 468A.005.

c. The facility complies with DEQ statutes and rules.

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

7. The Department of Agriculture's Recommendation

Based upon these findings, it is recommended that a Pollution Control Facility Certificate bearing the cost of $72,750 with 100% allocated to pollution control, be issued for the equipment claimed in Tax Credit Application No. T-4343.

James Britton, Manager
Smoke Management Program
Natural Resources Division
Oregon Department of Agriculture
(503) 378-6792
January 12, 1995

# Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

**Agenda Item C**
**March 3, 1995 Meeting**

**Title:**

Criteria and Procedures for Determining Conformity of General Federal Actions to State or Federal Air Quality Implementation Plans

**Summary:**

These rules would ensure that certain non-transportation federal actions which emit significant amounts of air pollution are consistent with the air quality requirements contained in the Oregon State Implementation Plan. This proposed rulemaking establishes new rules based on federal Clean Air Act requirements and which follow general conformity rules already adopted by the Environmental Protection Agency. These proposed conformity requirements go beyond the federal rules to address prescribed forest burning on federal lands in Oregon, since this source has the potential to significantly impact air quality.

**Department Recommendation:**

The Department recommends that the Commission adopt these rules.

| Report Author | Division Administrator | Director |
|---|---|---|

January 9, 1995

†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:** January 9, 1995

**To:** Environmental Quality Commission

**From:** Lydia Taylor, Interim Director

**Subject:** Agenda Item C, March 3, 1995, EQC Meeting

Criteria and Procedures for Determining Conformity of General Federal Actions to State or Federal Air Quality Implementation Plans

## Background

On November 15, 1994, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on proposed rules which would adopt a new rule for determining the conformity of general federal actions with the requirements of the Oregon State Implementation Plan (SIP).

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on December 1, 1994. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on November 30, 1994.

A Public Hearing was held January 4 and 5, 1995, in La Grande, Portland, and Medford, Oregon, with Brian Finneran and Howard Harris serving as Presiding Officers. The Presiding Officer's Report (Attachment C) indicates that no written or oral testimony was presented at the hearings.

The deadline for written comments was January 6, 1995. No written comments were received and no modifications were made to the rules following the public comment period.

The following sections summarize the issue that this proposed rulemaking action is intended to address, the authority to address the issue, the process for development of the rulemaking proposal including alternatives considered, a summary of the rulemaking proposal presented for public hearing, a summary of the significant public comments and

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

the changes proposed in response to those comments, a summary of how the rule will work and how it is proposed to be implemented, and a recommendation for Commission action.

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

Some federal activities such as construction projects, airport expansions, mineral extraction, and prescribed burning have the potential to cause significant air quality impacts and possibly conflict with state-developed strategies to meet Clean Air Act requirements. As a result, the 1990 Clean Air Act Amendments directed the Environmental Protection Agency and each state to promulgate rules for determining conformity of planned federal actions with state implementation plans. In November of 1993, EPA adopted a General Conformity rule. This rule established specific criteria and procedures for determining conformity of federal actions in areas which are out of compliance (nonattainment areas) with National Ambient Air Quality Standards. EPA indicated plans at an unspecified later date to propose separate conformity rules for federal actions in attainment areas, but said that states could proceed on their own to adopt conformity requirements for attainment areas if they so desired.

For nonattainment areas the Department is proposing to adopt identical rules to the federal General Conformity rules. For attainment areas the Department is proposing conformity provisions to address PM10 emissions from prescribed burning on federal lands, since this the largest man-caused source of PM10 emissions in attainment areas, and the source with the greatest potential of violating SIP requirements. The proposed provisions for prescribed burning will ensure that this activity continues to meet SIP requirements relating to National Ambient Air Quality Standards, Prevention of Significant Deterioration, and Visibility Protection.

**Relationship to Federal and Adjacent State Rules**

This proposed rulemaking is required under the 1990 Clean Air Act Amendments, and follows general conformity rules already adopted by the Environmental Protection Agency (EPA).

**Authority to Address the Issue**

ORS 468.020 and 468A.035

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

Since federal agencies are already subject to the federal General Conformity rules in nonattainment areas, and the Department is proposing identical rules (except for attainment area prescribed burning), no advisory committee review of these proposed rules was warranted. The proposed conformity provisions for federal actions associated with prescribed burning in attainment areas were developed with the assistance of representatives from the two affected federal agencies - the USDA Forest Service, and USDI Bureau of Land Management (BLM).

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

EPA's current general conformity rule applies to certain planned federal actions in nonattainment areas which emit any criteria pollutant (carbon monoxide, PM10, nitrogen dioxide, sulfur dioxide, ozone, and lead) for which the area is designated as nonattainment. The rule exempts federal actions which are permitted under the New Source Review or Prevention of Significant Deterioration programs, as these actions are "presumed to conform". The rule also exempts federal actions with associated emissions below specified "significance" or de minimis levels, which are based on the Clean Air Act's "major stationary source" definitions. The rule provisions proposed by the Department for attainment areas apply only to PM10 emissions from prescribed burning on federal lands, with the de minimis level for triggering the conformity analysis for prescribed burning is the same as in nonattainment areas (100 tons/PM10).

Both rule provisions are identical in that they require the federal agency to make the conformity determination, and to notify state and local air quality agencies as well as the general public as to the findings. The Department's role is primarily to review and comment on the conformity determinations.

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

No comments were received and no changes were made to the proposed rules.

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

Under the general conformity rule, the federal agency proposing a project or activity in a nonattainment area must first determine if the associated emissions exceed the de miminis or applicability level for the pollutant(s) for which the area was designated as

nonattainment. In attainment areas, the federal agency (the Forest Service or BLM) would determine if the emissions from the prescribed burning activity being planned would exceed the PM10 de minimis level of 100 tons. If so, the federal agency would then prepare a conformity determination and send it to the Department for review and comment. The federal agency would also be required to solicit and respond to public comments on its conformity determinations.

The Department expects most of conformity determinations it reviews will be associated with prescribed burning activity in attainment areas. The DEQ Headquarters currently reviews air quality impact analyses prepared by the Forest Service and BLM for prescribed burning activities under the National Environmental Protection Act (NEPA) requirements, and expects to replace this review process with conformity determination reviews. No additional DEQ staff to perform these duties is anticipated at this time. The Department expects very few conformity determinations associated with federal actions in nonattainment areas, since the majority of federal actions are likely to be either transportation related, and therefore subject to the Department's proposed Transportation Conformity rules, or general actions that fall below the applicability level.

A DEQ Headquarters' staff person will be trained in-house on the proposed general conformity rules. Training for affected federal agencies in nonattainment areas is not needed since these agencies have already been subject to the federal rule. The Department will be working with the Forest Service and BLM in developing guidance related to the implementation of the provisions pertaining to prescribed burning in attainment areas.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rules regarding general conformity as presented in Attachment A of the Department Staff Report.

**Attachments**

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

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

C. Presiding Officer's Report on Public Hearing

D. Rule Implementation Plan

**Reference Documents (available upon request)**

Code of Federal Regulations, Title 40, Parts 6, 51, and 93, Determining Conformity of General Federal Actions to State or Federal Implementation Plans, November 30, 1993.

Approved:

Section: John F. Kowalczyk

Division: Gregory A. Green

Report Prepared By: Brian Finneran

Phone: 229-6278

Date Prepared: January 9, 1995

BF:bf

rev: 2/10

# Proposed Rule

## DIVISION 20

## AIR POLLUTION CONTROL

### Determining Conformity of General federal Actions to State or Federal Implementation Plans

**KEY:**

**BOLD:** CLARIFICATIONS FOLLOWING STAPPA/ALAPCO MODEL RULE

*ITALIC:* CLARIFICATIONS MADE BY THE DEPARTMENT

*ITALIC UNDERLINED:* NEW PROVISIONS ADDRESSING ATTAINMENT AREAS

# Determining Conformity of General Federal Actions to State and Federal Implementation Plans

## Purpose

340-20-1500

(1) **The purpose of these rules is to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) and regulations under 40 CFR Part 51 subpart W, with respect to the conformity of general federal actions to the applicable implementation plan. Under those authorities** no department, agency or instrumentality of the federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan. **These rules set forth policy, criteria, and procedures for demonstrating and assuring conformity of such actions to the applicable implementation plan.**

(2) **Under CAA Section 176(c) and 40 CFR Part 51 subpart W,** a federal agency must make a determination that a federal action conforms to the applicable SIP in accordance with OAR 340-20-1500 through 1600 before the action is taken.

(3) Paragraph (2) of this rule does not include federal actions where either:

(a) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(b) ***the following has been completed:***

(A) Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;

(B) Sufficient environmental analysis is completed by March 15, 1994 so that the federal agency may determine that the federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under Section 176(c) of the Clean Air Act (Act); and

(C) A written determination of conformity under Section 176(c) of the Act has been made by the federal agency responsible for the federal action by March 15, 1994.

(4) Notwithstanding any provision of OAR 340-20-1500 through 1600, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

## Definitions
## 340-20-1510

***As used in OAR 340-20-1500 through 1600:***

(1) "Affected Federal land manager" means the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the Act (42 U.S.C. 7472) that is located within 100 km of the proposed federal action.

(2) "Applicable implementation plan or applicable SIP" means the portion (or portions) of the applicable SIP or most recent revision thereof, which has been approved under Section 110 of the Act, or promulgated under Section 110(c) of the Act (Federal implementation plan), or promulgated under Section 301(d) of the Act which implements the relevant requirements of the Act.

(3) "Areawide air quality modeling analysis means" an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

***(4) "Attainment or Unclassifiable area" means any area designated as attainment under Section 107 of the Act and described in 40 CFR part 81.***

(5) "Cause or contribute to ***any*** new violation ***of any standard in any area"*** means a federal action that:

(a) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

(b) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

***(c) Results in consumption of the PM10 PSD Increment, or causes visibility impairment in a federal Class I area protected under the Oregon Visibility Protection Program, as the result of prescribed burning actions in attainment/unclassifiable areas.***

(6) Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the federal action.

(7) "Criteria pollutant or standard" means any pollutant for which there is established a NAAQS at 40 CFR part 50.

(8) "Direct emissions" means those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and occur at the same time and place as the action.

(9) "Emergency" means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such federal activities makes it

impractical to meet the requirements of OAR 340-20-1500 through 1600, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

(10) "Emissions budgets" ***means*** those portions of the applicable SIP's projected emissions inventories that describe levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

(11) "Emissions offsets", for purposes of OAR 340-20-1570, ***means*** emissions reductions which are quantifiable, ***consistent with OAR 340-28-1960 through 1980,*** and the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other SIP provisions, enforceable at both the state and federal levels, and permanent within the timeframe specified by the program.

(12) "Emissions that a federal agency has a continuing program responsibility for" means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

(13) "EPA" means the United States Environmental Protection Agency.

(14) "Federal action" means any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency or instrumentality of the federal government supports in any way, provides financial assistance for licenses, permits, or approves under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). Where the federal action is a permit, license, or other approval for some aspect of a non-federal undertaking, the relevant activity is the part, portion, or phase of the non-federal undertaking that requires the federal permit, license, or approval.

(15) "Federal agency" means a federal department, agency, or instrumentality of the federal government.

(16) "Increase the frequency or severity of any existing violation of any standard in any area" means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

(17) "Indirect emissions" means those emissions of a criteria pollutant or its precursors that:
(a) Are caused by the federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and
(b) The federal agency can practicably control and will maintain control over due to a continuing program responsibility of the federal agency.

(18) "Local air quality modeling analysis" means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

(19) "Maintenance area" means an area with a maintenance plan approved under Section 175A of the Act.

(20) "Maintenance plan" means a revision to the applicable SIP, meeting the requirements of Section 175A of the Act.

(21) "Metropolitan Planning Organization (MPO)" ***means*** that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

(22) "Milestone" has the meaning given in Sections 182(g)(1) and 189(c)(1) of the Act.

(23) "National ambient air quality standards (NAAQS)" ***means*** those standards established pursuant to Section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO2), ozone, particulate matter (PM10), and sulfur dioxide (SO2).

(24) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

(25) "Nonattainment Area" means an area designated as nonattainment under Section 107 of the Act and described in 40 CFR part 81.

(26) "Precursors of a criteria pollutant" means:

(a) For ozone, nitrogen oxides (NOx), unless an area is exempted from NOx requirements under Section 182(f) of the Act, and volatile organic compounds (VOC); and

(b) For PM10, those pollutants described in the PM10 nonattainment area applicable SIP as significant contributors to the PM10 levels.

(27) "Reasonably foreseeable emissions" means projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

(28) "Regional water and/or wastewater projects" include construction, operation, and maintenance of water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

(29) "Regionally significant action" means a federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

(30) "Total of direct and indirect emissions" means the sum of direct and indirect emissions increases and decreases caused by the federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under OAR 340-20-1520(5), (6), (7) or (8) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

## Applicability

### 340-20-1520

(1) Conformity determinations for federal actions ***in a nonattainment or maintenance area*** related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.) must meet the

procedures and criteria ***for transportation conformity as set forth in OAR 340-20-700 et seq.***, in lieu of the procedures set forth in OAR 340-20-1500 through 1600.

(2) For federal actions ***in a nonattainment or maintenance area*** not covered by paragraph (1) of this rule, a conformity determination is required for each pollutant where the total of direct and indirect emissions caused by a federal action would equal or exceed any of the rates in paragraphs (4)(a) and (b) of this rule.

***(3) For federal actions involving prescribed burning in an attainment or unclassifiable area, a conformity determination is required where the PM10 emissions generated by the prescribed burning would equal or exceed the rate specified in paragraph (4)(c) of this section. The federal agency taking such action shall follow any guidance approved by the Department after consultation with affected federal agencies associated with determining emissions pursuant to paragraph (4)(c) of this rule.***

***(4) The following emission rates apply to federal actions pursuant to paragraphs (2) and (3) of this rule:***

(a) For ***nonattainment areas:***

| Pollutant | Tons per year |
|---|---|
| Ozone (VOCs or NOx): | |
| Serious NAAs | 50 |
| Severe NAAs | 25 |
| Extreme NAAs | 10 |
| Other ozone NAAs outside an ozone transport region | 100 |
| Marginal and moderate NAAs inside an ozone transport region: | |
| VOC | 50 |
| NOx | 100 |
| Carbon Monoxide: All NAAs | 100 |
| SO2 or NO2: All NAAs | 100 |
| PM-10: | |
| Moderate NAAs | 100 |
| Serious NAAs | 70 |
| Pb: All NAAs | 25 |

(b) For ***maintenance areas:***

| Pollutant | Tons per year |
|---|---|
| Ozone (NOx), SO2 or NO2: | |
| All maintenance areas | 100 |
| Ozone (VOCs): | |

Maintenance areas inside an
ozone transport region..... 50
Maintenance areas outside an
ozone transport region..... 100
Carbon Monoxide: All maintenance areas ..... 100
PM-10: All maintenance areas ..... 100
Pb: All maintenance areas..... 25

***(c) For prescribed burning in all attainment/unclassifiable areas:***

| Pollutant | Tons per year |
|---|---|
| ***PM10:*** | ***100*** |

(5) The requirements of OAR 340-20-1500 through 1600 shall not apply to:

(a) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(b) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(A) Judicial and legislative proceedings.

(B) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(C) Rulemaking and policy development and issuance.

(D) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(E) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training or law enforcement personnel.

(F) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(G) The routine, recurring transportation of material and personnel.

(H) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(I) Maintenance dredging and debris disposal where no new depths are required, applicable permits are required, and disposal will be at an approved site.

(J) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at

the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership and conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(K) The granting of leases, licenses such as for exports and trade, permits and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(L) Planning, studies, and provision of technical assistance.

(M) Routine operation of facilities, mobile assets and equipment.

(N) Transfer of ownership, interests, and titles in land, facilities and real and personal properties, regardless of the form or method of the transfer.

(O) The designation of empowerment zones, enterprise communities, or viticultural areas.

(P) Actions by any of the federal banking agencies of the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(Q) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.

(R) Actions that implement a foreign affairs function of the United States.

(S) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(T) Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity to another federal entity for subsequent deeding to eligible applicants.

(U) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(c) The following actions where the emissions are not reasonably foreseeable:

(A) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(B) Electric power marketing activities that involve the acquisition, sale and

transmission of electric energy.

(d) Actions ***in nonattainment or maintenance areas*** which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.

(6) Notwithstanding the other requirements of OAR 340-20-1500 through 1600, a conformity determination is not required for the following federal actions (or portion thereof):

(a) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (Section 173 of the Act or the prevention of significant deterioration (PSD) program (Title I, part C of the Act).

(b) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (7) of this rule.

(c) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (5)(b) of this rule), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the state agency primarily responsible for the applicable SIP.

(d) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g. hush houses for aircraft engines and scrubbers for air emissions).

(e) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(7) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (6)(b) of this rule and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (6)(b) of this rule are exempt from the requirements of OAR 340-20-1500 through 1600 only if:

(a) The federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(b) For actions which are to be taken after those actions covered by paragraph (7)(a) of this section, the federal agency makes a new determination as provided in paragraph (7)(a) of this section.

(8) Notwithstanding other requirements of OAR 340-20-1500 through 1600, actions specified by individual federal agencies that have met the criteria set forth in either paragraph (9)(a) or (9)(b) of this rule and the procedures set forth in paragraph (10) of this rule are presumed to conform, except as provided in paragraph (12) of this rule.

(9) The federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (a) or (b) of this section:

(a) The federal agency must clearly demonstrate using methods consistent with this rule that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(A) Cause or contribute to any new violation of any standard in any area;

(B) Interfere with provisions in the applicable SIP for maintenance of any standard;

(C) Increase the frequency or severity of any existing violation of any standard in any area;

(D) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(i) A demonstration of reasonable further progress;

(ii) A demonstration of attainment; or

(iii) A maintenance plan; or

(b) The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emissions rates for a conformity determination that are established in paragraph (4) of this rule, based, for example, on similar actions taken over recent years.

(10) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (9)(a) or (9)(a) of this rule, the following procedures must also be complied with to presume that activities will conform:

(a) The federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;

(b) The federal agency must notify the appropriate EPA Regional Office(s), state and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(c) The federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(d) The federal agency must publish the final list of such activities in the Federal Register.

(11) Notwithstanding the other requirements of OAR 340-20-1500 through 1600, when the total of direct and indirect emissions of any pollutant from a federal action does not equal or exceed the rates specified in paragraph (4) of this rule, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of 340-20-1500, and OAR 340-20-1540 through 340-20-1590 shall apply for the federal action.

(12) Where an action otherwise presumed to conform under paragraph (8) of this rule is a regionally significant action or does not in fact meet one of the criteria in paragraph

(9)(a) of this rule, that action shall not be presumed to conform and the requirements of OAR 340-20-1500 and 340-20-1540 through 340-20-1590 shall apply for the federal action.

(13) The provisions of OAR 340-20-1500 through 1600 shall apply in all nonattainment/ maintenance ***and attainment/unclassifiable*** areas, ***where applicable.***

## Conformity Analysis
## 340-20-1530

***(1)*** Any federal department, agency, or instrumentality of the federal government taking an action subject to OAR 340-20-1520 (4) must make its own conformity determination consistent with the requirements of OAR 340-20-1500 through 1600. In making its conformity determination, a federal agency must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency or develop its own analysis in order to make its conformity determination.

***(2) Federal actions involving prescribed burning in attainment or unclassifiable areas and subject to OAR 340-20-1520(4) shall follow any guidance approved by the Department after consultation with affected federal agencies for purposes of meeting the requirements of OAR 340-20-1500 through 1600. Such guidance may include applicability requirements in OAR 340-20-1520, conformity criteria in OAR 340-20-1570, and mitigation measures in OAR 340-20-1590.***

## Reporting Requirements
## 340-20-1540

(1) A federal agency making a conformity determination under OAR 340-20-1570 must provide to the appropriate EPA Regional Office(s), state and local air quality agencies and, where applicable, affected federal land managers, the agency designated under Section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the federal agency's draft conformity determination on the action.

(2) A federal agency must notify the appropriate EPA Regional Office(s), state and local air quality agencies and, where applicable, affected land managers, the agency designated under Section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under OAR 340-20-1570.

## Public Participation
## 340-20-1550

(1) Upon request by any person regarding a specific federal action, a federal agency must make available for review its draft conformity determination under OAR 340-20-1570 with supporting material which describe the analytical methods, ***assumptions*** and conclusions relied upon in making the applicability analysis and draft conformity

determination.

(2) A federal agency must make public its draft conformity determination under 340-20-1570 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(3) A federal agency must document its response to all the comments received on its draft conformity determination under OAR 340-20-1570 and make the comments and responses available, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

(4) A federal agency must make public its final conformity determination under 340-20-1570 for a federal action by placing notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

## Frequency of Conformity Determinations
## 340-20-1560

(1) The conformity status of a federal action automatically lapses 5 years from the date a final conformity determination is reported under OAR 340-20-1540, unless the federal action has been completed or a continuous program has been commenced to implement that federal action within a reasonable time.

(2) Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as **the emissions associated with** such activities are within the scope of the final conformity determination reported under OAR 340-20-1540.

(3) If, after the conformity determination is made, the federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in OAR 340-20-1520(4), a new conformity determination is required.

## Criteria for Determining Conformity of General Federal Actions
## 340-20-1570

(1) An action required under OAR 340-20-1520 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in OAR 340-20-1520(4), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (3) of this rule, and meets any of the following requirements:

(a) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(b) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a **similarly enforceable** measure that effects emission reductions so that there is not net increase in emissions of that pollutant;

(c) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(A) Specified in paragraph (2) of this rule, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(B) Meet the requirements of paragraph (1)(e) of this section and, for local air quality modeling analysis, the requirements of paragraph (2) of this rule;

(d) For CO or PM10:

(A) Where the Department ***or local air quality agency*** primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this rule, based on local air quality modeling analysis; or

(B) Where the Department ***or local air quality agency*** primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (2) of this rule, based on areawide modeling, or meet the requirements of paragraph (1)(e) of this section; or

***(C) Where the Department or local air quality agency primarily responsible for the applicable SIP determines that, for federal actions involving prescribed burning in attainment or unclassifiable areas, the use of air quality modeling for prescribed burning is not appropriate, the PM10 emissions from the action meet the requirements specified in paragraph (2) of this rule, based on an alternative air quality analysis approved by the Department pursuant to OAR 340-20-1580(3)(c).***

(e) For ozone or nitrogen dioxide, and for purposes of paragraphs (1)(c)(B) and (1)(d)(B) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(A) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the state makes a determination as provided in paragraph (1)(e)(A)(i) of this section or where the state makes a commitment as provided in paragraph (1)(e)(A)(ii) of this section:

(i) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the state agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

(ii) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the state agency

primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

(I) A specific schedule for adoption and submittal of a revision to the applicable SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur;

(II) Identification of specific measures for incorporation into the applicable SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(III) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued;

(IV) A determination that the responsible federal agencies have required all reasonable mitigation measures associated with their action; and

(V) Written documentation including all air quality analyses supporting the conformity determination;

(iii) Where a federal agency made a conformity determination based on a state commitment under paragraph (1)(e)(A)(ii) of this section, such a state commitment is automatically deemed a call for a SIP revision by EPA under Section 110(k)(5) of the Act, effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state commits to revise the applicable SIP;

(B) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A; **and OAR 340-20-710 et seq**.

(C) The action (or portion thereof), fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(D) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total direct and indirect

emissions from the action for the future years (described in OAR 340-20-1580(4)) do not increase emissions with respect to the baseline emissions:

(i) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during:

(I) Calendar year 1990;

(II) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81; or

(III) The year of the baseline inventory in the PM10 applicable SIP;

(ii) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in OAR 340-20-1580(4)) using the historic activity levels (described in paragraph (1)(e)(D)(i) of this rule and appropriate emission factors for the future years; or

(E) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(2) The areawide and/or local air quality modeling analyses must:

(a) Meet the requirements in OAR 340-20-1580; and

(b) Show that the action does not:

(A) Cause or contribute to any new violation of any standard in any area;

(B) Increase the frequency or severity of any existing violation of any standard in any area; ***or***

***(C) As the result of prescribed burning actions in attainment/unclassifiable areas, causes the consumption of the PM10 PSD Increment, or causes visibility impairment in a federal Class I area protected under the Oregon Visibility Protection Program.***

(3) Notwithstanding any other requirements of this rule, an action subject to OAR 340-20-1500 through 1600 may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements, **and such action is otherwise in compliance with all relevant requirements of the applicable SIP**.

(4) Any analyses required under this rule must be completed, and any mitigation requirements necessary for a finding of conformity must be identified **in compliance with OAR 340-20-1590,** before the determination of conformity is made.

## Procedures for Conformity Determinations of General federal Actions 340-20-1580

(1) The analyses required under OAR 340-20-1570 and 340-20-1580 must be based on the latest planning assumptions.

(a) All planning assumptions must be derived from the estimates of **current and future** population,
employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(b) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(2) The analyses required under OAR 340-20-1570 and 340-20-1580 must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification of substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

(a) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in **that** state must be used for the conformity analysis as specified in paragraphs (2)(a)(A) and (B) of this section:

(A) The EPA must publish in the Federal Register a notice of availability of any new motor vehicle emissions model; and

(B) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the federal Register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(b) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP-42)" must be used for conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(3) The air quality modeling analyses required under OAR 340-20-1570 and 340-20-1580 must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models" (Revised)"(1986), including supplements (EPA publication no. 450/2-78-027R), unless:

(a) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program;

(b) Written approval of the EPA Regional Administrator is obtained for any modification or substitution; and

***(c) For federal actions involving prescribed burning in attainment or unclassifiable areas, an alternative air quality analysis has been approved by the Department,***

***in accordance with OAR 340-20-1530(2).***

(4) The analyses required under OAR 340-20-1570 and 340-20-1580 must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(a) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(b) The year during which the total of direct and indirect emissions from the action **for each pollutant** is expected to be the greatest on an annual basis; and

(c) Any year for which the applicable SIP specifies an emissions budget.

## Mitigation of Air Quality Impacts
## 340-20-1590

(1) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(2) Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations. **Such written comments shall describe the mitigation measures and the nature of the commitments in a manner consistent with paragraph (1) of this rule.**

***(3) Mitigation measures related to federal actions involving prescribed burning in attainment or unclassifiable areas shall follow any guidance that has been approved by the Department after consultation with affected federal agencies, in accordance with OAR 340-20-1530(2).***

(4) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(5) In instances where the federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination**, as provided in paragraph (1) of this rule**.

(6) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of OAR 340-20-1540 and the public participation requirements of OAR 340-20-1550.

(7) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and all such commitments must be fulfilled.

(8) After ***the Department*** revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

## Savings Provision
### 340-20-1600

**The federal conformity rules under 40 CFR Part 51, Subpart W, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA Section 176(c) until such time as OAR 340-20-1500 through 1600 are approved by EPA. Following EPA approval of these rules, the state criteria and procedures in OAR 340 20-1500 through 1600 would govern conformity determinations. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the state revises its applicable implementation plan to specifically remove them, and that revision is approved by EPA.**

# NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality, Air Quality Division
**OAR Chapter 340**

| **DATE:** | **TIME:** | **LOCATION:** |
|---|---|---|
| January 4th | 7 p.m. | Rooms 201 & 202, Hoke College Center, Eastern Oregon State College, La Grande, OR |
| January 5th | 7 p.m. | 811 SW 6th Ave., Room 3A, Portland, OR |
| January 5th | 7 p.m. | 10 S. Oakdale, (Auditorium) Medford, OR |

**HEARINGS OFFICER(s):** Brian Finneran and other TBA

**STATUTORY AUTHORITY:** ORS 468.020 and 468A.035

**ADOPT:** OAR 340-20-1500 thru OAR 340-20-1600

**AMEND:** OAR 340-20-047

**REPEAL:** none

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

**SUMMARY:**

These rules would ensure that federal actions which emit significant amounts of air pollution are consistent with the air quality requirements contained in the Oregon State Implementation Plan. This proposed rulemaking establishes new rules based on federal Clean Air Act requirements and which follow general conformity rules already adopted by the Environmental Protection Agency, and contains additional conformity requirements which go beyond the federal rules to address prescribed forest burning on federal lands in Oregon.

**LAST DATE FOR COMMENT:** January 5th, 1994.
**DATE PROPOSED TO BE EFFECTIVE:** Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

**AGENCY RULES COORDINATOR:** Chris Rich, (503) 229-6775
**AGENCY CONTACT FOR THIS PROPOSAL:** Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

**ADDRESS:** Brian Finneran, Air Quality Division
811 S. W. 6th Avenue
Portland, Oregon 97204

**TELEPHONE:** (503) 229-6278
or Toll Free 1-800-452-4011

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

Brian Cummings
Signature

11-15-94
Date

State of Oregon
# Department of Environmental Quality Memorandum†

**Date:** November 10, 1994

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal - Criteria and Procedures for Determining Conformity of General Federal Actions to State or Federal Air Quality Implementation Plans

This memorandum contains information on a proposal by the Department of Environmental Quality (the Department) to adopt a new rule for determining the conformity of general federal actions with the requirements of the Oregon State Implementation Plan (SIP). This proposed rulemaking is required under the 1990 Clean Air Act Amendments, and follows general conformity rules already adopted by the Environmental Protection Agency (EPA). This rule only affects federal agencies which are proposing certain projects or activities which would emit a nonattainment pollutant above a de minimis level in a nonattainment area, or federal agencies planning prescribed burning on federal lands in an attainment area.

## What's in this Package?

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

| | |
|---|---|
| Attachment A | The actual language of the proposed rule. |
| Attachment B | The "Legal Notice" of the Rulemaking Hearing (required by ORS 183.335). |
| Attachment C | The official Rulemaking Statements for the proposed rulemaking action (required by ORS 183.335). |
| Attachment D | The official statement describing the fiscal and economic impact of the proposed rule (required by ORS 183.335). |

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

| | |
|---|---|
| Attachment E | A statement providing assurance that the proposed rule is consistent with statewide land use goals and compatible with local land use plans. |
| Attachment F | Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements. |

## Hearing Process Details

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

| | |
|---|---|
| **Date:** | January 4, 1995 - Hoke College Center, Rooms 201 & 202, Eastern Oregon State College, La Grande, OR<br>January 5, 1995 - DEQ Headquarters, Room 3A, 811 SW 6th Ave., Portland, OR<br>January 5, 1995 - Auditorium, 10 S. Oakdale, Medford, OR |
| **Time:** | 7 p.m. (all hearings) |
| **Place:** | see above |

**Deadline for submittal of Written Comments:** Thursday, January 5, 1995.

Brian Finneran is expected to be the Presiding Officer at the hearings in La Grande and Portland, and a DEQ staff person to be announced will be the Presiding Officer at the Medford hearing. Following the close of the public comment period, the Presiding Officer will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report and all written comments submitted. The public hearing will be tape recorded, but the tape will not be transcribed.

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

## What Happens After the Public Comment Period Closes

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is January 20, 1995. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

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

## Background on Development of the Rulemaking Proposal

### What is the problem

Section 176(c) of the 1990 Clean Air Act Amendments requires planned federal actions to conform to state implementation plans (SIPs), which are the state regulatory commitments and strategies for meeting Clean Air Act requirements. Much of the focus in the Act is on motor vehicles and the impact of federal transportation projects on air quality in areas which are out of compliance (nonattainment areas) with National Ambient Air Quality Standards (NAAQS), or areas which were nonattainment and are operating under an EPA-approved maintenance plan. The Act required EPA to promulgate both Transportation Conformity and General Conformity rules, which EPA adopted in November of 1993. Federal rules require each state to revise their SIPs to incorporate transportation and general conformity requirements within one year. As a result, concurrent with this rulemaking action the Department is also proposing adoption of a Transportation Conformity rule in a separate rule package.

EPA's General Conformity rule, adopted on November 30, 1993, established specific criteria and procedures for determining the conformity of planned federal projects and activities. In so doing EPA chose to address nonattainment and maintenance areas only, arguing that the conformity language in the Clean Air Act gives EPA discretionary

authority regarding the application of conformity to both nonattainment/maintenance and attainment areas. EPA has indicated it plans to propose separate conformity rules for attainment areas at a later date, but that states could proceed on their own to adopt requirements for attainment areas if they so desired. This rule package includes requirements for attainment areas, as described below.

Prescribed burning in Oregon is the largest man-caused source of PM10 emissions in the attainment areas of the state. It can degrade air quality, cause adverse impacts on public health, and impair visibility in pristine federal Class I areas. Practically none of this activity occurs within nonattainment areas, which is the only area addressed under the federal rules. Projections of future burning by the Forest Service indicate that a significant increase in prescribed burning can be expected in order to address forest health concerns and reduce the likelihood of potential catastrophic wildfires. This could potentially violate Oregon SIP requirements involving National Ambient Air Quality Standards (NAAQS), Prevention of Significant Deterioration (PSD), and Visibility Protection.

Currently, state air regulations address prescribed burning only through the Western Oregon Smoke Management Program. While federal agencies are required under National Environmental Protection Act (NEPA) to evaluate and disclose potential air quality impacts related to planned prescribed burns in national forests, NEPA does not specifically prohibit the federal agency from proceeding if the planned activity does not conform to the air quality requirements contained in the Oregon SIP.

**How does this proposed rule help solve the problem**

This rule would ensure that planned federal actions which emit significant amounts of air pollution are consistent with the air quality requirements contained in the Oregon State Implementation Plan. The Department is proposing to adopt an identical rule to the federal General Conformity rule for nonattainment/maintenance areas.

In addition, since EPA gives states the option of going beyond the federal rule to address conformity in attainment areas and areas which are in attainment but are designated as "unclassified", the Department has included new rule provisions to address prescribed burning on federal lands in these areas. In so doing, the state requirements will be more stringent than the federal requirements. The Department's proposed rule will require that federal prescribed burning in attainment (and "unclassified) areas conform to PSD and Visibility requirements in addition to NAAQS. In EPA's rule, federal agencies must protect NAAQS only. The Department believes that to satisfy the conformity

requirements in the Clean Air Act its rule needs to ensure conformity with all applicable SIP requirements, not just NAAQS.

In order for the Department and federal forest land managers to successfully evaluate the potential air quality impacts from proposed increases in prescribed burning, it is essential that there be a mechanism in place prior to the initiation of this burning that provides criteria and procedures for determining whether future burning will continue to meet SIP requirements.

**How was the rule developed**

EPA's current general conformity rule applies in nonattainment/maintenance areas to certain federal actions which emit any criteria pollutant (particulate matter or PM10, carbon monoxide, nitrogen dioxide, sulfur dioxide, ozone, and lead) for which the area is designated as nonattainment. Examples of federal actions subject to this rule include construction projects, airport expansions, mineral extraction projects, and prescribed burning. The rule exempts federal actions with associated emissions below specified "significance" or de minimis levels, which are based on the Clean Air Act's "major stationary source" definitions. The rule also exempts federal actions which are permitted under the New Source Review or Prevention of Significant Deterioration programs, as these actions are "presumed to conform". Other provisions in the federal rule include requirements for public participation in reviewing conformity determinations, criteria for demonstrating conformity, and mitigation measures.

The Department's proposed rule is identical to the federal rule as it applies to nonattainment/maintenance areas. Minor wording changes were made for the purpose of rule clarification and consistency.

The rule provisions proposed by the Department for attainment areas apply only to PM10 emissions from prescribed burning, since this source represents the only source of emissions from federal actions which is felt to be a threat to SIP requirements. The de minimis level for triggering a conformity analysis for prescribed burning is the same as for nonattainment/maintenance areas (100 tons PM10). This de minimis level will require conformity analyses for the majority of prescribed burning on federal lands in the state. The other requirements for public participation in reviewing conformity determinations, criteria for demonstrating conformity, and mitigation measures are also identical.

Since federal agencies are already subject to the federal rule in nonattainment/

maintenance areas, no advisory committee review of the conformity provisions for these areas was warranted. The conformity provisions for federal actions associated with prescribed forest burning in attainment areas was developed with the assistance of representatives from the USDA Forest Service and the USDI Bureau of Land Management (BLM). Topics discussed included the determination of the applicability threshold and the use of dispersion modeling as the primary means of demonstrating conformity. A consensus was reached on these matters and the draft rule being proposed is supported by these agencies.

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

The General Conformity rule is intended to prevent emissions associated with planned federal actions from undermining efforts by the state to achieve the Clean Air Act requirements specified in the Oregon SIP. By doing so these rules serve to protect the public from adverse public health effects and further degradation of air quality and visibility in the state.

This rule only affects federal agencies which are proposing certain projects or activities which would emit a nonattainment pollutant above a de minimis level in a nonattainment/maintenance area, or federal agencies planning prescribed burning on federal lands in an attainment area. EPA's existing General Conformity rule, which the Department's rule is based upon, affects the following types of federal agencies in nonattainment/maintenance areas: the Army Corps of Engineers, Federal Aviation Administration, General Services Administration, and Department of Defense. The Department expects the primary federal action requiring conformity determinations will be associated with prescribed burning in attainment areas, and therefore this rule will most directly affect the Forest Service, and to a lessor degree the BLM. These agencies are already required under NEPA to analyze air quality impacts associated with prescribed forest burning, and to indicate how the proposed action will be consistent with the federal Clean Air Act. The primary difference between NEPA and general conformity is that the latter more directly involves the state, and requires that mitigation measures be identified if the proposed action does not conform to the Oregon SIP.

The Department expects most conformity determinations will be associated with prescribed burning activity in attainment areas. The Department already reviews NEPA air quality analyses prepared by the Forest Service and BLM for prescribed burning to determine consistency with the SIP, and therefore expects to replace this activity with conformity determination review. The 100 ton de minimis level for PM10 emissions

will focus the conformity review on prescribed burning activities involving multiple burn units or sizeable individual burn units which have the potential for adverse air quality impacts. The Department expects very few conformity determinations associated with federal actions in nonattainment/maintenance areas, since the majority of federal actions are likely to be either transportation related, and therefore subject to the Department's proposed Transportation Conformity rules, or general actions that fall below the applicability level.

Under the reporting requirements of this rule, the federal agency making the conformity determination must notify state and local air quality agencies. The only local air pollution agency in the state is the Lane Regional Air Pollution Authority (LRAPA) for Lane County. Any draft or final conformity determinations conducted in this county would be sent to LRAPA and the Department. Based on the expected infrequency of federal actions triggering this rule in Lane County, the Department does not anticipate any significant workload increase related to the review of conformity determinations.

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

As described above, the proposed rule is identical to EPA's General Conformity rule as it applies to nonattainment/maintenance areas. Minor modifications were made to the federal rule by the Department in order to address prescribed burning in attainment areas. In this regard, the state will be more stringent than EPA.

**How will the rule be implemented**

Under the general conformity rule, the federal agency proposing a project or activity in a nonattainment/maintenance area must first determine if the associated emissions exceed the de miminis or applicability level for the pollutant(s) for which the area was designated as nonattainment. In attainment areas, the federal agency (the Forest Service or BLM) would determine if the emissions from the prescribed burning activity being planned would exceed the PM10 de minimis level specified in the rule. If so, the federal agency would then conduct the conformity determination following the requirements of this rule. Both draft and final conformity determinations would be sent to the Department (and LRAPA if in Lane County) for review, and comment if appropriate. The federal agency would also be required to solicit and respond to public comments on its conformity determinations.

**Are there time constraints**

The federal General Conformity rule adopted by EPA on November 30, 1993 requires each state to revise its SIP to incorporate general conformity provisions by November 30, 1994. The Department will miss this deadline for submittal, but is attempting to have these provisions adopted at the EQC meeting on January 20, 1995. Although EPA can begin the sanction imposition process on states which miss rule submittal deadlines, such action is not expected given the fact that this rule adoption will be "in progress" by the deadline date.

## Contact for more information

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

Brian Finneran
Air Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204-1390

(503) 229-6278
1-800-452-4011 (in Oregon)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
Criteria and Procedures for Determining
Conformity of General Federal Actions

# Rulemaking Statements

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

1. Legal Authority

ORS 468.020 and ORS 468A.035

2. Need for the Rule

This rule is required by Section 176(c)(4)(C) of the Clean Air Act, as amended in 1990, and by EPA regulations contained in 40 CFR, Part 51, Section 51.851. Adoption of these rules will require federal agencies to demonstrate to the state that federal actions which emit in significant amounts of air pollution are consistent with the air quality requirements contained in the Oregon State Implementation Plan.

3. Principal Documents Relied Upon in this Rulemaking

The Department relied federal regulations contained in 40 CFR, Part 51, Subpart W - "Determining Conformity of General Federal Actions to State or Federal Implementation Plans", and the STAPPA/ALAPCO Model Rule: "Conformity of General Federal Actions to State Implementation Plans".

4. Advisory Committee Involvement

A year ago the Environmental Protection Agency adopted General Conformity rules and required that states revise their state implementation plans by November 30, 1994 to incorporate similar rules. A major portion of this rulemaking proposal involves the adoption of conformity requirements identical to the existing EPA rules

which are currently being applied to federal actions in Nonattainment Areas. Therefore, since federal agencies are already subject to the federal rule in these areas, no advisory committee review of the provisions associated with conformity in Nonattainment Areas was warranted.

The portion of this rulemaking proposal which addresses conformity requirements for federal actions associated with prescribed forest burning in Attainment Areas was developed with the assistance of representatives from the U.S.D.A. Forest Service and the Bureau of Land Management. Topics discussed included the determination of the applicability threshold and the use of dispersion modeling as the primary means of demonstrating conformity. A consensus was reached by these agencies and support of this rule was obtained.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
**Criteria and Procedures for Determining Conformity of General Federal Actions**

# Fiscal and Economic Impact Statement

## Introduction

This rule would ensure that certain planned federal actions on federal lands which emit significant amounts of air pollution are consistent with the air quality requirements contained in the Oregon State Implementation Plan. This proposed rulemaking would establish new rules based on federal Clean Air Act requirements and which follow general conformity rules already adopted by the Environmental Protection Agency. In addition, this rule contains conformity requirements which go beyond the federal rules to require conformity determinations for prescribed forest burning on federal lands in Oregon.

EPA's current general conformity rule applies to certain planned federal actions in nonattainment areas which emit any criteria pollutant (carbon monoxide, PM10, nitrogen dioxide, sulfur dioxide, ozone, and lead) for which the area is designated as nonattainment. The rule exempts federal actions which are permitted under the New Source Review or Prevention of Significant Deterioration programs, as these actions are "presumed to conform". The also rule exempts federal actions with associated emissions below specified "significance" or de minimis levels, which are based on the Clean Air Act's "major stationary source" definitions. Examples of federal actions subject to this rule include federal construction projects, airport expansions, mineral extraction projects, and prescribed burning.

The rule provisions proposed by the Department for attainment areas apply only to PM10 emissions from prescribed burning on federal lands, since this source represents the only source of emissions from federal actions which is felt to be a threat to SIP requirements. The de minimis level for triggering a conformity analysis for prescribed burning is the same as for nonattainment areas (100 tons/PM10).

Both rule provisions are identical in that they require the federal agency to make the conformity determination, and to notify state and local air quality agencies as well

as the general public as to the findings. The Department's role is primarily to review and comment on the conformity determinations. For the provisions addressing prescribed burning, the Department will be involved in working with federal agencies to develop guidance related to these provisions.

**General Public**

There will be no fiscal and/or economic impacts on the general public.

**Small Business**

There will be no fiscal and/or economic impacts on small businesses, unless a small business is part of a large business group. See discussion below regarding large businesses.

**Large Business**

Under the proposed rules addressing conformity in nonattainment areas (cities which do not meet federal air quality standards), there is the possibility that private actions being proposed on federal lands under a permit or leasing agreement with a federal agency may require that the private sponsor or business contribute to the cost of conducting the conformity analysis. An example would be projects involving mineral extraction, timber harvesting, or ski resort construction. Environmental Protection Agency (EPA) estimates for a conformity determination made by a federal agency range from $1,700 for a straightforward determination to $133,000 for a complex, large-scale project. However, the Department believes very few private projects of this kind occur in nonattainment areas, and that the majority of those that do would fall below the applicability level (de minimis level) specified in these rules.

All projects in attainment areas subject to these conformity rules will involve prescribed burning activities conducted by federal agencies on federal land.

**Local Governments**

Under the reporting requirements of this rule, the federal agency making the conformity determination must notify state and local air quality agencies. The only local air pollution agency in the state is the Lane Regional Air Pollution Authority (LRAPA) for Lane County. Any draft or final conformity determinations conducted in this county would be sent to LRAPA and the Department. Based on the expected infrequency of federal actions triggering this rule in Lane County, the Department does not anticipate any significant workload increase related to the review of conformity determinations.

**State Agencies**

The Department expects to be involved initially in interagency consultation on conformity determinations, mostly with the Forest Service. Most of the Department's efforts will entail reviewing and commenting, where appropriate, on conformity determinations made by federal agencies in nonattainment and attainment areas.

The Department expects most of conformity determinations it reviews will be associated with prescribed burning activity in attainment areas. Since the Department already reviews the air quality analysis prepared by the Forest Service and Bureau of Land Management for prescribed burning under the NEPA requirements, additional staff to perform these duties is not anticipated. The Department expects very few conformity determinations associated with federal actions in nonattainment areas, since the majority of federal actions are likely to be either transportation related, and therefore subject to the Department's proposed Transportation Conformity rules, or general actions that fall below the applicability level.

**Assumptions**

EPA estimates that only about 15% of federal actions in nonattainment areas will require a conformity determination.

In attainment areas, the conformity determinations associated with prescribed burning activities are expected to follow the criteria for analyzing air quality impacts currently required under NEPA. The Department expects to be the lead agency regarding the review of conformity determinations involving prescribed burning.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
**Criteria and Procedures for Determining Conformity of General Federal Actions**

# Land Use Evaluation Statement

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

This rule would ensure that certain planned federal actions on federal lands which emit significant amounts of air pollution are consistent with the air quality requirements contained in the Oregon State Implementation Plan. This proposed rulemaking would establish new rules based on federal Clean Air Act requirements and which follow general conformity rules already adopted by the Environmental Protection Agency. In addition, this rule contains conformity requirements which go beyond the federal rules to require conformity determinations for prescribed forest burning on federal lands in Oregon.

EPA's current general conformity rule applies to certain planned federal actions in nonattainment areas which emit any criteria pollutant (carbon monoxide, PM10, nitrogen dioxide, sulfur dioxide, ozone, and lead) for which the area is designated as nonattainment. The rule exempts federal actions which are permitted under the New Source Review or Prevention of Significant Deterioration programs, as these actions are "presumed to conform". The also rule exempts federal actions with associated emissions below specified "significance" or de minimis levels, which are based on the Clean Air Act's "major stationary source" definitions. Examples of federal actions subject to this rule include federal construction projects, airport expansions, mineral extraction projects, and prescribed burning.

The rule provisions proposed by the Department for attainment areas apply only to PM10 emissions from prescribed burning on federal lands, since this source represents the only source of emissions from federal actions which is felt to be a threat to SIP requirements. The de minimis level for triggering a conformity analysis for prescribed burning is the same as for nonattainment areas (100 tons/PM10).

Both rule provisions are identical in that they require the federal agency to make the conformity determination, and to notify state and local air quality agencies as well as the general public as to the findings. The Department's role is primarily to review and

comment on the conformity determinations. For the provisions addressing prescribed burning, the Department will be involved in working with federal agencies to develop guidance related to these provisions.

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

   **Yes___ No_X_**

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

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

   **Yes___ No___ (if no, explain):**

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

   Staff should refer to Section III, subsection 2 of the SAC document in completing the evaluation form. Statewide Goal 6 - Air, Water and Land Resources is the primary goal that relates to DEQ authorities. However, other goals may apply such as Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources; Goal 11 - Public Facilities and Services; Goal 16 - Estuarine Resources; and Goal 19 - Ocean Resources. DEQ programs or rules that relate to statewide land use goals are considered land use programs if they are:

   1. Specifically referenced in the statewide planning goals; or

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

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

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

It is the Department's position that this rule does not meet DLCD's "significance" threshold for purposes of designation as a DEQ land use program. This rule is identical to EPA's rule for General Conformity with national ambient air quality standards. As such, this rule merely provides greater assurance of coordination, compliance, and cooperation with Goal 6. For further discussion on the effects of this rule on the public and other agencies, refer to page 5 of the rulemaking proposal memorandum.

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

   Not applicable.

| Division | Intergovernmental Coord. | Date |
|---|---|---|
| | | 11/15/94 |

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

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

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

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

   The Environmental Protection Agency has adopted general conformity requirements for nonattainment areas, but has yet to develop similar rules for attainment areas. This proposed rulemaking includes new provisions for conformity determinations in attainment areas involving planned prescribed burning on federal lands, and follows the same criteria and requirements in the federal rules which apply to planned prescribed burning in nonattainment areas. In addition, there are federal requirements under the National Environmental Protection Act (NEPA) that pertain to federal actions involving prescribed burning, and require a comprehensive air quality analysis. However, NEPA does not specifically prohibit the federal action from proceding if it does not conform to SIP requirements.

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

   The federal requirements are performance based. Under the federal rules, determining general conformity of a federal project or activity is based on a quantitative analysis of the potential air quality impacts. The Department's rule provisions pertaining to prescribed burning in attainment areas contain the same de minimis applicability threshold as the federal rule, and require the use of dispersion modeling where feasible to demonstrate conformity.

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

   No, the federal rule does not specifically address issues that are of concern in Oregon. Prescribed burning in Oregon is the largest source of PM10 emissions in the attainment areas of the state. Practically none of this activity occurs within

nonattainment areas, which is the only area addressed under the federal rules. Projections of future burning by the Forest Service indicate that a significant increase in burning can be expected in order to address forest health concerns and reduce the likelihood of potential catastrophic wildfires. This could potentially violate Oregon SIP requirements involving National Ambient Air Quality Standards (NAAQS), Prevention of Significant Deterioration (PSD), and Visibility Protection.

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

   The proposed provisions pertaining to prescribed burning in attainment areas will ensure that this activity continues to meet NAAQS, PSD, and Visibility requirements. Failure to comply with these SIP requirements could lead to more regulation of prescribed burning by placing stringent emission limits and smoke management controls on this activity, resulting in increased operation and compliance costs.

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

   Adopting the proposed provisions pertaining to prescribed burning in attainment areas at this time would be beneficial to both the Department and federal forest management agencies. Significant increases in prescribed burning area being planned for 1995 in northeastern Oregon and possibly other areas of the state which are currently in attainment with NAAQS. In order for the Department and federal forest land managers to successfully evaluate the potential air quality impacts from this burning, it is essential that there be a mechanism in place prior to the initiation of this burning that provide criteria and procedures for determining whether future burning will continue to meet SIP requirements.

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

   Not applicable.

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

   The new provisions for prescribed burning levels the playing field between stationary, mobile, and area sources. Stationary and mobile sources are controlled in nonattainment areas through relatively stringent control measures.

As an area source prescribed burning emits nearly the same total emissions as industry in the state, yet it is mostly uncontrolled, except in a few areas where mandatory smoke management controls exist.

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

   If the Department did not address prescribed burning in attainment areas there is the possibility that NAAQS or PSD violations could occur, and that the consequences could be costly controls on industrial sources, and restrictions on residential woodheating which could increase home heating costs.

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

   No. The proposed requirement is identical to the applicable federal requirements for prescribed burning in nonattainment areas.

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

    Yes. Federal forest management agencies will be able to demonstrate conformity following the same air quality criteria required under the NEPA provisions. These include use of dispersion models where applicable, smoke management controls, low emission burning techniques, and use of offsets.

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

    Both. The proposed requirement will ensure that emissions from prescribed burning comply with SIP requirements, which will contribute to the prevention of pollution, and in a cost-effective way address future increases in prescribed burning that results in environmental benefits.

State of Oregon
# Department of Environmental Quality Memorandum

**Date:** January 9, 1995

**To:** Environmental Quality Commission

**From:** Brian Finneran and Howard Harris

**Subject:** Presiding Officer's Report for Rulemaking Hearing
Hearing Dates and Time: January 4 and 5, 1995, at 7 p.m.
Hearing Locations: La Grande, Portland, Medford

Title of Proposal: Criteria and Procedures for Determining Conformity of General Federal Actions to State or Federal Air Quality Implementation Plans

The rulemaking hearing on the above titled proposal was convened at 7 p.m., at all three locations. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

There was no written or verbal testimony provided.

The hearings were closed at approximately 7:30 p.m.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
Criteria and Procedures for Determining Conformity of General Federal Actions to State or Federal Air Quality Implementation Plans

# Rule Implementation Plan

## Summary of the Proposed Rule

These rules would ensure that federal actions which emit significant amounts of air pollution are consistent with the air quality requirements contained in the Oregon State Implementation Plan. This proposed rulemaking establishes new rules based on federal Clean Air Act requirements and which follow general conformity rules already adopted by the Environmental Protection Agency, and contains additional conformity requirements which go beyond the federal rules to address prescribed forest burning on federal lands in Oregon.

## Proposed Effective Date of the Rule

The rules will become effective upon adoption.

## Proposal for Notification of Affected Persons

Affected federal agencies are already subject to EPA's General Conformity rules, and are aware of the general conformity provisions. The Department's rules will be identical to the federal rule, except for provisions which apply to federal agencies (the USDA Forest Service and USDI Bureau of Land Management) in attainment areas which are conduct prescribed burning on federal lands. These agencies were involved in the rule development process and will be formally notified by letter upon adoption of these rules.

## Proposed Implementing Actions

Affected federal agencies will have to conduct conformity determinations pursuant to these rules. The Department expects most of conformity determinations it reviews will be associated with prescribed burning activity in attainment areas. DEQ Headquarters currently reviews air quality impact analyses prepared by the Forest Service and BLM for prescribed burning activities under the National Environmental Protection Act requirements, and expects to replace this review process with conformity determination reviews. Therefore,

no additional DEQ staff to perform these duties is anticipated at this time. The Department expects very few conformity determinations associated with federal actions in nonattainment areas, since the majority of federal actions are likely to be either transportation related, and therefore subject to the Department's proposed Transportation Conformity rules, or general actions that fall below the applicability level.

**Proposed Training/Assistance Actions**

A DEQ Headquarters staff person will be trained in-house on the proposed general conformity rules. Draft and final conformity determinations will be sent to DEQ Headquarters. Training for affected federal agencies in nonattainment areas is not needed since these agencies have already been subject to the federal rule. The Department will be working with the Forest Service and BLM in developing guidance related to the implementation of the provisions pertaining to prescribed burning in attainment areas.

# Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

**Agenda Item D**
**March 3, 1995 Meeting**

**Title:**

Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under title 23 U.S.C. or the Federal Transit Act.

**Summary:**

These rules establish criteria and procedures for determining that transportation plans, programs, and projects funded or approved by a Metropolitan Planning Organization or a recipient of federal funds conform with State or Federal air quality implementation plans. These rules are required by section 176(c)(4)(C) of the Clean Air Act and by USEPA/DOT implementing regulations, 58 Fed. Reg. 62188, et. seq.

Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity or number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. In addition, these activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with timely attainment of required interim emission reductions towards attainment. This rule establishes the process by which the United States Department of Transportation, Metropolitan Planning Organizations, recipients of federal funds, and the Oregon Department of Transportation determine conformity of highway and transit projects.

**Department Recommendation:**

Adoption.

| Report Author | Division Administrator | Director |
|---|---|---|

February 15, 1995.

†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:** February 15, 1995

**To:** Environmental Quality Commission

**From:** Lydia Taylor, Interim Director

**Subject:** Agenda Item D, March 3, 1995, EQC Meeting

## Background

On November 15, 1994 the Interim Director authorized the Air QualityDivision to proceed to a rulemaking hearing on proposed rules which would establish criteria and procedures for determining conformity to State or Federal Implementation Plans of transportation plans, programs and projects.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on December 1, 1995. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on November 21, 1994.

Public Hearings were held on January 5, 1995, 7:00 p.m. at 811 SW 6th Ave., Room 3A, Portland, OR, and 10 S. Oakdale, Medford, OR. with Annette Liebe and Howard Harris serving as Presiding Officers. The Presiding Officers' Reports (Attachments C.1 & C.2) summarize the oral testimony presented at the hearings.

Written comment was received through 12:00 p.m., January 6, 1995. A list of written comments received is included as Attachment D. (A copy of the comments is available upon request.)

Department staff have evaluated the comments received (Attachment E). Based upon that evaluation, modifications to the initial rulemaking proposal are being recommended by the Department. These modifications are summarized below and detailed in Attachment F.

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

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

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

These rules are required by section 176(c)(4)(C) and by USEPA/DOT implementing regulations, 58 Fed. Reg. 62188, et. seq. These rules establish criteria and procedures for determining that transportation plans, programs, and projects which are funded or approved by a Metropolitan Planning Organization or a recipient of federal funds conform with State or Federal air quality implementation plans (SIPs).

In other words, federal funds or approvals can be awarded for projects only if the transportation plans, programs and projects conform to air quality plans adopted under the Clean Air Act. In urban areas with populations of greater than 50,000, USDOT designates Metropolitan Planning Organizations (MPOs) to distribute large amounts of federal money, and to develop and implement a region's transportation system. These MPOs are directed by Congress, pursuant to the Intermodal Surface Transportation Efficiency Act, to adopt 20 year long range regional transportation plans (RTPs) for 20 years and 3-7 year transportation improvement programs (TIPs) designed to implement the long range plan. The former lay out planned facilities and policies and the latter establish specific funding allocations for implementing projects. All projects with federal involvement and most significant non-federal projects can not proceed unless both the RTP and TIP are found to conform under the Clean Air Act. This final rule establishes the process by which the United States Department of Transportation, Metropolitan Planning Organizations, and the Oregon Department of Transportation (in non-metropolitan) nonattainment areas determine conformity of highway and transit projects.

Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity or number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. In addition, these activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with timely attainment of required interim emission reductions towards attainment.

**Relationship to Federal and Adjacent State Rules**

For the most part, the proposed rules are identical. In a few areas, they are more stringent to ensure adequate protection of air quality, given special conditions in Oregon.

The proposed rules would require all "regionally significant" transportation projects to meet the criteria of the rule regardless of funding source. The determination of "regionally significant" projects will be made through interagency consultation with affected parties. It is the Department's intent that only large scale projects be considered "regionally significant." The proposed rules would require a few "regionally significant" state or locally approved projects to be evaluated for localized air quality impacts. This is not required by the federal rules. This more stringent criterion is consistent with the requirements in the State of Washington.

Second, the proposed rules shorten the time frame for compliance with a mobile source emissions budget once a maintenance SIP has been approved by the Environmental Quality Commission (EQC). Since the mobile source emissions budget is the most accurate benchmark for ensuring compliance with national ambient air quality standards, the advisory committee agreed that the budget should govern during the time period when EPA is reviewing the maintenance submittal. This criterion is crucial since EPA has often taken years to approve SIP submittals.

Third, the proposed rule shortens the time frame for demonstrating timely implementation of transportation control measures (TCMs) once the EQC adopts a SIP revision which adds TCMs. Where DEQ has identified additional TCMs as necessary to achieve and/or maintain healthy air quality, it is important that these measures are implemented in a timely manner. Since EPA review of SIPs is often time consuming, implementation should move forward during EPA review.

Finally, the proposed rule requires timely implementation of all transportation control measures (TCMs) identified as necessary to achieve or maintain air quality standards, regardless of their eligibility for federal transportation funding. At the present time, this will primarily affect road sanding control measures in areas experiencing particulate matter pollution problems. The federal rule merely requires timely implementation of those TCMs eligible for federal transportation funds. A majority of the advisory committee agreed that once a commitment has been made to particular measures necessary for healthful air quality, the rule should require that these measures be implemented. In response to public comment, qualifying language has been added to this

criterion stating that timely implementation of TCMs not eligible for federal funding will only be required where attainment or maintenance of a standard is jeopardized.

For a complete analysis of these more stringent criteria, please turn to Attachment B.6 of this package.

**Authority to Address the Issue**

ORS 468A.035; 468.020.

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

The rule was developed over the course of approximately six months with the assistance of an advisory committee representing diverse interests. A complete list of Advisory Committee membership is included as Attachment G. Broad notice of advisory committee meetings was provided to an additional list of "interested parties." DEQ staff gave two presentations on the proposed rule to members of the METRO Transportation Policy Alternatives Committee.

The base text for the proposed conformity rule was the federal rule promulgated in November 1993. In addition, the committee assessed alternatives presented in a model rule developed by the umbrella membership organization for the State and Territorial Air Pollution Program Administrators.

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

The base text for the proposed rule that was presented to the public for comment was the federal rule. In a few areas, the proposed rule was more stringent in response to the policy recommendations of the Advisory Committee. The proposed rules were more stringent that the federal rules in the following four ways:

First, they required all "regionally significant" transportation projects to meet the criteria of the rule regardless of funding source. The determination of "regionally significant"

projects is made through interagency consultation with affected parties. The proposed rules required some "regionally significant" locally funded or approved projects to be evaluated for localized air quality impacts because they could jeopardize attainment and/or maintenance of air quality standards. This is not required by the federal rules. Since the need for localized air quality analysis has been identified with respect to certain federally funded and approved projects, the advisory committee recommended that these types of locally approved or funded projects should also comply with this requirement in order to ensure that no new localized violations occur.

Second, the proposed rules shortened the time frame for compliance with a mobile source emissions budget once a maintenance SIP has been approved by the Environmental Quality Commission (EQC). Since the mobile source emissions budget is the most accurate benchmark for ensuring compliance with national ambient air quality standards, the advisory committee agreed that the budget should govern during the time period when EPA is reviewing the maintenance submittal. This criterion is crucial since EPA has often taken years to approve SIP submittals.

Third, the proposed rule shortened the time frame for demonstrating timely implementation of transportation control measures (TCMs) once the EQC adopts a SIP revision which adds TCMs. Where DEQ has identified additional TCMs as necessary to achieve and/or maintain healthy air quality, it is important that these measures are implemented in a timely manner. Since EPA review of SIPs is often time consuming, implementation should move forward during EPA review.

Fourth, the proposed rule required timely implementation of all transportation control measures (TCMs) identified as necessary to achieve or maintain air quality standards, regardless of their eligibility for federal transportation funding. At the present time, this will primarily affect road sanding control measures in areas experiencing particulate matter pollution problems. The federal rule merely requires timely implementation of those TCMs eligible for federal transportation funds. A majority of the advisory committee agreed that once a commitment has been made to particular measures necessary for healthful air quality, the rule should require that these measures be implemented.

The proposed rule also contained detailed interagency consultation procedures involving state and local transportation and air quality agencies in key decisions. These consultation procedures are required by the joint USEPA/DOT implementing regulations.

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

The Department received 13 comments (eight parties supporting and five parties objecting) on the requirement that all "regionally significant" state or locally approved projects comply with the localized analysis requirement where such analysis is required for federally funded or approved projects. The rule has been revised to eliminate one instance where localized analysis would be required for state or locally approved "regionally significant" projects. The criterion requiring localized analysis where a project will increase the level of service of an intersection to D, E, or F has been revised to apply only to FHWA/FTA funded or approved projects. This revision was made for purposes of clarity and to reduce the burden on local governments.

The Department received nine comments (three parties in support and six parties in opposition) on the requirement that all transportation control measures (TCMs) be implemented in a timely manner, regardless of their eligibility for federal funding. The federal rule only requires timely implementation for TCMS eligible for federal funding. In response to public comment, the following qualifying language has been added to the rule:

> "timely implementation of TCMs which are not eligible for funding under title 23 or the Federal Transit Act [federal funding] is required where failure to implement such measure(s) jeopardizes attainment or maintenance of a standard."

In response to public comment, and as a clarification, DEQ added language to the definition of "regionally significant" clarifying that some facilities that normally would be included in an area's transportation network model will not be considered "regionally significant" because they do not serve regional travel needs.

Four parties commented that the formalized interagency consultation process seems unnecessary where an informal process is already doing the job. These parties also commented that interagency consultation should not delay projects from going forward. The rule retains detailed interagency consultation procedures to comply with the requirements of the joint USEPA/DOT rules. Deletion of these requirements would make the Oregon rules unapprovable by EPA, and sanctions may be triggered. It is DEQ's intent to work cooperatively with the affected agencies to ensure that the process is not delayed and that project approvals proceed smoothly.

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

The proposed rule requires Metropolitan Planning Organizations (MPOs) in metropolitan areas (Salem-Keizer, Eugene-Springfield, Medford-Ashland, Portland) to make conformity determinations for transportation plans and programs. In non-metropolitan areas (Klamath Falls, Grants Pass, La Grande, Lakeview, Oakridge) the Oregon Department of Transportation (ODOT) is designated as the responsible party for performing regional emissions analyses such as is required of plans and programs in metropolitan areas.

For projects funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA), the rule required localized analysis of air quality impacts for certain projects. Similarly, the rule requires cities and counties to perform localized analysis for some "regionally significant" projects that are not funded with federal funds and do not required FHWA/FTA approval.

The proposed rule requires MPOs and ODOT to demonstrate that transportation control measures are being implemented in a timely manner where those measures are required by an air quality plan. Where an air quality plan contains transportation control measures that are not eligible for federal funding, timely implementation is required only when attainment of maintenance of a standard is jeopardized.

Finally, and most importantly, the proposed rule requires state and local transportation planning and air quality agencies to engage in interagency consultation prior to making various decisions required by the rule. DEQ views the interagency consultation process as being the single most crucial aspect towards successful implementation of this program. The rule also contains a dispute resolution mechanism for conflict between state agencies. Should the heads of conflicting state agencies fail to come to agreement, the conflict can be escalated for resolution by the Governor's office.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the rules/rule regarding the conformity of transportation plans, programs, and projects as presented in Attachment A of the Department Staff Report.

**Attachments**

A. Rule (Amendments) Proposed for Adoption
B. Supporting Procedural Documentation:
    1. Legal Notice of Hearing
    2. Public Notice of Hearing (Chance to Comment)
    3. Rulemaking Statements (Statement of Need)
    4. Fiscal and Economic Impact Statement
    5. Land Use Evaluation Statement
    6. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
C. Presiding Officer's Report on Public Hearing
D. List of Written Comments Received
E. Department's Evaluation of Public Comment
F. Detailed Changes to Original Rulemaking Proposal made in Response to Public Comment
G. Advisory Committee Membership and Report
H. Rule Implementation Plan
I. (Other Attachments as appropriate)

**Reference Documents (available upon request)**

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

Approved:

Section: John F. Kowalczyk

Division: Gregory A. Green

Report Prepared By: Annette Liebe

Phone: 229-6919

Date Prepared: January 25, 1995

**PROPOSED RULE**

OAR Section 340-20-700, et. seq.

Criteria and Procedures for Determining

Conformity to State or Federal Implementation Plans

of Transportation Plans, Programs, and Projects

Funded or Approved Under

Title 23 U.S.C. or the Federal Transit Act.

NOTE: This is a new rule. All changes made in response to public comments are clearly marked in **bold**.

Attachment A

implementation plan submission).
340-20-1040 Enforceability of design concept and scope and project-level mitigation and control measures.
340-20-1050 Exempt projects.
340-20-1060 Projects exempt from regional emissions analyses.
340-20-1070 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.
340-20-1080 Savings provisions.

340-20-700 Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

340-20-710 Purpose.

The purpose of OAR 340-20-710 through 340-20-1080 is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). OAR 340-20-710 through 340-20-1080 sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

340-20-720 Definitions.

Terms used but not defined in this rule shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency regulations, or other DOT regulations, in that order of priority.

(1) "Applicable implementation plan" is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

(2) "CAA" means the Clean Air Act, as amended.

(3) "Cause or contribute to a new violation" for a project means:

(a) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(b) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

(4) "Consult or consultation" means that the party or parties responsible for consultation as established in OAR 340-20-760 shall provide all appropriate information necessary to making a conformity determination and, prior to making a conformity determination, except with respect to a transportation plan or TIP revision which merely adds or deletes exempt projects listed in OAR 340-20-1050, consider the views of such parties and provide a timely, written response to those views. Such views and written responses shall be included in the record of decision or action.

(5) "Control strategy implementation plan revision" is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).

(6) "Control strategy period" with respect to particulate matter less than 10 microns in diameter (PM-10), carbon monoxide (CO), nitrogen dioxide (NO2), and/or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NOx)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM-10, NO2, CO, and/or ozone, as appropriate. This period ends when the State submits and EPA approves a request under §107(d) of the CAA for redesignation to an attainment area.

(7) "DEQ" means the Department of Environmental Quality

(8) "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.

(9) "Design scope" means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

(10) "DOT" means the United States Department of Transportation.

(11) "EPA" means the Environmental Protection Agency.

(12) "FHWA" means the Federal Highway Administration of DOT.

(13) "FHWA/FTA project" for the purpose of this rule, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway

program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

(14) "FTA" means the Federal Transit Administration of DOT.

(15) "Forecast period" with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

(16) "Highway project" is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(a) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(b) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(17) "Horizon year" is a year for which the transportation plan describes the envisioned transportation system in accordance with OAR 340-20-770.

(18) "Hot-spot analysis" is an estimation of likely future localized CO and PM-10 pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

(19) "Incomplete data area" means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

(20) "Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

(21) "ISTEA" means the Intermodal Surface Transportation Efficiency Act of 1991.

(22) "Lead planning agency" means an agency designated pursuant to section 174 of the Clean Air Act as responsible for developing an applicable implementation plan.

(23) "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA, as amended.

(24) "Maintenance period" with respect to a pollutant or pollutant precursor means that period of time beginning when a State submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

(25) "Maintenance plan" means an implementation plan adopted by the Environmental Quality Commission, endorsed by the Governor and submitted to EPA under section 175(a) of the CAA, as amended.

(26) "Maximum priority" means that all possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation - for example, by increasing the funding rate - even though timing of other projects may be affected. It is not permissible to have prospective discrepancies with the SIP's TCM implementation schedule due to lack of funding in the TIP, lack of commitment to the project by the sponsoring agency, unreasonably long periods to complete future work due to lack of staff or other agency resources, lack of approval or consent by local governmental bodies, or failure to have applied for a permit where necessary work preliminary to such application has been completed. However, where statewide and metropolitan funding resources and planning and management capabilities are fully consumed, within the flexibilities of the Intermodal Surface Transportation Efficiency Act (ISTEA), with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made.

(27) "Metropolitan area" means any area where a metropolitan planning organization has been designated.

(28) "Metropolitan planning organization (MPO)" is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

(29) "Milestone" has the meaning given in § 182(g)(1) and § 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

(30) "Motor vehicle emissions budget" is that portion of the total allowable emissions defined in a revision to the applicable implementation plan, or in an implementation plan revision which

was adopted by the Environmental Quality Commission, subject to a public hearing, and submitted to EPA, but not yet approved by EPA, for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NOx) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NOx budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NOx budget if NOx reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

(31) "National ambient air quality standards (NAAQS)" are those standards established pursuant to § 109 of the CAA.

(32) "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

(33) "NEPA process completion" with respect to FHWA or FTA, means the point at which there is a specific action to make a final determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

(34) "Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

(35) "Not classified area" means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

(36) "ODOT" means the Oregon Department of Transportation.

(37) "Phase II of the interim period" with respect to a pollutant or pollutant precursor means that period of time after December 27, 1993, lasting until the earlier of the following:

(a) Submission to EPA of the relevant control strategy implementation plan revisions which have been adopted by the Environmental Quality Commission and have been subject to a public hearing, or

(b) Submission to EPA of a maintenance plan which has been adopted by the Environmental Quality Commission and has been subject to a public hearing, or

(c) The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the State's failure to

submit any such plans and the State, MPO, and DOT have received notice of such finding of the State's failure to submit any such plans. The precise end of Phase II of the interim period is established in OAR 340-20-990.

(38) "Policy level official" means elected officials, and management and senior staff level employees.

(39) "Project" means a highway project or transit project.

(40) "Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act" means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

(41) "Regional air authority" means a regional air authority established pursuant to ORS 468A.105.

(42) "Regionally significant project" means a transportation project, other than an exempt project, that is on a facility which serves regional transportation needs, such as access to and from the area outside the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves, and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum:

(a) all principal arterial highways,

(b) all fixed guideway transit facilities that offer an alternative to regional highway travel, and

(c) any other facilities determined to be regionally significant through interagency consultation pursuant to OAR 340-20-760.

**A project that is included in the modeling of an area's transportation network may not, subject to interagency consultation, be considered regionally significant because it is not on a facility which serves regional transportation needs.**

(43) "Rural transport ozone nonattainment area" means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area, as defined by the United States Bureau of the Census, and is classified under Clean Air Act section 182(h) as a rural transport area.

(44) "Standard" means a national ambient air quality standard.

(45) "Submarginal area" means any ozone nonattainment area which EPA has classified as

submarginal in 40 CFR part 81.

(46) "Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

(47) "Transit project" is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(a) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(b) Have independent utility or independent significance; i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(c) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(48) "Transitional area" means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

(49) "Transitional period" with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan or maintenance plan which has been adopted by the Environmental Quality Commission, and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. In the case of maintenance plan submissions, the transitional period shall last until EPA takes final approval or disapproval action. In the case of submissions other than maintenance plans, the precise beginning and end of the transitional period is established in OAR 340-20-990.

(50) "Transportation control measure (TCM)" is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions
are not TCMs for the purposes of this subpart.

(51) "Transportation improvement program (TIP)" means a staged, multiyear, intermodal

program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

(52) "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

(53) "Transportation project" means a roadway project or a transit project.

(54) "VMT" means vehicle miles traveled.

340-20-730 Applicability.

(1) Action applicability. Except as provided for in section (3) of this rule or OAR 340-20-1050, conformity determinations are required for:

(a) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or a DOT;
(b) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and
(c) The approval, funding, or implementation of FHWA/FTA transportation projects or regionally significant projects by a recipient of funds under title 23.

(2) Geographic Applicability.

(a) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(b) The provisions of this rule apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10).

(c) The provisions of this rule apply with respect to emissions of the following precursor pollutants:

(A) Volatile organic compounds and nitrogen oxides in ozone areas, except with respect to interim period reductions required under this rule, which shall not apply to nitrogen oxides if the Administrator has made a determination under section 182(f) of the CAA that additional NOx reductions would not contribute to attainment in the area and has not notified the state or MPO that a subsequent violation of the ozone standard rescinds that determination;
(B) Nitrogen oxides in nitrogen dioxide area; and
(C) Volatile organic compounds, nitrogen oxides, and PM-10 in PM-10 areas if:

(i) During the interim period, the EPA Regional Administrator or the director of the Department of Environmental Quality, or the director of any other regional air authority has made a finding, including a finding in an applicable implementation plan or a submitted implementation plan revision, that transportation related precursor emissions within the nonattainment area are a significant contributor to the PM-10 nonattainment problem and has so notified the MPO and DOT; or

(ii) During the transitional, control strategy, and maintenance periods, the applicable implementation plan, or implementation plan submission, establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) Limitations.

(a) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred in the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right of-way acquisition, construction, or any combination of these phases.

(b) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

340-20-740 Priority.

When assisting or approving any action with air quality related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

340-20-750 Frequency of conformity determinations.

(1) Conformity determinations and conformity redeterminations for transportation plans, TIPs, FHWA/FTA projects, and regionally significant projects approved or adopted by a recipient of funds under title 23 must be made according to the requirements of this rule and the applicable implementation plan.

(2) Transportation plans.

(a) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT. Each new transportation plan must be found to conform in accordance with the consultation requirements in OAR 340-20-760.

(b) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by an MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in OAR 340-20-1050. The conformity determination must be based on the transportation plan and the revision taken as a whole, and must be made in accordance with the consultation provisions of OAR 340-20-760.

(c) Conformity of existing transportation plans must be redetermined within 18 months of the following or the existing conformity determination will lapse:

(A) November 24, 1993; or

(B) EPA approval of an implementation plan revision which:

(i) Establishes or revises a transportation related emissions budget (as required by CAA section 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide); or

(ii) Deletes, or changes TCMs.

(C) within 24 months after the EQC adopts a SIP revision which adds TCMs, or 18 months after EPA approval of a SIP revision which adds TCMs, or at the next transportation plan approval (whichever comes first).

(D) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(d) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(3) Transportation improvement programs.

(a) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT. The new TIP must be found to conform in accordance with the consultation requirements in OAR 340-20-760.

(b) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in OAR 340-20-1050. The TIP amendment must be found to conform in accordance with the consultation requirements in OAR 340-20-760.

(c) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the

plan, unless the new or revised plan merely adds or deletes exempt projects listed in OAR 340-20-1050. Otherwise, the existing conformity determination for the TIP will lapse.

(d) In any case, conformity determination must be made no less frequently than every three years of the existing conformity determination will lapse.

(4) Projects. FHWA/FTA transportation projects must be found to conform before they are adopted, accepted, approved, or funded. In the case of recipients of funds under title 23 or the Federal Transit Act, all regionally significant projects must be found to conform before they are approved or adopted. Conformity must be redetermined for any FHWA/FTA project or any regionally significant project adopted or approved by a recipient of funds under title 23 if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of plans, specifications or estimates.

340-20-760 Consultation.

(1) General.

(a) This section provides procedures for interagency consultation (Federal, State, and local) and resolution of conflicts. Consultation shall be undertaken by MPOs, the Oregon Department of Transportation, affected local jurisdictions, and USDOT before making conformity determinations and in developing regional transportation plans and transportation improvement programs. Consultation shall be undertaken by a Lead Planning Agency, the Department of Environmental Quality, the Lane Regional Air Pollution Authority (for actions in Lane County which are subject to this rule), or any other regional air authority, and EPA in developing applicable implementation plans.

(b) The Lead Planning Agency, the Department of Environmental Quality, the Lane Regional Air Pollution Authority for Lane County, or any other regional air authority, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development, amendment or revision (except administrative amendments or revisions) of an applicable implementation plan including, the motor vehicle emissions budget. The MPO, ODOT, or any other party responsible for making conformity determinations pursuant to this rule, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the transportation plan, the TIP, and any determinations of conformity under this rule. The project sponsor shall be responsible for assuring the conformity of FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under title 23.

(c) In addition to the lead agencies identified in subparagraph (2), other agencies entitled to participate in any interagency consultation process under this rule include the Oregon Department

of Transportation, both headquarters and each affected regional or district office, each affected MPO, the Federal Highway Administration regional office in Portland and State division office in Salem, the Federal Transit Administration regional office, the Department of Environmental Quality, both headquarters and each affected regional office, any affected regional air authority, the United States Environmental Protection Agency, both headquarters and each affected regional or district office, and any other organization within the State responsible under State law for developing, submitting or implementing transportation-related provisions of an implementation plan, any local transit agency, and any city or county transportation or air quality agency.

(d) Specific roles and responsibilities of various participants in the interagency consultation process shall be as follows:

(A) The Lead Planning Agency, the Department of Environmental Quality, the Lane Regional Air Pollution Authority, or any other regional air authority, shall be responsible for developing

(i) emissions inventories,

(ii) emissions budgets,

(iii) attainment and maintenance demonstrations, (iv) control strategy implementation plan revisions, and (v) updated motor vehicle emissions factors.

(B) Unless otherwise agreed to in a Memorandum of Understanding between the affected jurisdictions and the Department of Environmental Quality, the Department of Environmental Quality shall be responsible for developing the transportation control measures to be included in SIPs in PM-10 nonattainment or maintenance areas, except Oakridge.

(C) The Lane Regional Air Pollution Authority shall be responsible for developing transportation control measures for PM-10 in Oakridge.

(D) The MPO shall be responsible for

(i) developing transportation plans and TIPs, **and making corresponding conformity determinations,**

(ii) monitoring regionally significant projects,

(iii) developing and evaluating TCMs in ozone and/or carbon monoxide nonattainment and/or maintenance areas,

(iv) providing technical and policy input on emissions budgets,

(v) performing transportation modeling, regional emissions analyses and documenting timely implementation of TCMs as required for determining conformity,

(vi) distributing draft and final project environmental documents which have been prepared by the MPO to other agencies.

(E) The Oregon Department of Transportation (ODOT) shall be responsible for

(i) providing technical input on proposed revisions to motor vehicle emissions factors,

(ii) distributing draft and final project environmental documents prepared by ODOT to other agencies,

(iii) convening air quality technical review meetings on specific projects when requested by other agencies or, as needed.

**(iv) convening interagency consultation meetings required for purposes of making conformity determinations in non-metropolitan nonattainment or maintenance areas, except Grants Pass.**

**(v) making conformity determinations in non-metropolitan nonattainment or maintenance areas, except Grants Pass.**

**(F) In addition to the responsibilities of MPOs described in (D) above, the Rogue Valley Council of Governments will be responsible for**

**(i) convening interagency consultation meetings required for purposes of making conformity determinations in Grants Pass;**

**(ii) making conformity determinations in Grants Pass.**

(G) The project sponsor shall be responsible for

(i) assuring project level conformity including, where required by this rule, localized air quality analysis,

**(ii) distributing draft and final project environmental documents prepared by the project sponsor to other agencies,**

(H) FHWA and FTA shall be responsible for

(i) assuring timely action on final findings of conformity, after consultation with other agencies as provided in this section and 40 CFR § 93.105.

(I) EPA shall be responsible for

(i) reviewing and approving updated motor vehicle emissions factors, and

(ii) providing guidance on conformity criteria and procedures to agencies in interagency consultation.

(J) Any agency, by mutual agreement with another agency, may take on a role or responsibility assigned to that other agency under this rule.

(K) In metropolitan areas, any state or local transportation agency, or transit agency shall disclose regionally significant projects to the MPO standing committee established under OAR 340-20-760(3)(b) in a timely manner.

(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: **adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project**, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.

(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to the MPO annually on or before July 1.

(iii) In the case of any regionally significant project that has not been disclosed to the MPO and other interested agencies participating in the consultation process in a timely manner, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle

emissions budget in the applicable implementation plan, for the purposes of OAR 340-20-1000.

**(L) In non-metropolitan areas, except Grants Pass, any state or local transportation agency, or transit agency shall disclose regionally significant projects to ODOT in a timely manner.**

**(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.**

**(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to ODOT as requested. Requests for disclosure shall be made in writing to any affected state or local transportation or transit agency.**

**(M) In Grants Pass, any state or local transportation agency, or transit agency shall disclose regionally significant projects to RVCOG in a timely manner.**

**(i) Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: adoption or amendment of a local jurisdiction's transportation system plan to include a proposed project, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract for final design or construction of the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with final design, permitting or construction of the project, or any approval needed for any facility that is dependent on the completion of the regionally significant project.**

**(ii) To help assure timely disclosure, the sponsor of any potentially regionally significant project shall disclose to RVCOG as requested. Requests for disclosure shall be made in writing to any affected state or local transportation or transit agency.**

(3) Interagency consultation: specific processes

(a)(A) It shall be the affirmative responsibility of the agency with the responsibility for preparing or revising a State Implementation Plan, except for administrative amendments or revisions, to initiate the consultation process by notifying other participants and convening a working group made up of representatives of each affected agency in the consultation process including representatives of the public, as appropriate. Such working group shall be chaired by a representative of the convening agency, unless the group by consensus selects another chair.

The working group shall make decisions by majority vote. Such working group shall begin consultation meetings early in the process of decision on the final SIP, and shall prepare all drafts of the final SIP, the emissions budget, and major supporting documents, or appoint the representatives or agencies that will prepare such drafts. Such working group shall be made up of policy level representatives, and shall be assisted by such technical committees or technical engineering, planning, public works, air quality, and administrative staff from the member agencies as the working group deems appropriate. The chair, or his/her designee, shall set the agenda for meetings and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(B) Regular consultation on development or amendment of an implementation plan shall include meetings of the working group at regularly scheduled intervals, no less frequently than quarterly. In addition, technical meetings shall be convened as necessary.

(C) Each lead agency with the responsibility for preparing the SIP subject to the interagency consultation process, shall confer through the working group process with all other agencies identified under section (2)(c) of this rule with an interest in the document to be developed, provide all appropriate information to those agencies needed for meaningful input, and, consider the views of each such agency and respond to substantive comments in a timely, substantive written manner prior to making a recommendation to the Environmental Quality Commission for a final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(D) The working group may appoint subcommittees to address specific issues pertaining to SIP development. Any recommendations of a subcommittee shall be considered by the working group.

(E) Meetings of the working group shall be open to the public. The agency with the responsibility of preparing the SIP shall provide timely written notification of working group meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(b) There shall be a standing committee for purposes of consultation required under this rule by an MPO. The standing committee shall advise the MPO. The committee shall include representatives from state and regional air quality planning agencies and State and local transportation and transit agencies. The standing committee shall consult with EPA and USDOT. If not designated by committee bylaws, the standing committee shall select its chair by majority vote.

(A) For MPOs designated prior to the effective date of this rule, the following standing committees are designated for purposes of interagency consultation required by this rule:

(i) Lane Council of Governments: Transportation Planning Committee;
(ii) Salem-Keizer Area Transportation Study: Technical Advisory Committee;
(iii) Metro: Transportation Policy Alternatives Committee;
(iv) Rogue Valley Council of Governments: Technical Advisory Committee.

(B) Any MPO designated subsequent to the effective date of this rule shall establish a standing committee to meet the requirements of this rule.

(C) The standing committee shall hold meetings at least quarterly. The standing committee shall make decisions by majority vote.

(D) The standing committee shall be responsible for consultation on:

(i) determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis, in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel;
(ii) determining whether a project's design concept and scope have changed significantly since the plan and TIP conformity determination,
(iii) evaluating whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason,
(iv) making a determination, as required by OAR 340-20-840(3)(A), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;
(v) Identifying, as required by OAR 340-20-1020(4) projects located at sites in PM-10 nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM-10 hot-spot analysis;
(vi) forecasting vehicle miles traveled, and any amendments thereto.
(vii) making a determination, as required by OAR 340-20-1000(2), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(viii) determining whether the project sponsor or MPO has demonstrated that the requirements of OAR 340-20-870, 340-20-890, and 340-20-900 are satisfied without a particular mitigation or control measure, as provided in OAR 340-20-1040(4);
(ix) evaluating events which will trigger new conformity determinations in addition to those triggering events established in OAR 340-20-750;
(x) consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment or maintenance areas or air basins.
(xi) assuring that plans for construction of regionally significant projects which are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed to the MPO on a regular basis, and assuring that any changes to those plans are immediately disclosed.
(xii) the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).
(xiii) development of transportation improvement programs
(xiv) development of regional transportation plans.
(xv) establishing appropriate public participation opportunities for project-level conformity determinations required by this rule.

(E) The chair of each standing committee, or his/her designee, shall set the agenda for all meetings. The chair of each standing committee shall assure that all agendas, and relevant documents and information are supplied to all participants in the consultation process in a timely manner prior to standing committee meetings which address any issues described in OAR 340-20-760(3)(b)(D) of this rule.

(F) Such standing committees shall begin consultation meetings early in the process of decision on the final document, and shall review all drafts of the final document and major supporting documents. The standing committee shall consult with EPA and USDOT.

(G) The MPO shall confer with the standing committee and shall consult with all other agencies identified under section (2)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. **The MPO shall provide draft conformity determinations to standing committee members and shall allow a minimum of 30 days for standing committee members to comment. The 30 day comment period for standing committee members may occur concurrently with the public comment period. The MPO shall respond to substantive comments raised by a standing committee member in a timely, substantive written manner at least 7 days prior to any final decision by the MPO on such document.** Such views and written response shall be made part of the record of any decision or action.

(H) The standing committee may, where appropriate, appoint a subcommittee to develop recommendations for consideration by the full committee.

(I) Meetings of the standing committee shall be open to the public. The MPO shall provide timely written notification of standing committee meetings to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(c) An MPO, or any other party responsible for developing Transportation Control Measures, shall consult with affected parties listed in section (2)(c) in developing TCMs for inclusion in an applicable implementation plan.

**(d)(A) In non-metropolitan areas the following interagency consultation procedures shall apply, unless otherwise agreed to by the affected parties in an Memorandum of Understanding, or specified in an applicable State implementation plan:**

**(B) In each non-metropolitan nonattainment or maintenance area, except in Grants Pass, the Oregon Department of Transportation shall facilitate a meeting of the affected agencies listed in section (2)(c) of this rule prior to making conformity determinations to**

**(i) determine which minor arterials or other transportation projects shall be considered "regionally significant";**
**(ii) determine which projects have undergone significant changes in design concept and scope since the regional emissions analysis was performed;**
**(iii) evaluate whether projects otherwise exempted from meeting the requirements of this rule should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason,**
**(iv) make a determination, as required by OAR 340-20-840(3)(a), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs; this consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;**
**(v) Identify, as required by OAR 340-20-1020(4) projects located at sites in PM-10 nonattainment or maintenance areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM-10 hot-spot analysis;**
**(vi) confer on the forecast of vehicle miles traveled, and any amendments thereto;**

(vii) determine whether the project sponsor has demonstrated that the requirements of OAR 340-20-870, 340-20-890, and 340-20-900 are satisfied without a particular mitigation or control measure, as provided in OAR 340-20-1040(d);
(viii) evaluate events which will trigger new conformity determinations in addition to those triggering events established in OAR 340-20-750;
(ix) assure that plans for construction of regionally significant projects which are not FHWA/FTA projects, including projects for which alternative locations, design concept and scope, or the no-build option are still being considered, are disclosed on a regular basis, and assuring that any changes to those plans are immediately disclosed.
(x) confer on the design, schedule, and funding of research and data collection efforts and transportation model development (e.g., household/travel transportation surveys).
(xi) establish appropriate public participation opportunities for project-level conformity determinations required by this rule.

(C) Notwithstanding section (3)(d)(B) of this rule, the Rogue Valley Council of Governments shall be responsible for facilitating a meeting of the affected agencies listed in section (2)(c) of this rule prior to making conformity determinations for Grants Pass, Oregon for the purpose of consulting on the items listed in section (3)(d)(B) of this rule.

(D) The Oregon Department of Transportation, or the Rogue Valley Council of Governments (RVCOG) in Grants Pass, shall consult with all other agencies identified under section (2)(c) of this rule with an interest in the document to be developed, shall provide all appropriate information to those agencies needed for meaningful input, and consider the views of each such agency. All draft regional conformity determinations as well as, supporting documentation shall be made available to agencies with an interest in the document and those agencies shall be given at least 30 days to submit comments on the draft document. ODOT, or RVCOG in Grants Pass, shall respond to substantive comments received from other agencies in a timely, substantive written manner at least 7 days prior to any final decision on such document. Such views and written response shall be made part of the record of any decision or action.

(E) Meetings hereby required shall be open to the public. Timely written notification of any meetings relating to conformity shall be provided to those members of the public who have requested such notification. In addition, reasonable efforts shall be made to identify and provide timely written notification to interested parties.

(F) If no transportation projects are proposed for the upcoming fiscal year, there is no obligation to facilitate the annual meeting required by sections (3)(d)(B)&(C)

**of this rule.**

**(G) The meetings required by sections (3)(d)(B)&(C) of this rule may take place using telecommunications equipment, where appropriate.**

(e) An MPO or ODOT shall facilitate an annual statewide meeting, **unless otherwise agreed upon by ODOT, DEQ and the MPOs,** of the affected agencies listed in section (2)(c) to review procedures for regional emissions and hot-spot modeling.

(A) The members of each agency shall annually jointly review the procedures used by affected MPOs and agencies to determine that the requirements of OAR 340-20-1010 are being met by the appropriate agency.

(B) An MPO or ODOT shall facilitate a statewide meeting of parties listed in section (2)(c) of this rule to receive comment on the EPA guidelines on hot-spot modeling, to determine the adequacy of the guidelines, and to make recommendations for improved hot-spot modeling to the EPA Regional Administrator. DEQ, LRAPA, or any other regional air authority, may make recommendations for improved hot-spot modeling guidelines to the EPA Regional Administrator with the concurrence of ODOT. ODOT may make recommendations for improved hot-spot modeling guidelines to the EPA Regional Administrator with the concurrence of the affected air quality agency (e.g., DEQ, LRAPA or any other regional air authority).

(C) The MPO or ODOT shall determine whether the transportation modeling procedures are in compliance with the modeling requirements of OAR 340-20-1010. The DEQ or LRAPA (in Lane County), or any other regional air authority, shall determine whether the modeling procedures are in compliance with the air quality emissions modeling requirements of OAR 340-20-1010.

(f)(A) FHWA and FTA will, for any proposed or anticipated transportation improvement program (TIP) or transportation plan conformity determination, provide a draft conformity determination to EPA for review and comment. FHWA and FTA shall allow a minimum of 14 days for EPA to respond. DOT shall respond in writing to any significant comments raised by EPA before making a final decision. In addition, where FHWA/FTA request any new or revised information to support a TIP or transportation plan conformity determination, FHWA/FTA shall either return the conformity determination for additional consultation under sections (3)(b) or (3)(d) of this rule, or FHWA/FTA shall provide the new information to the agencies listed in (2)(c) of this rule for review and comment. Where FHWA/FTA chooses to provide the new or additional information to the affected agencies listed in section (2)(c), FHWA and FTA shall allow for a minimum of 14 days to respond to any new or revised supporting information; DOT shall respond in writing to any significant comments raised by the agencies consulted on the new or revised supporting information before making a final decision.

(g) Each agency subject to an interagency consultation process under this rule (including any

Federal agency) shall provide each final document that is the product of such consultation process, together with all supporting information that has not been the subject of any previous consultation required by this rule, to each other agency that has participated in the consultation process within 14 days of adopting or approving such document or making such determination. Any such agency may supply a checklist of available supporting information, which such other participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

(h) It shall be the affirmative responsibility of the agency with the responsibility for preparing a transportation plan or TIP revision which merely adds or deletes exempt projects listed in OAR 340-20-1050 to initiate the process by notifying other participants early in the process of decision on the final document and assure that all relevant documents and information are supplied to all participants in the consultation process in a timely manner.

(i) A meeting that is scheduled or required for another purpose may be used for the purposes of consultation required by this rule if the conformity consultation purpose is identified in the public notice for the meeting.

(j) It shall be the affirmative responsibility of a project sponsor to consult with the affected transportation and air quality agencies prior to making a project level conformity determination required by this rule.

(4) Resolving conflicts.

(a) Any conflict among State agencies or between State agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the heads of the involved agencies. In the first instance, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

(b) A State agency, regional air authority, or MPO has 14 calendar days to appeal a determination of conformity, SIP submittal, or other decision under this rule, to the Governor after the State agency, regional air authority, or MPO has been notified of the resolution of all comments on such proposed determination of conformity, SIP submittal, or decision. If an appeal is made to the Governor, the final conformity determination, SIP submittal, or policy decision must have the concurrence of the Governor. The appealing agency must provide notice of any appeal under this subsection to the lead agency. If an action is not appealed to the Governor within 14 days, the lead agency may proceed.

(c) The Governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the State, but not to the head or staff of the State air quality agency or any local air quality agency, the State department of transportation, a State transportation commission or board, the Environmental Quality Commission, any agency that has responsibility for only one

of these functions, or an MPO.

(5) Public participation.

Affected agencies, except USDOT, making conformity determinations **for transportation plans and/or transportation improvement programs** shall make available the draft conformity determination and all supporting documentation 30 days prior to a final decision. Notification of the availability of the draft determination and all supporting documentation shall be given by prominent advertisement in the area affected. Written notification of the availability of the draft determination and all supporting documentation shall also be provided to any party requesting such notification. Members of the public may submit oral and/or written comments to the affected agency prior to the final decision. These comments shall be made part of the record of any final decision. The full record including, public comments and responses to comments shall be submitted to USDOT. In addition, the affected agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP.

340-20-770 Content of transportation plans.

(1) Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas. The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(a) The agency or organization developing the transportation plan, after consultation pursuant to OAR 340-20-760, may choose any years to be horizon years, subject to the following restrictions:

(A) Horizon years may be no more than 10 years apart;
(B) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;
(C) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year;
(D) The last horizon year must be the last year of the transportation plan's forecast period.

(b) For these horizon years:

(A) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and OAR 340-20-760;
(B) The highway and transit system shall be described in terms of the regionally

significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(C) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(2) Moderate areas reclassified to serious. Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(3) Transportation plans for other areas. Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of OAR 340-20-800 through 340-20-980.

(4) Savings. The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

340-20-780 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan of TIP, the project must meet the criteria in OAR 340-20-800 through 340-20-980 for projects not from a TIP before NEPA process completion.

340-20-790 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be financially constrained consistent with DOT's

metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

340-20-800 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(1) In order to be found to conform, each transportation plan, program, FHWA/FTA project, and regionally significant project approved or adopted by a recipient of funds under title 23 must satisfy the applicable criteria and procedures in OAR 340-20-810 through 340-20-980 as listed in Table 1 in section (2) of this rule, and must comply with all applicable conformity requirements of implementation plans and this rule, and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review, the time period in which the conformity determinations is made, and the relevant pollutant.

(2) The following table indicates the criteria and procedures in OAR 340-20-810 through 340-20-980 which apply for each action in each time period.

TABLE 1 - CONFORMITY CRITERIA

| ACTION | CRITERIA |
|---|---|
| **ALL PERIODS** | |
| Transportation plan | 340-20-810; 340-20-820; 340-20-830; 340-20-840(b). |
| TIP | 340-20-810; 340-20-820; 340-20-830; 340-20-840(c). |
| Project from a conforming plan and TIP. | 340-20-810; 340-20-820; 340-20-830; 340-20-850; 340-20-860; 340-20-870; 340-20-880. |
| Project NOT from a conforming plan and TIP. | 340-20-810; 340-20-820; 340-20-830; 340-20-840(d); 340-20-850; 340-20-870; 340-20-880. |
| **PHASE II OF THE INTERIM PERIOD** | |
| Transportation plan | 340-20-930; 340-20-960. |
| TIP | 340-20-940; 340-20-970. |
| Project from a conforming plan | 340-20-920. |

and TIP.

| | |
|---|---|
| Project NOT from a conforming plan and TIP. | 340-20-920; 340-20-950; 340-20-980. |

TRANSITIONAL PERIOD

| | |
|---|---|
| Transportation plan | 340-20-890; 340-20-930; 340-20-960. |
| TIP | 340-20-900; 340-20-940; 340-20-970. |
| Project from a conforming plan and TIP. | 340-20-920. |
| Project NOT from a conforming plan and TIP. | 340-20-910; 340-20-920; 340-20-950; 340-20-980. |

CONTROL STRATEGY AND MAINTENANCE PERIODS

| | |
|---|---|
| Transportation plan | 340-20-890. |
| TIP | 340-20-900. |
| Project from a conforming plan and TIP. | No additional criteria. |
| Project NOT from a conforming plan and TIP. | 340-20-910. |

340-20-810 Criteria and procedures: Latest planning assumptions.

(1) The conformity determination, with respect to all other applicable criteria in OAR 340-20-820 through 340-20-980, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of this rule.

(2) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determinations must also be based on the latest planning assumptions about current and future background

concentrations.

(3) The conformity determination for each transportation plan and TIP must discuss how transit operating policies, including fares and service levels, and assumed transit ridership have changed since the previous conformity determination.

(4) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(5) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(6) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by OAR 340-20-760.

340-20-820 Criteria and procedures: Latest emissions model.

(1) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(2) EPA will consult with DOT to establish a grace period following the specification of any new model.

(a) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the Federal Register.

(b) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the Federal Register.

(3) Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

340-20-830 Criteria and procedures: Consultation.

The MPO or ODOT must make conformity determinations according to the interagency consultation procedures in OAR 340-20-760, and according to the public involvement procedures established in OAR 340-20-760 and public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods.

340-20-840 Criteria and procedures: Timely implementation of TCMs.

(1) The transportation plan, TIP or FHWA/FTA project or regionally significant projects approved or adopted by a recipient of funds under title 23 which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

(2) For transportation plans, this criterion is satisfied if the following two conditions are met:

(a) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan. **Timely implementation of TCMs which are not eligible for funding under title 23 or the Federal Transit Act is required where failure to implement such measure(s) will jeopardize attainment or maintenance of a standard.**

(b) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(3) For TIPs, this criterion is satisfied if the following conditions are met:

(a) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined after consultation in accordance with OAR 340-20-760 that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding of TCMs are giving maximum priority to approval of funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. **Timely implementation of TCMs which are not eligible for funding under title 23 or the Federal Transit Act is required where attainment or maintenance of a standard is jeopardized.**

(b) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the

funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

(c) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(4) For FHWA/FTA projects and regionally significant projects approved or adopted by a recipient of funds under title 23 which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

340-20-850 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan of TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of OAR 340-20-750.

340-20-860 Criteria and procedures: Projects from a plan and TIP.

(1) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of OAR 340-20-800 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of section (2) of this rule and from a conforming program if it meets the requirements of section (3) of this rule.

(2) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(a) For projects which are required to be identified in the transportation plan in order to satisfy OAR 340-20-770, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(b) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with

the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(3) A project is considered to be from a conforming program if the following conditions are met:

(a) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(b) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by OAR 340-20-1040(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

340-20-870 Criteria and procedures: Localized CO and PM-10 violations (hot spots).

(1) A FHWA/FTA project and any regionally significant project approved or adopted by a recipient of funds under title 23 must not cause or contribute to any new localized CO or PM-10 violations or increase the frequency or severity of any existing CO or PM-10 violations in CO and PM-10 nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(2) The demonstration must be performed according to the requirements of OAR 340-20-760(c)(5) and 340-20-1020.

(3) For projects which are not of the type identified by OAR 340-20-1020(1), or 340-20-1020(4), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of OAR 340-20-1020(2).

340-20-880 Criteria and procedures: Compliance with PM-10 control measures.

A FHWA/FTA project and any regionally significant project approved or adopted by a recipient of funds under title 23 must comply with PM-10 control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures for the purpose of limiting PM-10 emissions from the construction activities and/or normal use and operation associated with the project contained in the applicable implementation plan are

included in the final plans, specifications, and estimates for the project.

340-20-890 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

(1) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in OAR 340-20-1070. This criterion may be satisfied if the requirements in section (2) and (3) of this rule are met:

(2) A regional emissions analysis shall be performed as follows:

(a) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan or implementation plan submission establishes an emissions budget:

(A) VOC as an ozone precursor;
(B) NOx as an ozone precursor;
(C) CO;
(D) PM-10 (and its precursors VOC and/or NOx if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM-10 nonattainment problem or establishes a budget for such emissions); or
(E) NOx (in NO2 nonattainment or maintenance areas);

(b) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(c) The emissions analysis methodology shall meet the requirements of OAR 340-20-1010;

(d) For areas with a transportation plan that meets the content requirements of OAR 340-20-770(1), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(e) For areas with a transportation plan that does not meet the content requirements of OAR 340-20-770(1), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must

also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(3) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in section (2)(a) of this rule the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(a) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;
(b) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;
(c) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis or horizon year; and
(d) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

340-20-900 Criteria and procedures: Motor vehicle emissions budget (TIP).

(1) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in OAR 340-20-1070. This criterion may be satisfied if the requirements in sections (2) and (3) of this rule are met:

(2) For areas with a conforming transportation plan that fully meets the content requirements of OAR 340-20-770(1), this criterion may be satisfied without additional regional analysis if:

(a) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(b) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires

a demonstration that:

(A) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
(B) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
(C) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(c) If the requirements in subsections (a) and (b) of this section are not met, then:

(A) The TIP may be modified to meet those requirements; or
(B) The transportation plan must be revised so that the requirements in subsections (a) and (b) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of subsections (a) and (b) of this section.

(3) For areas with a transportation plan that does not meet the content requirements of OAR 340-20-770(1), a regional emissions analysis must meet all of the following requirements:

(a) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(b) The analysis methodology shall meet the requirements of OAR 340-20-1010(3); and

(c) The regional analysis shall satisfy the requirements of OAR 340-20-890(2)(a), 340-20-890(2)(e), and 340-20-890(3).

340-20-910 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

(1) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in OAR 340-20-1070. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

(2) For areas with a conforming transportation plan that meets the content requirements of OAR 340-20-770(1):

(a) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(A) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
(B) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
(C) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(b) If the requirements in subsection (a) of this section are not met, a regional emissions analysis must be performed as follows:

(A) The analysis methodology shall meet the requirements of OAR 340-20-1010;
(B) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and
(C) The emissions analysis shall meet the requirements of OAR 340-20-890(2)(a), 340-20-890(2)(d) and 340-20-890(3).

(3) For areas with a transportation plan that does not meet the content requirements of OAR 340-20-770(1), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(a) The analysis methodology meets the requirements of OAR 340-20-1010(3);
(b) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;
(c) The regional analysis satisfies the requirements OAR 340-20-890(2)(a); 340-20-890(2)(d), and 340-20-890(3).

340-20-920 Criteria and procedures: Localized CO violations (hot-spots) in the interim period.

(1) Each FHWA/FTA project, or regionally significant project approved or adopted by a recipient of funds under title 23, must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project in CO nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is satisfied with

respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(2) The demonstration must be performed according to the requirements of OAR 340-20-760(3)(d) and 340-20-1020.

(3) For projects which are not of the type identified by OAR 340-20-1020(1), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of OAR 340-20-1020(2).

340-20-930 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

(1) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in OAR 340-20-1070. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in sections (2) through (6) of this rule.

(2) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year, 1995 in CO nonattainment areas and 1996 in ozone nonattainment areas. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Define the "Baseline" scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in OAR 340-20-1050 and 340-20-1060 need not be explicitly considered):

(a) All in-place regionally significant highway and transit facilities, services and activities;
(b) All ongoing travel demand management or transportation system management activities; and
(c) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way;

or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in subsection (4) of this section.)

(4) Define the "Action" scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in OAR 340-20-1050 and 340-20-1060 need not be explicitly considered):

(a) All facilities, services, and activities in the "Baseline" scenario;
(b) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
(c) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
(d) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;
(e) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
(f) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(5) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference in regional VOC and NOx emissions, unless the EPA Administrator or his/her designee determines that additional reductions of NOx would not contribute to attainment, between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of OAR 340-20-1010. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(6) This criterion is met if regional VOC and NOx emissions (for ozone nonattainment areas) and CO (for CO nonattainment areas) predicted in the "Action" scenario are less than the emissions predicted from the "Baseline" scenario in each analysis year, and if this can

reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the "Action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

340-20-940 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

(1) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in OAR 340-20-1070. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in sections (2) through (6) of this rule.

(2) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year, 1995 in CO nonattainment areas and 1996 in ozone nonattainment areas. The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Define the "Baseline" scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in OAR 340-20-1050 and 340-20-1060 need not be explicitly considered):

> (a) All in-place regionally significant highway and transit facilities, services and activities;
> (b) All ongoing travel demand management or transportation system management activities; and
> (c) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in subsection (4) of this section.)

(4) Define the "Action" scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in OAR 340-20-1050 and 340-20-1060 need not be considered):

(a) All facilities, services, and activities in the "Baseline" scenario:
(b) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
(c) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
(d) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing Federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
(e) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
(f) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(5) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios, and determine the difference in regional VOC and NOx emissions, unless the EPA Administrator or his/her designee determines that additional reductions of NOx would not contribute to attainment, between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of OAR 340-20-1010. Emissions in milestone years which are between analysis years may be determined by interpolation.

(6) This criterion is met if the regional VOC and NOx emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the "Action" scenario are less than the emissions predicted from the "Baseline" scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the "Action" scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

340-20-950 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in OAR 340-20-1070. This criterion is satisfied if a regional emissions analysis is performed which

meets the requirements of OAR 340-20-930 and which includes the transportation plan and project in the "Action" scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "Baseline" scenario must include the project with its original design concept and scope, and the "Action" scenario must include the project with its new design concept and scope.

340-20-960 Criteria and procedures: Interim period reductions for PM-10 and NO2 areas (transportation plan).

(1) A transportation plan must contribute to emission reductions or must not increase emissions in PM-10 and NO2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either sections (2) or (3) of this rule are met.

(2) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM-10 in a PM-10 nonattainment area, and of each transportation-related precursor of PM-10 in PM-10 nonattainment areas if the EPA Regional Administrator or the director of the Department of Environmental Quality, or the director of any regional air authority has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM-10 nonattainment problem and has so notified the MPO and DOT, and of NOx in an NO2 nonattainment area, by performing a regional emissions analysis as follows:

(a) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO2 areas) or four years and six months following the date of designation (for PM-10 areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(b) Define for each of the analysis years the "Baseline" scenario, as defined in OAR 340-20-930(3), and the "Action" scenario, as defined in OAR 340-20-930(4).

(c) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM-10 emissions in a PM-10 nonattainment area (and transportation-related precursors of PM-10 in PM-10 nonattainment areas if the EPA Regional Administrator or the Director of the Department of Environmental Quality, or the director of any regional air authority has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM-10 nonattainment problem and has so notified the MPO and DOT) and in NOx emissions in an NO2 nonattainment area. The analysis must be performed

for each of the analysis years according to the requirements of OAR 340-20-1010. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(d) Demonstrate that the regional PM-10 emissions and PM-10 precursor emissions, where applicable, (for PM-10 nonattainment areas) and NOx emissions (for NO2 nonattainment areas) predicted in the "Action" scenario are less than the emissions predicted from the "Baseline" scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(3) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM-10 in a PM-10 nonattainment area (and transportation-related precursors of PM-10 in PM-10 nonattainment areas if the EPA Regional Administrator or the director of the Department of Environmental Quality or the director of any regional air authority has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM-10 nonattainment problem and has so notified the MPO and DOT) and of NOx in an NO2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(a) Determine the baseline regional emissions of PM-10 and PM-10 precursors, where applicable (for PM-10 nonattainment areas) and NOx (for NO2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless an implementation plan revision defines the baseline emissions for a PM-10 area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(b) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of OAR 340-20-1010. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO2 areas) or four years and six months following the date of designation (for PM-10 areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year if the transportation plan's forecast period shall also be an analysis year.

(c) Demonstrate that for each analysis year the emissions estimated in subsection (3)(b) of this section are no greater than baseline emissions of PM-10 and PM-10 precursors, where applicable (for PM-10 nonattainment areas) or NOx (for NO2 nonattainment areas)

from highway and transit sources.

340-20-970 Criteria and procedures: Interim period reductions for PM-10 and NO2 areas (TIP).

(1) A TIP must contribute to emission reductions or must not increase emissions in PM-10 and NO2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either section (2) or (3) of this rule are met.

(2) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM-10 in a PM-10 nonattainment area, and transportation-related precursors of PM-10 in PM-10 nonattainment areas if the EPA Regional Administrator or the director of the Department of Environmental Quality, or the director of any regional air authority has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM-10 nonattainment problem and has so notified the MPO and DOT, and of NOx in an NO2 nonattainment area, by performing a regional emissions analysis as follows:

(a) Determine the analysis years for which emissions are to be estimated, according to the requirements of OAR 340-20960(2)(a).

(b) Define for each of the analysis years the "Baseline" scenario, as defined in OAR 340-20-940(3), and the "Action" scenario, as defined in OAR 340-20-940(4).

(c) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by OAR 340-20-960(2)(c), and make the demonstration required by OAR 340-20-960(2)(d).

(3) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM-10 in a PM-10 nonattainment area, and transportation-related precursors of PM-10 in PM-10 nonattainment areas if the EPA Regional Administrator or the director of the Department of Environmental Quality, or the director of any regional air authority has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM-10 nonattainment problem and has so notified the MPO and DOT, and of NOx in an NO2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by OAR 340-20-960(3)(a) through (c).

340-20-980 Criteria and procedures: Interim period reductions for PM-10 and NO2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM-10 and NO2

nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of OAR 340-20-960 and which includes the transportation plan and project in the "Action" scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and OAR 340-20-960(2) is used to demonstrate satisfaction of this criterion, the "Baseline" scenario must include the project with its original design concept and scope, and the "Action" scenario must include the project with its new design concept and scope.

340-20-990 Transition from the interim period to the control strategy period.

(1) Areas which submit a control strategy implementation plan revision after November 24, 1993.

(a) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(A) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to section (1)(a) of this rule.

(B) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(b) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(c) Notwithstanding section (1)(b) of this rule, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of section (1)(a) of this rule shall apply for 12 months following the date of disapproval. The conformity status

of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(2) Areas which have not submitted a control strategy implementation plan revision.

(a) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act section 179 or 110(m):

(A) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(B) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(b) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(A) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(B) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(3) Areas which have not submitted a complete control strategy implementation plan revision.

(a) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(A) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

(B) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(C) Notwithstanding sections (3)(a)(A) and (B) of this rule, if EPA notes in its incompleteness finding that the submittal would have been considered complete

with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of section (1)(a) of this rule shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 and 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(A) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and
(B) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made;
(C) Notwithstanding section (3)(b)(A) and (B) of this rule, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of section (4)(a) of this rule shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(4) Areas which submitted a control strategy implementation plan before November 24, 1993.

(a) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(A) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in section (4)(a) of this rule.
(B) Beginning February 22, 1994, new transportation plans and TIPs shall

demonstrate conformity according to transitional period criteria and procedures.

(b) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(c) Notwithstanding section (4)(b) of this rule, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of section (4)(a) of this rule shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(5) Projects. If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of sections (5)(a) and (b) of this rule must be met.

(a) Before a FHWA/FTA project or project approved or adopted by a recipient of funds under title 23, which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the Department of Environmental Quality, or any regional air authority must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by OAR 340-20-930 through 340-20-980) compare to the motor vehicle emissions budget in the implementation plan submission of the projected motor vehicle emissions budget in the implementation plan under development.

(b) In the event of unresolved disputes on such project-level conformity determinations, the Department of Environmental Quality, or any regional air authority may escalate the issue to the Governor consistent with the procedure in OAR 340-20-760(4) which applies for any State or regional air agency comments.

(6) Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.

(a) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures, as required by sections (1)(a) and (4)(a) of this rule, does not require new emissions analysis and does not have to satisfy

the requirements of OAR 340-20-810 and 340-20-820 if:

(A) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and
(B) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(b) A redetermination of conformity as described in section (6)(a) of this rule is not considered a conformity determination for the purposes of OAR 340-20-750(2)(d) or 340-20-750(3)(d) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of OAR 340-20-800 within three years of the last determination which did not rely on section (6)(a) of this rule.

(7) Ozone nonattainment areas.

(a) The requirements of section (2)(a) of this rule apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act section 182(b)(1) requires to be submitted to EPA November 15, 1993.

(b) The requirements of section (2)(a) of this rule apply if moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act section 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of section (2)(a) of this rule apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act section 182(b)(1).

(c) The requirements of section (1) of this rule apply when the implementation plan revisions required by Clean Air Act section 182(c)(2)(A) and 182(c)(2)(B) are submitted.

(8) Nonattainment areas which are not required to demonstrate reasonable further progress and attainment. If an area listed in OAR 340-20-1070 submits a control strategy implementation plan revision, the requirements of sections (1) and (5) of this rule apply. Because the areas listed in OAR 340-20-1070 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of section (2) of this rule do not apply to these areas at any time.

(9) Maintenance plans. If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act section 175A is submitted to EPA, the requirements of section (1) or (4) of this rule apply, with the maintenance plan submission

treated as a "control strategy implementation plan revision" for the purposes of those requirements.

340-20-1000 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is currently conforming transportation plan and TIP consistent with the requirements of OAR 340-20-850 and any requirements of sections (1) through (6) of this rule are met:

(1) The project comes from a conforming plan and program consistent with the requirements of OAR 340-20-860;

(2) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(3) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of OAR 340-20-910;

(4) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of OAR 340-20-950 (in ozone and CO nonattainment areas) or OAR 340-20-980 (in PM-10 and NO2 nonattainment areas); or

(5) During the transitional period, the project satisfies the requirements of sections (3) and (4) of this rule.

(6) During all periods the project satisfies the requirements of OAR 340-20-870.

340-20-1010 Procedures for determining regional transportation-related emissions.

(1) General requirements.

(a) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO or ODOT as required by OAR 340-20-760. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such

projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(b) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(c) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(d) Notwithstanding section (1)(c) of this rule, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in OAR 340-20-890 through 340-20-910, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of OAR 340-20-890 through 340-20-910 are satisfied.

(e) A regional emissions analysis for the purpose of satisfying the requirements of OAR 340-20-930 through 340-20-950 may account for the programs in section (1)(d) of this rule, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.

(f) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to OAR 340-20-760 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(2) Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas

after January 1, 1995. Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in sections (2)(a) through (e) of this rule.

(a) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(A) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;
(B) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;
(C) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;
(D) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;
(E) Free-flow speeds on network links shall be based on empirical observations;
(F) Peak and off-peak travel demand and travel times must be provided;
(G) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;
(H) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;
(I) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;
(J) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and
(K) Consideration of emissions increases from construction-related congestion is not specifically required.

(b) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measures of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(c) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(d) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(3) All other metropolitan nonattainment areas shall comply with the following requirements after January 1, 1996:

Estimates of regional transportation-related emissions used to support conformity determinations must be made according to the procedures which meet the requirements in sections (3)(a) and (b) of this rule.

(a) Procedures which satisfy some or all of the requirements of section (2) of this rule shall be used in all areas not subject to section (2) of this rule where those procedures have been the previous practice of the MPO.

(b) At a minimum, these areas shall estimate emissions using methodologies and procedures which possess the following attributes:

(A) a network based travel demand model which describes the network in sufficient detail to capture at least 85 percent of the vehicle trips;

(B) an ability to generate plausible vehicle trip tables based on current and future land uses and travel options in the region;

(C) software, or other appropriate procedures, to assign the full spectrum of vehicular traffic including, where possible, truck traffic, to the network;

(D) other modes of travel shall be estimated in accordance with reasonable professional practice either quantitatively or qualitatively;

(E) sufficient field observations of traffic (e.g. average speeds, average daily volumes, average peaking factors for specific links that are directly identifiable in the network) to calibrate the traffic assignment for base year data;

(F) software, or other appropriate procedures, to calculate emissions based on network flows and link speeds, and as necessary, to refine speed estimates from assigned traffic;

(G) software, or other appropriate procedures, to account for additional "off-model" transportation emissions; and

(H) estimates of future land uses sufficient to allow projections of future emissions.

(4) Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995, or any area not covered by sections (2) or (3) of this rule.

(a) Procedures which satisfy some or all of the requirements of section (2) and (3) of this rule shall be used in all areas not subject to section (2) or (3) of this rule in which those procedures have been the previous practice of the MPO.

(b) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles traveled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(5) Projects not from a conforming plan and TIP in non-metropolitan nonattainment and maintenance areas. This section applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP because, the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or a Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area.

(a) Conformity demonstrations for projects in these areas may satisfy the requirements of OAR 340-20-910, 340-20-950, and 340-20-980 with one regional emissions analysis which includes all regionally significant projects in the nonattainment or maintenance area, or portion thereof.

(b) The requirements of OAR 340-20-910 shall be satisfied according to the procedures in OAR 340-20-910(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

(c) The requirements of OAR 340-20-950 and 340-20-980 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area, or portion thereof.

(d) The requirements of OAR 340-20-1000(2) shall be satisfied if:

(A) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area, or portion thereof, and supports the most recent conformity determination made according to the requirements of OAR 340-20-910, 340-20-950, 340-20-980, as modified by sections (4)(b) and (4)(c) of this rule, as appropriate for the time period and pollutant; and
(B) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(6) PM-10 from construction-related fugitive dust.

(a) For areas in which the implementation plan does not identify construction-related fugitive PM-10 as a contributor to the nonattainment problem, the fugitive PM-10 emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(b) In PM-10 nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM-10 as a contributor to the nonattainment problem, the regional PM-10 emissions analysis shall consider construction-related fugitive PM-10 and shall account for the level of construction activity, the fugitive PM-10 control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

340-20-1020 Procedures for determining localized CO and PM-10 concentrations (hot-spot analysis).

(1) In the following cases, CO hot-spot analysis must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2-78-027R), unless, after the interagency consultation process described in OAR 340-20-760 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

(a) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation of possible current violation;

(b) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F, because of increased traffic volumes related to a new **FHWA/FTA funded or approved** project in the vicinity;

(c) For any project involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(d) For any project involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the worst Level of Service; and

(e) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

**(f) For any project identified through interagency consultation pursuant to OAR 340-20-760 as a site of potential future violation.**

(2) In cases other than those described in section (1) of this rule, other quantitative methods may be used if they represent reasonable and common professional practice.

(3) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of the future to current emission factors.

(4) PM-10 hot-spot analysis must be performed for projects which are located at sites where violations have been verified by monitoring, and at sites which have essentially identical **or higher** vehicle and roadway emission and dispersion characteristics, including sites near ones where a violation has been monitored. The projects which require PM-10 hot-spot analysis shall be determined through the interagency consultation process required in OAR 340-20-760. In PM-10 nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicle congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.

(5) Hot-spot analysis assumptions must be consistent with those in the regional emissions

analysis for those inputs which are required for both analyses.

(6) PM-10 or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor or operator to the implementation of such measures, as required by OAR 340-20-1040(1).

(7) CO and PM-10 hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

340-20-1030 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(1) In interpreting an applicable implementation plan, or implementation plan submission with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan, or submission. Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO or ODOT may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans, or submissions, which demonstrate that after implementation of control measures in the implementation plan:

(a) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(b) Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(c) Emissions will be lower than needed to provide for continued maintenance.

(2) If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(3) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan, or implementation plan submission, allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(4) If the applicable implementation plan, or implementation plan submission, estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan, or implementation plan submission, explicitly indicates an intent to create such subarea budgets for purposes of conformity.

(5) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

340-20-1040 Enforceability of design concept and scope and project-level mitigation and control measures.

(1) Prior to determining that a transportation project is in conformity, the MPO, ODOT, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM-10 or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by sections OAR 340-20-890 through 340-20-910 and OAR 340-20-930 through 340-20-950 or used in the project-level hot-spot analysis required by OAR 340-20-870 and 340-20-920.

(2) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(3) Written commitments to mitigation measures must be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.

(4) During the control strategy and maintenance periods, if the MPO, ODOT or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of OAR 340-20-870, 340-20-890, and 340-20-900 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under OAR 340-20-760. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of OAR 340-20-890 and 340-20-900 and that the project still satisfies the requirements of OAR

340-20-870, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid.

340-20-1050 Exempt projects.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO or ODOT in consultation with other agencies (See OAR 340-20-760(3)(b)&(d)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

Table 2 - Exempt projects

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SAFETY
Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.
Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.

MASS TRANSIT
Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles.

Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction of renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771.

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.

OTHER

Specific activities which do not involve or lead directly to construction such as:
- Planning and technical studies.
- Grants for training and research programs.
- Planning activities conducted pursuant to titles 23 and 49 U.S.C.
- Federal-aid systems revisions.

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Advance land acquisitions (23 CFR 712 or 23 CFR 771).
Acquisition of scenic easements.
Plantings, landscaping, etc.
Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

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340-20-1060 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this rule, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM-10 concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity

determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO or ODOT in consultation with other agencies, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

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Table 3 - Projects Exempt From Regional Emissions Analyses

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Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

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340-20-1070 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

(1) Application. This section applies in the following areas:
- (a) Rural transport ozone nonattainment areas;
- (b) Marginal ozone areas;
- (c) Submarginal ozone areas;
- (d) Transitional ozone areas;
- (e) Incomplete data ozone areas;
- (f) Moderate CO areas with a design value of 12.7 ppm or less; and
- (g) Not classified CO areas.

(2) Default conformity procedures. The criteria and procedures in OAR 340-20-930 through 340-20-950 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in OAR 340-20-890 through 340-20-910, except as otherwise provided in section (3) of this rule. These default conformity procedures may not be used once a maintenance plan has been approved by the Environmental Quality Commission. Once a maintenance plan has been approved by the Environmental Quality Commission the area is required to meet the requirements applicable during the transition period in accordance with OAR 340-20-720 (defining when the transitional period begins and Phase II of the interim period ends).

(3) Optional conformity procedures. The State or MPO may voluntarily develop an attainment

demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in OAR 340-20-890 through 340-20-910 apply in lieu of the procedures in OAR 34020-930 through 340-20-950.

340-20-1080 Savings provisions.

The Federal conformity rules under 40 CFR part 51 subpart T, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until EPA approves this conformity implementation plan revision. Following EPA approval of this revision to the applicable implementation plan, or a portion thereof, the approved, or approved portion of, the State criteria and procedures will govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 will apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and EPA approves those revisions.

# NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality Air Quality

**OAR Chapter 340**

| DATE: | TIME: | LOCATION: |
|---|---|---|
| January 5th | 7:00 p.m. | 811 SW 6th Ave., Room 3A, Portland, OR |
| January 5th | 7:00 p.m. | 10 S. Oakdale, (Auditorium) Medford, OR |

**HEARINGS OFFICER(s):** Annette Liebe

**STATUTORY AUTHORITY:** ORS 468A.035; 468.020

**ADOPT:** OAR 340-20-700 to 1080

**AMEND:** N/A

**REPEAL:** N/A

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

**SUMMARY:**

This action establishes the criteria and procedures for determining that transportation plans, programs, and projects which are funded or approved under title 23 U.S.C. or the Federal Transit Act conform with State or Federal air quality implementation plans. This action is required by section 176(c)(4)(C) of the federal Clean Air Act, as amended in 1990 and joint EPA/USDOT implementing regulations, 40 C.F.R. Section 51.396.

**LAST DATE FOR COMMENT:** January 5, 1995

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

**AGENCY RULES COORDINATOR:** Chris Rich, (503) 229-6775
**AGENCY CONTACT FOR THIS PROPOSAL:** Annette Liebe, (503) 229-6919
**ADDRESS:** Air Quality
811 S. W. 6th Avenue
Portland, Oregon 97204
**TELEPHONE:** (503) 229-6919
or Toll Free 1-800-452-4011

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

Signature Annette Liebe Date 11/15/94

*Oregon Department of Environmental Quality*

# A CHANCE TO COMMENT ON...

Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

| | |
|---|---|
| Date Issued: | November 21, 1994 |
| Public Hearings: | January 5, 1995 |
| Comments Due: | January 5, 1995 |

**WHO IS AFFECTED:** Recipients of funds under title 23 U.S.C. or the Federal Transit Act (most counties and cities in Oregon) Metropolitan Planning Organizations, Department of Environmental Quality, Lane Regional Air Pollution Authority, U.S. Department of Transportation, U.S.E.P.A., and members of the public.

**WHAT IS PROPOSED:** Establishes criteria and procedures for determining conformity of transportation plans, programs and projects.

**WHAT ARE THE HIGHLIGHTS:** The proposed rule mirrors the federal rule language, with a few exceptions where the rule is more stringent.

The proposed rule requires that "regionally significant" projects approved or adopted by a recipient of funds under title 23, be held to the same standard as projects approved or funded by FHWA/FTA.

Second, the proposed rule requires compliance with an emissions budget included in a maintenance plan upon adoption by the EQC, as opposed to adoption by EPA.

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

11/1/88



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

Third, the proposed rule requires that the conformity of a transportation plan be redetermined within 24 months after the EQC adopts a SIP revision adding transportation control measures (TCMs), or 18 months after EPA approval of a SIP revision which adds TCMs, or at the next transportation plan approval (whichever comes first).

Fourth, the proposed rule requires timely implementation of all TCMs, regardless of the eligibility for funding under title 23.

The proposed rule also contains detailed interagency consultation procedures.

**HOW TO COMMENT:**

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

January 5th, 7:00 p.m. 811 SW 6th Ave., Room 3A, Portland, OR.
January 5th, 7:00 p.m. 10 S. Oakdale, (Auditorium) Medford, OR

Written comments must be received by 5:00 p.m. on January 5, 1995, at the following address:

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

A copy of the Proposed Rule may be reviewed at the above address. A copy may be obtained from the Department by calling the Air Quality Division at 229-6919 or calling Oregon toll free 1-800-452-4011.

**WHAT IS THE NEXT STEP:**

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

State of Oregon
# Department of Environmental Quality Memorandum†

**Date:** November 21, 1994

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal - Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

This memorandum contains information on a proposal by the Department of Environmental Quality (DEQ) to adopt new rules regarding the conformity of transportation plans, programs and projects to Federal and State implementation plans in nonattainment and maintenance areas. This proposal establishes the criteria and procedures for determining that transportation plans, programs, and projects funded or approved under title 23 U.S.C. or the Federal Transit Act conform with State or Federal air quality implementation plans. This action is required by section 176(c)(4)(C) of the Clean Air Act, as amended in 1990, and EPA's implementing regulations, 58 Fed. Reg. 62215, et. seq.

## What's in this Package?

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

| | |
|---|---|
| Attachment A | The actual language of the proposed rule (amendments). |
| Attachment B | The "Legal Notice" of the Rulemaking Hearing. (required by ORS 183.335) |
| Attachment C | The official Rulemaking Statements for the proposed rulemaking action. (required by ORS 183.335) |
| Attachment D | The official statement describing the fiscal and economic impact of the proposed rule. (required by ORS 183.335) |

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

| | |
|---|---|
| Attachment E | A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans. |
| Attachment F | Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements. |
| Attachment G | Summary graphs of the conformity process. |

## Hearing Process Details

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

**Date:** January 5, 1995
**Time:** 7:00 p.m.
**Place:** Room 3A, 811 SW 6th Ave., Portland, OR 97204

**Date:** January 5, 1995
**Time:** 7:00 p.m.
**Place:** Jackson County Courthouse Auditorium
10 S. Oakdale, Medford, OR 97501

**Deadline for submittal of Written Comments:** January 5, 1995.

Annette Liebe will be the Presiding Officer at the hearing in Portland. The Presiding Officer at the hearing in Medford has not yet been determined. Following close of the public comment period, the Presiding Officers will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officers' report and all written comments submitted. The public hearing will be tape recorded, but the tape will not be transcribed.

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

## What Happens After the Public Comment Period Closes

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is January 19 & 20, 1995. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

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

## Background on Development of the Rulemaking Proposal

### What is the problem

Recognizing that motor vehicle travel can affect attainment and maintenance of air quality standards, Congress amended the Clean Air Act in 1990 to include specific requirements for the design, development and operation of urban transportation systems. The purpose of these requirements is to integrate air quality and transportation planning to ensure that federal transportation funding is not in conflict with state efforts to clean the air.

Transportation air quality conformity is a quantitative analysis intended to insure that funding of transportation systems and projects will not undermine a state's strategy to attain and maintain healthy air for its residents. Polluted areas are required to develop and submit to EPA State Implementation Plans (SIPs) demonstrating how the state will achieve and maintain health-based air quality standards. Each area must allocate a budget for mobile source emissions in its SIP. Conformity will be demonstrated if

emissions from a proposed transportation system are projected to be at or below the budget.

On November 24, 1993, the Environmental Protection Agency (EPA), with the concurrence of USDOT, issued regulations to implement the Clean Air Act's conformity requirements. 58 Fed. Reg. 62188 (Nov. 24, 1993). These regulations establish specific criteria and procedures for determining conformity of transportation plans, programs, and projects. Section 176(c)(4)(C) of the 1990 Clean Air Act amendments, and EPA's implementing regulations, direct states to revise their State Implementation Plans to contain criteria and procedures for assessing conformity of transportation plans, programs and projects which are at least as stringent as the requirements of the Federal rule. See, 40 C.F.R. section 51.396.

How does this proposed rule help solve the problem

This proposed rule establishes criteria and procedures for assessing the conformity of transportation plans, programs, and projects. These criteria and procedures are at least as stringent, and in some cases more stringent, than the criteria and procedures contained in the federal rule issued by EPA with the concurrence of the U.S. Department of Transportation. This proposed rule will be submitted to EPA for approval as the SIP revision required by the Clean Air Act amendments and EPA/USDOT's implementing regulations.

How was the rule developed

The rule was developed with the assistance of an advisory committee representing diverse interests. The committee is chaired by Susan Brody of the Oregon Transportation Commission; representation includes all the Metropolitan Planning Organizations (MPOs) in the state, Lane Regional Air Pollution Authority, Tri-Met, Oregon Department of Transportation, League of Oregon Cities, Association of Oregon Counties, and interested business and public interest organizations. The Federal Highway Administration (FHWA) division office in Salem and EPA's Region 10 office have also participated in the committee deliberations, but not as official members. The advisory committee met eight times to discuss and debate various policy issues with respect to these proposed rules.

The base text for the proposed conformity rule was the federal rule promulgated in November 1993. In addition, the committee used as a guide a model rule developed by the umbrella membership organization for the State and Territorial Air Pollution Program Administrators. This model rule provided several clarifying options as well as, more stringent options.

Although the committee was cautious in accepting more stringent criteria and procedures since these will become federally enforceable once this rule is approved by EPA, the committee agreed to rule language implementing three significant policy choices that go beyond what is required by the federal rule. In another case, DEQ staff presented a recommendation which was received neutrally by some MPO representatives because the proposal did not currently affect their respective areas. The recommendations presented by DEQ staff were based on their interpretation of section 176(c) of the Clean Air Act as well as policy considerations.

First, the committee agreed that "regionally significant" projects approved or adopted by a recipient of funds under title 23, be held to the same standard as projects approved or funded by FHWA/FTA.

Second, the committee supported the DEQ staff proposal requiring an emissions budget included in a maintenance plan to govern upon adoption by the EQC, as opposed to adoption by EPA.

Third, the rule requires that the conformity of a transportation plan must be redetermined within 24 months after the EQC adopts a SIP revision adding transportation control measures (TCMs), or 18 months after EPA approval of a SIP revision which adds TCMs, or at the next transportation plan approval (whichever comes first).

Fourth, a majority of the advisory committee recommended the following concept which is more stringent than the federal rule. The federal rule requires that TCMs eligible for funding under title 23 be implemented in order for a positive conformity determination to be made for a regional transportation plan and transportation improvement program. DEQ presented the option of applying this requirement to all TCMs, regardless of the eligibility for funding under title 23. Although ODOT and Mid-Willamette Valley Council of Governments dissented to requiring timely implementation of transportation control measures that are not eligible for title 23 funding, a majority of the committee agreed that TCMs should be implemented in a timely manner regardless of whether they are eligible for title 23 funding. The representatives who opposed this concept felt that federal funds should not be held up for failure to implement TCMs not eligible for federal funding and that this requirement could have some unforeseen consequences. RVCOG remained neutral with respect to this recommendation because they currently are not affected by it.

The federal rule requires states to develop detailed interagency consultation procedures applicable to transportation plan, transportation improvement program and state implementation plan development, and to conformity determinations. The interagency consultation procedures included in the proposed rule were developed by a subcommittee

of the advisory committee. This subcommittee included representatives of all the affected agencies. Thereafter, the language was presented to and discussed by the full advisory committee. The proposed rule language formalizes existing processes in the MPO areas because most of the committee members felt that these processes work well.

The proposed rule requires interagency consultation on developing forecasts of vehicle miles traveled (VMT) because of its very direct relationship to emissions. Consultation on this point is not required by the federal rule. After much debate before the full advisory committee, the MPOs did not object to including this requirement, but expressed discomfort with doing so. The MPOs discomfort arose from the perception that DEQ is trying to highlight just one decision in a very technical process. ODOT stated that it opposed including VMT forecasting in the interagency consultation. ODOT opposed the proposed language because it felt that DEQ is trying to get special status over other agencies. After much deliberation, ODOT and the League of Oregon Cities were the only members of the advisory committee that did not accept the proposed language. The industry and public interest representatives supported including VMT forecasting in interagency consultation. DEQ has included VMT forecasting as an element of interagency consultation because this is a crucial decision affecting the projection of future emissions and therefore, it is important for all parties to agree on the forecast early in the process.

In addition, DEQ proposed to include a requirement in the rule that financial plans required under the metropolitan planning regulations implementing the Intermodal Surface Transportation Efficiency Act be developed pursuant to interagency consultation. This proposal was met with strong opposition from the MPO representatives and ODOT. The argument against including the financial plans as specific decisions subject to interagency consultation was that the metropolitan planning rules already address this issue therefore, including such a requirement in the conformity rule would be duplicative. The public interest representatives supported DEQ's proposal to include the financial plans as specific decisions requiring interagency consultation because they felt that it is important for the air quality agencies to have an equal voice in making these decisions. The committee was not able to achieve consensus on this point, although the MPO and ODOT committee members acknowledged that DEQ does have the ability under the conformity rules to address this issue through the dispute resolution procedures applicable to regional transportation plans or transportation improvement programs. In response to opposition from most members on the advisory committee, DEQ has not included this as a requirement in the proposed rule.

The advisory committee appointed a subcommittee to draft minimum public participation procedures. Thereafter, these procedures were reviewed and agreed to by the full advisory committee. These procedures require 30 days notice and an opportunity for

public comment on conformity determinations made by affected agencies, except USDOT, for TIPs and plans.

The advisory committee also debated establishing criteria and procedures applicable to attainment areas where monitored ambient concentrations exceeding 85% of a National Ambient Air Quality Standard have been recorded. EPA has indicated that they will be proposing rules to address these areas. DEQ staff recommended delaying adoption of such criteria and procedures until EPA adopts its rules. DEQ staff made this recommendation because DEQ does not have the resources presently to develop and implement such criteria and procedures. DEQ expects air quality in carbon monoxide (CO) and ozone (03) nonattainment areas will continue to improve as a result of the federal emission control program for new vehicles. However, this is not the case in particulate matter (PM 10) nonattainment areas where increases in re-entrained road dust emissions are directly associated with increases in vehicle miles traveled.

The advisory committee recommended public education efforts in these areas to heighten awareness of air quality concerns. Industry and public interest representatives urged DEQ to go beyond public education and outreach, and to adopt some criteria and procedures applicable to these areas. The Sierra Club suggested adopting the same criteria and procedures applicable to nonattainment areas for this category of attainment areas. DEQ staff noted, however, that in many situations these criteria would be more stringent than necessary because these attainment areas could tolerate some growth in emissions without exceeding any standards. In addition, it would be resource intensive to apply the same criteria to these attainment areas because they do not have SIPs containing emissions budgets, and the Department does not intend to develop budgets for these areas. For these reasons, the proposed rule does not include criteria and procedures applicable to attainment areas where monitored ambient concentrations at or above 85% of a National Ambient Air Quality Standard have been recorded.

To address the underlying concern that some areas are at risk of exceeding National Ambient Air Quality Standards, the following recommendations were offered, subject to available funding: 1) expand the DEQ Clean Air Weather Watch program to areas at-risk of exceeding the ozone standard (presently Eugene and Medford); 2) expand monitoring in the at risk areas; 3) develop emission inventory projections for these areas; and 4) form local air quality advisory committees, where such committees do not currently exist. LRAPA did not support expansion of the DEQ Clean Air Weather Watch program to Lane County because the agency believes that it's existing emergency episode program is adequate. Where DEQ does not have money to implement the above recommendations, the committee suggested that reasonable efforts be made to secure funding.

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

This rule will help to ensure that Oregon residents will have healthy air to breathe. This rule may also lead to the development of transportation systems that reduce reliance on the single occupant automobile.

The proposed rule will require MPOs in nonattainment areas and local jurisdictions in rural nonattainment areas to analyze the regional air quality impacts from proposed transportation systems and localized impacts from large scale projects. In addition, the proposed rule establishes detailed procedures for interagency consultation with respect to transportation and air quality planning.

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

The rule mirrors the federal rule requirements verbatim, with a few exceptions where the rule is more stringent.

Because the federal rule did not establish interagency consultation procedures, these were developed in consultation with the affected agencies. Interagency consultation will occur during the development of transportation plans, transportation improvement programs and State Implementation Plans, and before findings of conformity. Specifically, the proposed rule requires interagency consultation on several technical issues, including the forecasts of vehicle miles traveled. Interagency consultation on this issue is crucial because increases in vehicle miles traveled dramatically affect projected emissions, and an area could meet the emissions criteria of the rule by merely changing the assumptions concerning increases in vehicle miles traveled.

Attachment F contains a complete discussion of provisions that are more stringent than required by the federal rule.

Finally, the proposed rule requires regionally significant projects adopted or approved by a recipient of funds under title 23 U.S.C., to comply with rule provisions applicable to FHWA/FTA approved or funded projects. Rules adopted by the State of Washington contain the same requirements. This is particularly important because EPA has designated an Interstate nonattainment area (Portland-Vancouver) for ozone consistent with the recommendations of the governors of Oregon and Washington.

How will the rule be implemented

MPOs, and in some cases local jurisdictions or ODOT will implement the rule requirements applicable to transportation planning activities, conformity determinations and interagency consultation on these decisions. DEQ and LRAPA will be responsible for implementing the interagency consultation procedures applicable to SIP development.

Finally, once EPA approves the rule as a SIP submittal, it will become federally enforceable under the Clean Air Act.

Are there time constraints

The deadline for submitting these rules to EPA is November 25, 1994. Although we will miss the deadline for submittal, this does not mean that highway funding sanctions will be imposed. These sanctions would apply only if the EQC failed to adopt the SIP revision within 12-18 months after EPA makes a finding of non-submittal. EPA generally makes findings for all SIP submittals that were due in the previous calendar year in January. Thus, EPA may make a finding with respect to these rules. However, since the EQC will act shortly thereafter, it is very unlikely that highway funding sanctions will be imposed as a result of Oregon's time frame for completing rule adoption. In addition, DEQ staff is working with EPA to ensure that the rule package will be found complete upon submittal. DEQ staff also is keeping EPA staff informed of the rule adoption schedule.

## Contact for more information

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

Annette Liebe
(503) 229-6919

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

# Rulemaking Statements

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

1. Legal Authority

ORS 468A.035; 468.020

2. Need for the Rule

This rule is required by section 176(c)(4)(C) of the federal Clean Air Act, as amended in 1990 and joint EPA/USDOT implementing regulations, 40 C.F.R. section 51.396.

3. Principal Documents Relied Upon in this Rulemaking

40 C.F.R. Part 51, "Transprotation Conformity Under the Clean Air Act, Model Rules for State and Local Agencies," published by STAPPA/ALAPCO (State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials).

4. Advisory Committee Involvement

The rule was developed with the assistance of an advisory committee representing diverse interests. The committee is chaired by Susan Brody of the Oregon Transportation Commission; representation includes all the Metropolitan Planning Organizations (MPOs) in the state, Lane Regional Air Pollution Authority, Tri-Met, Oregon Department of Transportation, League of Oregon Cities, Association of Oregon Counties, and interested business and environmental organizations. The Federal Highway Administration (FHWA) division office in Salem and EPA's Region 10 office also have participated in the committee

deliberations, but not as official members. The advisory committee met eight times to discuss and debate various policy issues with respect to these proposed rules.

The committee recommended adoption of rule provisions to implement three specific policy choices which go beyond what is require by the federal rule. First, the committee recommended that "regionally significant" projects approved or adopted by a recipient of funds under title 23 be held to the same standard as projects approved or funded by FHWA/FTA. Second, the committee recommended that the rule require that an emissions budget included in a maintenance plan should govern upon adoption by the EQC, as opposed to adoption by EPA. Finally, the rule requires that the conformity of a transportation plan must be redetermined within 24 months after the EQC adopts a SIP revision which adds TCMs, or 18 months after EPA approval or a SIP revision which adds TCMs, or at the next transportation plan approval (whichever comes first).

The federal rule requires states to develop detailed interagency consultation procedures applicable to transportation plan, transportation improvement program and state implementation plan development, and to conformity determinations. The interagency consultation procedures included in the proposed rule were developed by a subcommittee of the advisory committee. This subcommittee included representatives of all the affected agencies. The proposed rule requires interagency consultation on developing forecasts of vehicle miles traveled. Consultation on this point is not required by the federal rule. After much debate before the full advisory committee, the affected agencies did not object to including this requirement, but expressed discomfort therewith.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

# Fiscal and Economic Impact Statement

## Introduction

The primary impacts of this rule are the increased requirements for Metropolitan Planning Organizations (MPOs) in metropolitan (population greater than 50,000) nonattainment areas and local jurisdictions in rural nonattainment areas to perform regional transportation and emissions modeling, and document the regional and localized air quality impacts of proposed transportation infrastructure. Presently the following areas have been designated nonattainment for a transportation-related pollutant: La Grande, Grants Pass, Eugene, Portland, Salem, Klamath Falls, Medford, Lakeview, and Oakridge. In addition, there will be impacts on metropolitan, local and state transportation and air quality agencies associated with carrying out the consultation required under this rule. Because tracking of transportation control measures (TCMs) has been required since the conformity requirements of the 1977 Clean Air Act, minimal impacts will be associated with this requirement of the rule. The requirements for regional and localized analyses arise from the Federal rules promulgated by EPA on November 24, 1993. Therefore, the impacts arising only from differences between these rules and the federal rules, are fairly minor.

## General Public

There will be no fiscal and/or economic impacts on the general public.

## Small Business

There will be no fiscal and/or economic impacts on small businesses unless, a small business is working as part of a large business consortium. See discussion below of possible impacts on large businesses.

## Large Business

Where a developer is proposing to build regionally significant transportation infrastructure at their expense, the developer will bear the cost of making a conformity determination. This means that a developer will have to document that the requirements of the rule have been satisfied and analyze whether there will be any new localized violations of an air quality standard. These localized analyses are expected to cost approximately $2,000 for a smaller project (e.g. traffic signalization) and up to $5,000 for larger projects (e.g. construction of an arterial). These estimates were made by ODOT, who is experienced in transportation and air quality modeling. Should an outside consultant be contracted to provide these services, costs may be higher.

Where a developer has not disclosed its regionally significant project to an MPO for inclusion in the regional emissions analysis for a transportation plan and improvement program, the developer would also have to perform a regional analysis consistent with the requirements of the rule. See discussion below on impacts on local agencies for estimates on regional emissions analysis.

Finally, should private toll authorities be created in Oregon, as in other states, the requirements of the rule would apply to any regionally significant projects proposed by such an entity. The fiscal and economic impacts on such entities would be the same as described above.

## Local Governments

Local governments will be impacted by this rule because the rules require documentation that the requirements of the rule have been met for FHWA/FTA funded or approved projects and regionally significant projects not funded or approved by FHWA/FTA. In addition, localized air quality modeling is required by this rule for FHWA/FTA funded or approved projects and for regionally significant projects not funded or approved by FHWA/FTA. The requirement for localized air quality modeling of FHWA/FTA funded or approved projects originated from the Federal rules. In order to protect air quality, the Advisory Committee recommended that regionally significant projects not funded or approved by FHWA/FTA be held to the same standard as FHWA/FTA approved or funded projects.

These localized analyses are expected to cost approximately $2,000 for a smaller project (e.g. traffic signalization) and up to $5,000 for larger projects (e.g. construction of an arterial). These estimates were made by ODOT, who is experienced in transportation and air quality modeling. Should an outside consultant be contracted to provide these services, costs may be higher. According to ODOT, most local jurisdictions approve or adopt approximately 2-3 projects annually which are regionally significant or are funded or approved by FHWA/FTA. However, the City of Portland generally has about a half dozen projects annually requiring localized analysis.

The documentation required by this rule will not have any significant fiscal/economic impact on local governments, and it is unlikely that additional FTE will be required to perform these tasks.

The impact of this rule on Metropolitan Planning Organizations (MPOs)(exist in areas with population greater than 50,000) may vary widely depending on the pollutant for which an area is in nonattainment, the classification of the nonattainment area, the population of the area, and the technical capabilities already developed in the area. For example, in Portland it is estimated that a regional emissions analysis costs Metro, the Portland MPO, $30,000 - $60,000. For other areas in the state the cost is less. However, these costs do not generally arise specifically from the Oregon rule, but rather, arise from compliance with the Federal requirements. The requirement that regional transportation and emissions analysis be performed arise from the requirements of the 1990 Clean Air Act amendments and EPA's implementing regulations. Thus, these rules impose minimal new costs on metropolitan planning organizations and local jurisdictions with respect to regional emissions modeling, and implementation of the interagency consultation requirements

It is expected that regional emissions modeling for a regional transportation plan will occur every three years and for transportation improvement programs every two years. The federal transportation planning regulations require MPOs in nonattainment or maintenance areas to adopt a regional transportation plan at least every three years and transportation improvement programs every two years. The federal conformity rules, and these proposed rules, require conformity determinations before a transportation plan or transportation improvement program can be adopted or approved.

In nonattainment areas where there is no MPO, the local government will be responsible for satisfying the regional emissions analysis criteria. Currently, the following non-metropolitan areas are designated nonattainment for a transportation-related pollutant: Klamath Falls, La Grande, Grants Pass, Lakeview, Oakridge. In many areas, the regional emissions analyses will not be as expensive since the areas are not as large. Rogue Valley Council of Governments (RVCOG) has agreed to take on these responsibilities for Grants Pass therefore, additional costs will be incurred by RVCOG. As mentioned above, compliance with the regional emissions analysis criteria are required by the Federal rule, and do not result directly from the proposed state rule.

State Agencies

A. Department of Environmental Quality

Under this rule DEQ will have a role to play in interagency consultation on conformity determinations. It is expected that initially DEQ will have to answer questions and assist regional and local governments in complying with the rules. There will also be significant coordination between the conformity rule and the development of SIPs. This coordination is not required by the rule, but is necessary for coordinated planning.

DEQ will be reviewing and commenting, where appropriate, on conformity analyses and determinations prepared by MPOs and local jurisdictions in nonattainment areas. In addition, DEQ will be reviewing environmental documents prepared for proposed projects. In the past, DEQ has summarily reviewed conformity determinations and environmental documents, so this rule is not creating an additional burden on the agency to perform those duties.

The coordination, education and outreach efforts necessary to implement the proposed rules effectively will require additional staff initially. At this time, the planning section has received EPA special grants money to fund staff to perform these tasks in the short term. It is difficult to predict what the long term staff needs will be. Should more staff resources be necessary, additional funding sources such as the Intermodal Surface Transportation Efficiency Act will be explored.

B. Lane Regional Air Pollution Authority.

The Lane Regional Air Pollution Authority will be responsible for implementing this rule in Lane County. LRAPA's fiscal and economic impacts will be similar in nature to those described above for DEQ. It is anticipated that the rule will be implemented with existing staff.

C. Department of Transportation

The Oregon Department of Transportation will be impacted by its role in the interagency consultation process required by the rule. However, the interagency consultation process is intended to formalize existing MPO processes, and ODOT already is participating in these processes.

Under the proposed rule, as well as under the federal rule, ODOT will be required to make project level conformity determinations for many of its transportation projects. It is expected that there will be approximately 10-15 projects annually. Of these, approximately half likely will be signalization projects and the others will be capacity increasing projects. As discussed above, ODOT estimates localized analysis for signalization projects will cost approximately $1,500. For capacity increasing projects the costs are greater. For projects the size and scale of the Western Bypass the analysis can cost up to $15,000. It is expected however, that there will be very few projects of this size and scale.

<u>Assumptions</u>

There are four metropolitan planning organizations in the state.

Conformity determinations for regional transportation plans will be made every three years.

Conformity determinations for transportation improvement programs will be made every two years.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

# Land Use Evaluation Statement

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

These rules establish criteria and procedures for determining that transportation plans, programs, and projects which are funded or approved by a recipient of funds under title 23 or the Federal Transit Act conform with State or Federal air quality implementation plans. These rules are required by section 176(c)(4)(C) and by USEPA/DOT implementing regulations, 58 Fed. Reg. 62188, et. seq.

Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity or number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. In addition, these activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with timely attainment of required interim emission reductions towards attainment. This rule establishes the process by which the United States Department of Transportation, Metropolitan Planning Organizations, Recipients of Funds under title 23, and local jurisdictions in non-metropolitan nonattainment areas determine conformity of highway and transit projects.

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

Yes___ No_X___

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

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

**Yes____ No_____ (if no, explain):**

c. **If no, apply the following criteria to the proposed rules.**
**In the space below, state if the proposed rules are considered programs affecting land use. State the criteria and reasons for the determination.**

The proposed rules are considered to be new rules affecting land use. These rules may have a significant effect on the resources, objectives or areas identified in four statewide planning goals. Specifically, these rules may affect the interagency and public coordination responsibilities of government bodies established under Goals 1, 2 and 9. Second, the rules further the objectives of Goal 6 because they assist in the maintenance and improvement of air quality. Finally, the proposed rules may have a significant effect on Goal 12 since, it may be necessary to reduce reliance on the single occupant automobile in order to reduce emissions, and the rules will assist in minimizing environmental impacts and costs.

This rule may indirectly affect future land uses identified in acknowledged comprehensive land use plans because transportation facilities or improvements found not to conform would lose Federal funding and may be prohibited.

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

The proposed rules ensure compliance with the statewide planning goals, because they further intergovernmental coordination requirements and help to assure maintenance or air quality standards. Similarly, the Department is not aware of any provisions in these rules that conflict with the goals or the administrative rules adopted by LCDC to implement the goals.

The proposed rules do not authorize the Department to certify or permit activities or otherwise take actions with respect to uses allowed under acknowledged comprehensive land use plans. Consequently, any effect on acknowledged land uses would be indirect. Moreover, existing state, regional and local transportation planning requirements (along with the coordination required under the proposed rules) are adequate to ensure that any indirect effects on land use will be consistent with land use plans and regulations.

Gregory A. Green — Division

[illegible] — Intergovernmental Coord.

11/15/94 — Date

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

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

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

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

   Yes, there are federal requirements applicable to the conformity of transportation plans, programs and projects. The federal rules can be found in 40 C.F.R. part 93. The federal rules however, explicitly state that conformity determinations and localized analysis of air quality impacts are not required for projects approved or adopted by a recipient of funds under title 23.

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

   The federal requirements are performance based. Under the federal rules, conformity of a transportation plan, program, or project will be demonstrated based upon a quantitative regional analysis of the proposed transportation system, as well as a localized analysis of some transportation projects. In addition, both transportation systems and individual projects must demonstrate that they further implementation of transportation control measures included in an applicable implementation plan.

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

   No, the federal rule does not specifically address all issues that are of concern in Oregon. With respect to

interagency consultation, the federal rule explicitly required states to develop their own detailed process.

The application of the proposed rule's requirements to projects adopted or approved by recipients of funds under title 23 was considered during the federal rulemaking. The proposed federal rule did not address these projects. EPA responded to comments received on this issue during the federal rulemaking by requiring regionally significant projects adopted or approved by a recipient of funds under title 23 to be included in the regional emissions analysis for an area's proposed transportation system. However, the federal rule does not require a demonstration that these projects meet all the requirements of the rule, nor does the federal rule require an analysis of localized impacts for large scale projects approved or adopted by a recipient of funds under title 23. These requirements are included in the proposed rule to ensure that a project sponsor may not circumvent the rule's requirements by pursuing private or local funding instead of federal funding (e.g. Western Bypass).

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

The proposed more stringent requirements will ensure that transportation systems which do not comply with an emission budget, thereby impairing an area's ability to attain or maintain air quality standards, do not go forward due to delay by EPA in approving an applicable State implementation plan. In addition, the proposed rule ensures that projects which may lead to new localized air quality violations are not constructed merely because they are being funded with local or private funds.

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

Yes, the federal rule does not require an area to comply with an emission budget included in a maintenance plan until the maintenance plan is approved by EPA. The proposed rule requires compliance with the emission budget (in addition to the tests applicable under the federal rule) once the applicable State Implementation Plan has been approved by the EQC. This is a key feature

of the proposed rule which ensures that in areas where the emission budget is more restrictive than the tests applicable under the federal rule, transportation systems do not go forward which will make compliance with the emission budget more difficult later.

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

Not applicable.

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

The proposed requirements level the playing field between stationary, area and mobile sources. Stationary and area sources will be required to comply with control technology requirements established in an applicable State Implementation Plan once it is approved by the EQC. The proposed rule would require compliance with an emission budget allocated to mobile sources once it is adopted by the EQC.

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

If the more stringent features of the proposed rule were not enacted, attainment and maintenance of air quality standards may be jeopardized. If an area experienced violations due to increased emissions from mobile sources, it would increase the costs imposed on industrial sources due to continued growth restrictions and/or increased control technology requirements.

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

The proposed rule requires interagency consultation on forecasts of vehicle miles traveled. This is an additional requirement, above and beyond what is required by the federal rule. Interagency consultation on this issue is crucial because projected emissions are dramatically affected by increases in vehicle miles traveled, and an area could meet the emissions criteria

of the rule by merely changing the assumptions with regard to increases in vehicle miles traveled.

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

EPA will be issuing guidance on quantitative analysis of localized particulate matter impacts. In the interim, a qualitative assessment is required. Under the federal rule, such an analysis is required for FHWA/FTA funded or approved projects. The proposed rule would ensure that locally or privately funded projects comply with either qualitative or, when available, quantitative analysis the same degree as FHWA/FTA funded or approved projects.

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

Yes, the proposed requirements will ensure that increases in emissions from mobile source, which may lead to violations of air quality standards, is prevented.

State of Oregon
# Department of Environmental Quality Memorandum

**Date:** January 9, 1995

**To:** Environmental Quality Commission

**From:** Annette Liebe

**Subject:** Presiding Officer's Report for Rulemaking Hearing
Hearing Date and Time: January 5, 1995 beginning at 7:00 p.m.
Hearing Location: Room 3A, 811 SW 6th Ave., Portland, OR 97204

Title of Proposal:Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

The rulemaking hearing on the above titled proposal was convened at 7:16 p.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Three people were in attendance, one person signed up to give testimony. People were then called to testify in the order of receipt of witness registration forms and presented testimony as noted below.

Mary Tobias, President, Tualatin Valley Economic Development Corp.
Written testimony was submitted for the record.

Ms. Tobias thanked the Commission for an opportunity to present comments on the proposed rules. Ms. Tobias described the interests of the TVEDC. Ms. Tobias indicated that she had difficulty fully understanding the proposed rule primarily because she did not have access to the United States Code and Code of Federal Regulations. Ms. Tobias commented that she felt that most of the public was not able to comment in a meaningful way since there were so many relevant background documents. Ms. Tobias felt that public participation in the development of the rule was woefully inadequate.

Ms. Tobias focused her comments on the fiscal/ economic impacts on businesses and local governments that would ultimately be passed on to the public. TVEDC stated that dialogue with the business community is crucial since commerce ultimately foots the bill.

Memo To: Environmental Quality Commission
January 9, 1995
Presiding Officer's Report on
January 5, 1995 Rulemaking Hearing

TVEDC felt that the definition of "transportation control measure" articulates a policy shift away from dealing directly with emissions to dealing directly with how many vehicle there are on the road. Ms. Tobias indicated that the TVEDC believes that this shift is inappropriate. TVEDC also requested that a definition be added to the rule defining vehicle miles traveled, or VMT. Ms. Tobias indicated that the rule should clarify whether this term refers to gross VMT or VMT per capita.

Ms. Tobias encouraged the Department to weigh fiscal/economic impacts as well as, economic development impacts in their recommendation. Ms. Tobias also indicated that TVEDC believes that the Department incorrectly concluded that there would not be any fiscal/economic impacts on the general public. This conclusion is incorrect because businesses and local governments will pass on any costs they incur to the public. Ms. Tobias testified that the same is true for businesses, developers will pass any costs on to businesses. Ms. Tobias also recommended that the Department should include an analysis of the fiscal and economic impacts on transit agencies since implementation of the proposed rule will mandate transit service increases.

Ms. Tobias also submitted written testimony for the record on behalf of the Tualatin Valley Economic Development Corporation. In addition, several written comments were received by the Department however, they were not submitted during the hearing. A list of written comments received by the Department is included in the rule adoption packet.

There was no further testimony and the hearing was closed at 7:30.

Attachments:

Written Testimony Submitted for the Record.

State of Oregon
# Department of Environmental Quality Memorandum

**Date:** January 9, 1995

**To:** Environmental Quality Commission

**From:** Howard Harris

**Subject:** Presiding Officer's Report for Rulemaking Hearing

Hearing Date and Time: January 5, 1995 beginning at 7:00 p.m.
Hearing Location: Jackson County Auditorium, 10 S. Oakdale, Medford, Oregon

Title of Proposal:

1) Rulemaking Proposal--Criteria and Procedures for Determining Conformity of General Federal Actions to State or Federal Air Quality Implementation Plans;

2) Rulemaking Proposal--Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act;

3) Rulemaking Proposal--Air Quality Prevention of Significant Deterioration (PSD) Amendments and related Forest Health Restoration Program.

The rulemaking hearing on the above titled proposal was convened at 7:05 p.m. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Eight people were in attendance, five people signed up to give testimony.

Prior to receiving testimony, Howard Harris briefly explained the specific rulemaking proposal, the reason for the proposal, and responded to questions from the audience.

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

Wally Skyrman, Patient Representative on the Southern Oregon Region Advisory Committee of the American Lung Association of Oregon, summarized written testimony for the record on behalf of the Coalition to Improve Air Quality. Mr. Skyrman appreciated a conformity rule proposal that exceeds EPA requirements. He indicated that all transportation projects should be covered and all vehicle pollution sources should be controlled, whether or not required by federal mandates. Mr. Skyrman also noted that transportation models needed to show the total mix of vehicles that are on the streets and roads, and he stated that all branches of government should consult with one another in early stages of planning.

On the proposed PSD Rule Amendments, Mr. Skyrman saw problems with large scale prescribed burns and indicated opposition to them. He noted that most of the contemplated burn would occur during the winter months when other sources are already impacting the airshed. He also noted that a 90% drop in slash burning has coincided with recent experience in gaining air quality attainment.

Frank Hirst, representing the Ashland League of Women Voters, summarized written testimony for the record. He indicated support for Dr. Robert Palzer's comments (see below). He questioned whether existing air quality standards sufficiently protect children from lung impairments as they reach adulthood. He noted the importance of regulating commercial interests in the most stringent manner as a priority.

On the proposed PSD Rule Amendments, Mr. Hirst could not see why baselines should play a part in determining how much, when, or whether slash burning should be allowed. He supported the change to PM-10 from TSP and stated that the smoke management plan should cover the entire state and that all population centers should be designated areas.

Phyllis M. Hughes, representing the Rogue Group Sierra Club, summarized written testimony including an attachment of comments from Dr. Robert J. Palzer on transportation conformity. She urged DEQ to retain rules exceeding EPA minimum requirements and noted the importance of public participation in conformity review. The transportation model should include trucks, bikes and pedestrian facilities for forecasting air emissions and interagency consultation should include projections of vehicle miles,

impact on air emissions and financial planning and funding feasibility. She noted that strong proactive measures should be instituted to keep at-risk areas from going into nonattainment.

On the proposed PSD Rule Amendments, Ms. Hughes supported the upgrades of wilderness areas and Eastern Oregon population centers to Class I and Designated areas, respectively. She cautioned that care should be given to obtaining and utilizing typical data for the different regions in Oregon. She also stated that no burning should be allowed until February/March and alternatives to burning, such as chipping, should be seriously investigated and encouraged.

Victoria Barbour, a public health nurse working in Jackson County, supported the testimony of Wally Skyrman, Frank Hirst and Phyllis Hughes. She cited respiratory health concerns, which are significant in the Rogue Valley, and emphasized the need to institute preventative measures before air quality standards problems occur.

Paula Brown, Associate Director of Rogue Valley Council of Governments (RVCOG), presented written testimony from her agency and also summarized written testimony from the Josephine County Board of County Commissioners and a private organization, Josephine/Jackson County Transportation Advocacy Committee (TRADCO). The testimony was solely directed at the proposed transportation conformity rule. Ms. Brown indicated that the intent of the proposed rule appears reasonable, but she indicated some concern with the detail of the interagency consultation (procedures), potentially increasing the time for a process that is already working. She stressed the need for DEQ to work with all of the parties to streamline the process to alleviate delays in project planning and implementation. Ms. Brown indicated that RVCOG will accept responsibility for transportation air quality conformity analysis and modeling for Grants Pass. RVCOG is developing the transportation model for the Grants Pass Urban Area Master Transportation Plan Update. In summarizing the written comments of the Josephine County Board of Commissioners and TRADCO, she noted that they had similar concerns to RVCOG. The Commissioners indicated that the Oregon Department of Transportation should cover the cost for conformity analysis work in Grants Pass, since it is doing so in other jurisdictions. The Commissioners were also concerned that the definition of "regionally significant project" is too general. The term should be quantified in the rules with respect to traffic volumes and/or actual capacity added by a project.

Written comments, without oral testimony, were received from Alan and Myra Erwin of Ashland on the proposed transportation conformity rule. They indicated strong support for the proposed rule, especially noting that all regionally significant projects would have to comply whether or not federal funds are used. They also stressed the importance of encouraging public participation at each stage of planning for air quality improvement.

There was no further testimony and the hearing was closed at approximately 8:00 p.m.

Attachments:

Written Testimony Submitted for the Record.

1) Wally Skyrman (Coalition to Improve Air Quality), January 5, 1995, letter
2) Frank H. Hirst (Ashland League of Women Voters), January 5, 1995, memo
3) Phyllis M. Hughes (Rogue Group Sierra Club), January 3, 1995, letter
4) Rob Winthrop (Rogue Valley Council of Governments), December 28, 1994, letter
5) Josephine County Board of County Commissioners, January 3, 1995, letter
6) Michael Burrill (TRADCO), January 5, 1995, letter
7) Allan and Myra Erwin, January 5, 1995, letter

INDEX OF COMMENTS RECEIVED

1. Mary Tobias
   President
   Tualatin Valley Economic Development Corporation
   Tualatin, OR

2. Jim Whitty
   Legislative Counsel
   Associated Oregon Industries
   Portland, OR

3. Doug MacCourt
   Portland Office of Transportation
   Portland, OR

4. Susan Brody
   Chair
   Transportation Conformity Rule Advisory Committee
   Eugene, OR

5. Keith Bartholomew
   Staff Attorney
   1000 Friends of Oregon
   Portland, OR

6. Rob Winthrop
   Chair, Board of Directors
   Rogue Valley Council of Governments
   Central Point, OR

7. Jerry Reid
   Manager
   Salem Economic Development Corporation

8. Tom VanderZanden
   Executive Director
   Department of Transportation and Development
   Clackamas County
   Oregon City, OR

9. Mary Pearmine
   Chairperson
   Policy Committee
   Salem/Keizer Area Transportation Study
   Salem, OR

10. Ron Dodge
    Chair
    Polk County Board of Commissioners
    Dallas, OR

11. Robert Hansen
Director of Public Works
Marion County
Salem, OR

12. Dr. Roger Gertenrich
Mayor
City of Salem
Salem, OR

13. Fred Borngasser
Harold Haugen
Irvin Whiting
Board of Commissioners
Josephine County
Grants Pass, OR

14. Susan Kaltwasser
Chair
East Lancaster Neighborhood Ass.
Salem, OR

15. Brent Curtis
Planning Manager
Washington County
Hillsboro, OR

16. Steven Lindland
Civil/Environmental Engineer
Environmental Services
Oregon Department of Transportation

17. David Barenberg
Senior Staff Associate
Oregon League of Cities
Salem, OR

18. Dr. Robert Palzer
Air Quality Coordinator
OR Chapter Sierra Club
Portland, OR

19. Loretta Pickerell
Sensible Transportation Options for People
Portland, OR

20. Bill Peterson
City Manager
City of Grants Pass
Grants Pass, OR

21. Alan & Myra Erwin

Affected Citizens
Ashland, OR

22. Wallace Skyrman
OR Patient Representative
American Lung Assoc.
Central Point, OR

23. Frank Hirst
Ashland League of Women Voters
Ashland, OR

24. Phyllis Hughes
Air Quality Co-Coordinator
Rogue Valley Sierra Club
Jacksonville, OR

25. Michael Burrill
Chair
Josephine/Jackson County Transportation Advocacy Committee
Medford, OR

**SUMMARY OF COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSE**

1. Comment: Access to related rules and codes as well as, plain English and a better visual layout would have helped to understand the rule. 1

   Response: We will continue to strive to present rules and related documentation in a more simple and easily understood format. In addition, we are also always willing to provide reference materials upon request, and will make this offer more clearly in our rule notices. In addition, a simplified "talking points" memo was distribute prior to the January 5, 1995, public hearings to representatives from all affected local governments.

2. Comment: Definition of "maximum priority" requires implementation even in extraordinary circumstances. 1, 3. The definition goes beyond the federal minimum requirements and was not discussed in the document describing potential justifications for differing from federal requirements. 3

   Response: The definition is a verbatim recitation of EPA's policy with respect to defining maximum priority as expressed in the preamble to the federal conformity rule. The decision regarding whether obstacles to implementation of transportation control measures (TCMs) are being overcome is within the scope of the standing committee established for interagency consultation. See, 340-20-760(3)(b)(D)(iv). Therefore, the standing committee could decide that obstacles are being overcome and that maximum priority is being given. The intention is to ensure that all affected agencies do what they can do to ensure implementation of these measures.

3. Comment: The definition of transportation control measure (TCM) reflects a policy shift away from air quality towards reducing single occupant vehicles. 1

   Response: The definition is verbatim from the federal rule. The definition is consistent with the way Congress defined TCMs in the 1990 CAA amendments. However, the measures expressly identified as not being TCMs (fuel and fleet based measures) are accounted for in the emissions model during a conformity modeling exercise. Therefore, emission reduction credit is given for these measures, they just aren't called transportation control measures.

4. Comment: The rule should define VMT. Is it gross VMT or VMT per capita? 1

   Response: DEQ added a definition of VMT to the rule. VMT is defined as vehicle miles traveled. This use of the term within the context of this rule is not intended to specify VMT

per capita or gross VMT reductions. This is a local decision.

5. Comment: Public participation was not adequate. 1, 14

Response: The rule was developed over the course of six months with the assistance of an advisory committee representing diverse interests who DEQ felt would be directly impacted. Broad notice of advisory committee meetings was provided to an additional list of "interested parties." DEQ staff gave two presentations on the proposed rule to members of the METRO Transportation Policy Alternatives Committee. The proposed rule was mailed to more than 400 interested parties more than 30 days prior to the public hearing. Finally, the proposed rule requires all decisions made under the rule to be made after adequate public involvement. The rule provides for public participation in reviewing regional emissions analyses (See, 340-20-760(5)) and the standing committee established for purposes of interagency consultation is responsible for establishing appropriate project-level public review procedures (See, 340-20-760(3)(b)(D)(xv)). The full public involvement process will be served when specific projects are at stake.

6. Comment: The advisory committee did not include adequate business interest representation. 1

Response: DEQ appointed an advisory committee of all interests that are directly affected by the rule. This membership included all the metropolitan planning organizations, representatives from the counties and cities as well as, the Oregon Department of Transportation. Jim Whitty was appointed to represent a broad spectrum of business interests. Generally, DEQ has included more business representatives on advisory committees where these interests will be more directly and substantially impacted. Since these rules directly affect government agencies involved in transportation planning, those interests were the primary interests represented.

7. Comment: The section requiring conformity determinations to be based on the latest planning assumptions should give particular attention to the perspective of providing transit service in order to meet the goals of the CAA. 1

Response: This rule does not mandate a particular strategy for meeting the goals of the CAA. Particular strategies will be evaluated for their fiscal/economic impact in other forums prior to their adoption. Should emission levels fail to decline even if the most ambitious measures have been implemented, the Department, along with local governments will have to assess alternatives to ensuring attainment or

maintenance of the standards. This also is not within the scope of this rule. This section of the rule is verbatim from the federal rule.

8. Comment: Truck size and weight inspection terminals and bus terminals and transfer points should not be exempt from regional emissions analysis. 1

   Response: The impact on regional emissions from these facilities is presumed to be minimal and therefore, the federal rule exempted these projects from regional analysis. The standing committee may however, during interagency consultation decide to include these facilities in the regional emissions analysis, where appropriate (See, 340-20-760(3)(b)(D)(iii).

9. Comment: The fiscal/economic impact statement does not analyze the costs of complying with this rule that will be passed on to small businesses and consumers. 1

   Response: There will be no fees assessed under this rule. As mentioned in the fiscal/economic impact statement, the majority of costs associated with implementation of this rule will be imposed on metropolitan planning organizations and state and local governmental agencies. Most of these costs arise from implementation of the Federal rule requirements. DEQ can not specifically identify costs that will be imposed on small businesses. In addition, the Department is committed to reviewing the Indirect Source Program which may be viewed as duplicative, and may likely amend the program to eliminate certain elements thereof where fees are currently assessed. Finally, it is important to understand that since this rule is limited in applicability to projects that are "regionally significant" it will not require elaborate analyses for each and every project.

10. Comment: Transit agencies should be included in the fiscal/economic impact statement. 1

    Response: This rule does not assume that a particular strategy is necessary to achieve air quality objectives. While transit may be relied upon to meet the goals of the CAA, this fiscal/economic impact statement is limited to evaluating the impacts associated directly with implementation of conformity. In Portland, METRO will generally be responsible for making conformity determinations. The costs associated with increased transit service will be debated in the context of regional transportation planning.

11. Comment: The Land Use Evaluation Statement should address Goal 9 - Economic Development. 1

Response: DEQ will address this issue in the revised Land Use Evaluation Statement presented to the EQC. It is important to understand that this rule is primarily a procedural mechanism to ensure compliance with requirements that exist elsewhere.

12. Comment: All "regionally significant" projects regardless of funding source should be included in the analysis of an area's transportation network and be held to the same standard applicable to projects approved or funded by FHWA/FTA. 18, 19, 2, 14, 24, 22, 21, 24.

Response: The rule retains most of these requirements. Since applicability is limited to projects that are "regionally significant," it will not require elaborate analyses for each and every project. The determination of whether a particular project is "regionally significant" will be made through interagency consultation at the local level. The federal definition of "regionally significant" was retained to provide some flexibility. In response to public testimony and for purposes of clarification, DEQ has eliminated the requirement for localized analysis where a "regionally significant" project will result in an intersection becoming level of service D, E, or F. The revised proposed rule applies this requirements only to FHWA/FTA funded and approved projects, retains the other requirements for state and locally approved projects. In addition, the proposed rule allows additional projects where the potential exists for future violations to be identified through interagency consultation.

13. Comment: All transportation control measures included in a State implementation plan, regardless of their eligibility for funding under title 23, should be required to be implemented in a timely manner in order to satisfy conformity. 18, 19, 24.

Response: In general, the proposed rule retains this requirement. However, in response to public comment, this criterion has been revised to eliminate the language requiring implementation of TCMs including, ~~[but not limited, to measures]~~ eligible for funding under title 23 U.S.C. or the Federal Transit Act. The following language has been added to the section to provide flexibility with regard to implementation of measures not eligible for federal funding: "timely implementation of TCMs which are not eligible for funding under title 23 or the Federal Transit Act is required where failure to implement such measure(s) jeopardizes attainment or maintenance of a standard."

14. Comment: The provisions for public participation in both the interagency consultation and the conformity determination processes should be retained. 18, 19, 14, 24, 22, 21, 24.

Response: On December 9, 1994, the advisory committee met to

discuss the proposed rule. At that meeting changes were agreed to with regard to public participation in conformity determinations. The revisions establish formal public participation requirements applicable to conformity determinations made by an MPO or ODOT for transportation improvement programs and regional transportation plans. These procedures are identical to those contained in the proposed rule. The rule was revised for public participation applicable to project-level review. Under the revised rule, project level public participation procedures will be established by interagency consultation. All interagency consultation meetings are required to be open to the public.

15. Comment: The rule should address attainment pollutant and areas "at-risk" of exceeding a standard. 18, 19, 24.

Response: The rule does not address attainment pollutants or areas "at-risk" of exceeding a standard. It is not practicable at this time to address attainment pollutants or "at-risk" areas because this would create an administrative burden on DEQ that the agency currently does not have the resources to address. However, DEQ is committed to exploring increased monitoring and public education efforts in these areas.

16. Comment: The rule should establish bright line definitions of "regionally significant" projects such as capacity volume thresholds. 19, 13, 20

Response: Several options for defining "regionally significant" projects were explored with the advisory committee. The rule retains the federal language because it provided the greatest degree of flexibility. This flexibility is thought to be appropriate since the term may mean something different in each affected area of the state, depending on local circumstances.

17. Comment: Add the following language to the definition of "regionally significant": If a project is included in the modeling of a metropolitan area's transportation network, but is not on a facility which serves regional travel needs, it is not a regionally significant project. 15

Response: For purposes of clarification the following language has been added to the definition of "regionally significant": "A project that is included in the modeling of an area's transportation network may not, subject to interagency consultation, be considered regionally significant because it is not on a facility which serves regional transportation needs."

18. Comment: The transportation models used to forecast air

emissions should include estimates representing the diversity of vehicles in the mix of total vehicle miles traveled and their emissions. 24, 18, 21, 24.

Response: The rule establishes minimum transportation modeling requirements but provides flexibility to analyze trucks and alternative modes because most models are not currently capable of analyzing these modes. The rule allows travel from these modes to be analyzed consistent with reasonable professional practice.

19. Comment: The rule should provide for interagency consultation on forecasting vehicle miles traveled as well as, financial plans. 18, 24

Response: The rule does require interagency consultation on forecasting vehicle miles traveled. The metropolitan planning rules under the Intermodal Surface Transportation Efficiency Act require interagency and public consultation in developing financial plans. Therefore, a specific rule provision was not added to this rule to address this issue since, it was viewed by the advisory committee as duplicative.

20. Comment: The rule should not require project level conformity determinations for local projects. 12, 7, 9, 10, 11.

Response: The rule does retain the requirement that "regionally significant" projects approved or adopted by a recipient funds under title 23 comply with the rule. A subset of these projects will have to be analyzed for their localized impacts. The requirement that "regionally significant" locally or state funded projects comply with the hot spot analysis requirement is limited to the following situations:

(1) projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation of possible current violation;

(2) projects involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(3) for any project involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the worst Level of Service;

(4) projects which are located at sites where PM-10 violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and

dispersion characteristics, including sites near one at which a violation has been monitored. In addition, the projects which require PM-10 hot-spot analysis shall be determined through the interagency consultation process required in OAR 340-20-760; and

(5) for projects, as identified through interagency consultation, where the potential for a future violation exists.

This language is retained because DEQ as well as, the advisory committee unanimously recognized the policy implications of not expanding applicability to these projects. The determination of regional significance will be made through interagency consultation and will likely vary from locality to locality. The federal definition of "regionally significant" is retained to allow flexibility. This requirement is intended only to bring in large scale projects and not smaller projects where application of conformity is unnecessary.

21. Comment: The rule should not require TCMs which are not eligible for federal funds to be implemented in a timely manner. DEQ's existing SIP enforcement authority is adequate to ensure implementation. Timely implementation is not appropriate for measures that are not normally addressed in transportation planning. 16, 3, 12, 7, 9, 11.

Response: The rule retains the requirement that all TCMs satisfy the timely implementation criterion regardless of their eligibility for funding under title 23. However, in response to public comment, this criterion has been revised to state that "timely implementation of TCMs which are not eligible for funding under title 23 or the Federal Transit Act is required where failure to implement such measure(s) jeopardizes attainment or maintenance of a standard."

Since these measures will be selected in consultation with all affected agencies, there should be agreement on the need for all TCMs in order to ensure air quality standards are achieved and maintained. DEQ's only existing enforcement mechanism is the citizen suit provision of the Clean Air Act and this is not viewed as adequate. The rule does provide flexibility in satisfying the timely implementation criterion since the decision of whether implementation obstacles are being overcome will be made through interagency consultation. See, 340-20-760(3)(b)(D)(iv).

22. Comment: The rule should not require that "all final recommendations of the standing committee shall be approved by the MPO." 4, 7, 9, 10, 12

Response: The above quoted language has been deleted to

ensure that review by the MPO is meaningful, and that the hands of policy makers are not tied.

23. Comment: The interagency consultation procedures applicable to areas where there is not a designated metropolitan planning organization are inadequate. 17

Response: These provisions have been substantially revised to reflect agreements between the Oregon Department of Transportation and the affected jurisdictions. The Oregon Department of Transportation will be responsible for making conformity determinations as well as, convening interagency consultation meetings in the non-MPO areas of the State, except for Grants Pass. Rogue Valley Council of Governments has agreed to take on these responsibilities for Grants Pass.

24. Comment: The portions of the Indirect Source Rules relating to highway projects should be deleted. 16

Response: The Department is committed to reviewing and revising, where necessary, the Indirect Source Program to eliminate any duplicative requirements.

25. Comment: The formalized interagency consultation process seems unnecessary where an informal process is already doing the job. Interagency consultation should not delay projects from going forward. 25, 20, 6, 13

Response: The joint USEPA/DOT rules require the State to develop detailed and specific interagency consultation requirements. Deletion of these requirements would make the Oregon rules unapprovable by EPA, and sanctions may be triggered. It is DEQ's intent to work cooperatively with the affected agencies to ensure that the process is not delayed and that project approvals proceed smoothly.

26. Comment: If the project is exempt there is no need for additional consultation. Who makes the decision as to whether an exempt project would have potential adverse emission impacts? 8

Response: Consultation on whether exempt projects have adverse emissions impacts is required by the joint USEPA/DOT rule in order for the Oregon rule to be found complete by EPA. In MPO areas this decision would be made by the standing committee. In the non-MPO areas this decision will be made through consultation with affected parties.

27. Comment: "Regionally significant" projects should be defined as anything that serves regional travel needs or would normally be included in the modeling of a metropolitan area's transportation network. 5

Response: The federal rule definition is retained to allow flexibility in determining projects that are "regionally significant." In some areas, the transportation modeling capabilities are so advanced that they capture small facilities. The Department does not intend this rule to apply to small projects.

28. Comment: Since ODOT has accepted the responsibility of making conformity determinations in all non-metropolitan areas of the State and Rogue Valley Council of Governments has agreed to take on this responsibility for Grants Pass, ODOT should pay RVCOG for this analysis. 20, 13

Response: This comment can not be addressed within the scope of these rules.

29. Comment: The proposed rule fails to provide a time frame for agencies involved in interagency consultation to review and respond to draft documents. 4

Response: The rule has been revised to provide a 30 day interagency review period for draft documents. This review period is consistent with the public review period.

30. Comment: Only final conformity determinations by an MPO or State agency should be appealable to the Governor's office. 4

Response: The rule has been revised to eliminate the word "proposed" in the dispute resolution procedures.

31. Comment: Where the project sponsor prepares an environmental review document, it should be their responsibility to circulate it for interagency consultation. 4

Response: The rule has been revised to assign to project sponsors the responsibility of distributing environmental documents prepared by them.

32. Comment: The rule should clarify that it is the MPO's responsibility to make conformity determinations for TIPs and plans developed for their area. 4

Response: The rule has been revised to make this clarification.

33. Comment: An annual meeting to discuss modeling may not always be necessary. A meeting should not be required where the parties agree it is not necessary. 4

Response: The rule has been revised to eliminate the annual meeting requirement where agreed to by ODOT, DEQ and the MPOs.

34. Comment: Project-level analyses should not require the same public participation as regional analyses. The project level "hot-spot" analysis is prepared at the end of the project design process; additional public involvement at the end of the process will not be meaningful and will only result in delay. 12, 7, 9, 10, 11

Response: The rule was revised for public participation applicable to project-level review. Under the revised rule, project level public participation procedures will be established by the standing committee designated for interagency consultation in MPO areas and through interagency consultation of affected parties in the non-MPO areas. See, comment 14 above.

35. Comment: Eliminate the disclosure requirements contained in the interagency consultation provisions and instead link disclosure to preparation or amendment of a local jurisdiction's transportation system plan. Such disclosure would facilitate early determinations of "regional significance." 15

Response: The suggested language has been added to the disclosure requirements of the proposed rule. The proposed rule language was retained, in addition to, the suggested language in order to facilitate disclosure and assessment of whether a project would be considered regionally significant as early as possible. Once a project has been disclosed, additional disclosure is not required unless the project's design concept and scope changes. Capacity and volume changes that occur post construction are not viewed as design concept and scope changes they are considered "most recent planning assumptions." In metropolitan areas, such as Portland, the annual disclosure requirement is linked to an MPOs schedule for adopting or amending transportation improvement programs and/or regional transportation plans.

36. Comment: Add a new criterion under the section addressing most recent planning assumptions which states "[T]he conformity determination shall be based on a metropolitan transportation network that includes both regionally significant projects and local transportation projects. However, future changes in the timing, design or scope of a local transportation project shall not be subject to conformity determinations for ozone." 15

Response: The rule does not add this criterion because most affected areas of the state do not have modeling capabilities to include analysis of local streets. Transportation models generally only include arterials and collectors, not local streets. Capacity and volume changes that occur post construction are not viewed as design concept and scope

changes they are considered "most recent planning assumptions."

37. Comment: The term "intersection" should be clarified to provide better guidance on intersections that will be considered "regionally significant." Will locally approved intersections require hot spot analysis only if it is a proposed intersection between regionally significant facilities or if it is a proposed intersection of a regionally significant facility with a local street? 15

Response: The proposed rule requires hot-spot analysis of "regionally significant" locally or state funded or approved projects only in the following circumstances:

(1) projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation of possible current violation;

(2) projects involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(3) for any project involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the worst Level of Service; and

(4) projects which are located at sites where PM-10 violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics, including sites near one at which a violation has been monitored. In addition, the projects which require PM-10 hot-spot analysis shall be determined through the interagency consultation process required in OAR 340-20-760.

(5) Any other projects identified through interagency consultation as the site of a potential future violation.

For purposes of clarification the following criterion was amended to apply only to FHWA/FTA funded or approved projects:

(1) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F, because of increased traffic volumes related to a new **FHWA/FTA funded or approved** project in the vicinity;

See, 340-20-1020.

38. Comment: The rule should clarify that interagency consultation to assess whether projects exempt under the rule have potential adverse emissions impacts and therefore should not be treated as exempt, will be made in the context of TIP conformity. 15

Response: While it may be most appropriate to make these decisions in the context of TIP conformity in metropolitan areas, the rule has not been amended to include this requirement in order to provide flexibility for each affected area to develop its own approach in consultation with affected local agencies.

39. Comment: The Fiscal and Economic Impact Statement and the Potential Justification for Differing from Federal Requirements fail to address the inclusion of the definition of "maximum priority" for purposes of transportation control measure implementation. 3

Response: These documents do not discuss this definition because it is a verbatim recitation of EPA/DOT with respect to this issue as expressed in the preamble to the federal rule. It is included in the rule as a clarification, and is not an additional or a more stringent requirement. This clarification was supported unanimously by the advisory committee.

40. Comment: The Fiscal and Economic Impact Statement and the Potential Justification for Differing from Federal Requirements fail to address the impacts of the rule's requirement that timely implementation must be demonstrated for all transportation control measures regardless of their eligibility for title 23 federal funding. 3

Response: The Fiscal and Economic Impact Statement does state that tracking of transportation control measures has been required since the 1977 Clean Air Act Amendments and minimal impacts will be associated with the requirement in the rule. The issues relating to funding for particular transportation control measures not eligible for federal funding, will be addressed in the context of consultation prior to TCM selection during SIP development. It is important to understand that this rule is primarily a procedural mechanism to ensure compliance with requirements that exist elsewhere.

41. Comment: What is being done about emissions from passengers cars along I-5 that are not required to go through inspections and maintenance?

Response: This issue is not addressed within the scope of this rulemaking.

42. Comment: What percentage of emissions comes from trucks that do not have inspection and maintenance requirements?

Response: This issue is not addressed within the scope of this rulemaking.

43. Comment: What impacts might the proposed rules have on projects of community-wide significance and the ability of a city to sell bonds to fund these types of projects? The proposed rule has the potential to place a cloud of uncertainty (with regard to project cost and potential for public challenge) over the use of bonds for transportation projects. The additional criteria may make Oregon communities at a disadvantage in the bond market. 12

Response: The proposed rule does not make it any more likely that such projects will get challenged by the public since that opportunity already exists under other federal and state laws. In addition, the proposed rule criterion for "hot-spot" analysis has been modified to provide greater certainty regarding projects that will require such analysis. See, also comment #20 above.

44. Comment: Clarity is needed on which safety projects are going to be exempted under the rule. 8

Response: Table 2 in the proposed rule specifically identifies projects that are considered exempt safety projects. The only ambiguous reference is the term "safety improvement program." Clarification from both EPA and FHWA indicated that this term refers to a specific program funded under the Intermodal Surface Transportation Efficiency Act (ISTEA). While some local jurisdictions may have "safety improvement programs," only projects eligible for this program under ISTEA will be considered exempt from conformity.

The exemption of safety projects will also be evaluated by the parties involved in interagency consultation. Interagency consultation is required by the federal rule to provide an avenue for applying conformity to exempt projects where there are potential adverse emissions impacts. The proposed rule provides for interagency consultation on such projects under OAR 340-20-760. The manner for reviewing these projects will be established by each of the standing committees in MPO areas and the affected agencies in the non-MPO areas.

**CHANGES MADE TO THE PROPOSED RULE**
**IN RESPONSE TO PUBLIC COMMENT**

1. The "hot-spot" analysis criterion was revised to reduce the analysis burden on local governments by providing greater clarity on when "hot-spot" analysis would be required for state or locally approved intersections.
Section 340-20-1020 was modified to address these comments.

CO hot-spot analysis is required:

(a) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation of possible current violation;

(b) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F, because of increased traffic volumes related to a new **FHWA/FTA funded or approved** project in the vicinity;

(c) For any project involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(d) For any project involving or affecting any of the intersections which the applicable implementation plan identified as the top three intersections in the nonattainment or maintenance area based on the worst Level of Service; and

(e) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

**(f) For any project identified through interagency consultation pursuant to OAR 340-20-760 as a site of potential future violation.**

PM-10 hot-spot analysis is required:

(a) For projects which are located at sites where violations have been verified by monitoring, and at sites which have essentially identical **or higher** vehicle and roadway emission and dispersion characteristics, including sites near ones where violations have been monitored. The projects which require PM-10 hot-spot analysis shall be determined through the interagency consultation process required in OAR 340-20-760.

2. The Department also modified the criteria requiring timely implementation of transportation control measures regardless of their eligibility for federal funding. The following

qualifying language has been added to address concerns raised during the public comment period:

"timely implementation of TCMs which are not eligible for funding under title 23 or the Federal Transit Act is required where failure to implement such measure(s) jeopardizes attainment or maintenance of a standard."

3. The rule was revised to include disclosure of regionally significant projects once they are included in an area's transportation system plan or an amended transportation system plan. One party raised this issue and the Department included this requirements to ensure disclosure of "regionally significant" projects as early as possible. The rule now requires disclosure at the first instance one of several actions is sought, including adoption of amendment of a transportation system plan.

4. The definition of "regionally significant" was revised in response to public comment to further clarify that not everything which is on an area's transportation model will automatically be considered regionally significant. Where an area's model is very detailed, it may include projects that will not be considered "regionally significant" for purposes of conformity. The following language has been added to the definition:

**A project that is included in the modeling of an area's transportation network may not, subject to interagency consultation, be considered regionally significant because it is not on a facility which serves regional transportation needs.**

5. In response to public comment and final advisory committee discussions, the revised proposed rule eliminates the requirement that final recommendations of the standing committee be approved by the MPO.

6. In response to public comment and final advisory committee deliberations, the interagency consultation procedures applicable to non-metropolitan areas have been revised. ODOT has agreed to take on these responsibilities for all non-metropolitan areas, except Grants Pass. The City of Grants Pass preferred to have Rogue Valley Council of Governments assume these responsibilities.

7. In response to public comment and final advisory committee deliberations, the public participation procedures were revised. Appropriate project-level public participation procedures will be established through interagency consultation and are not established in the proposed rule.

8. In response to final advisory committee recommendations, the interagency consultation procedures were revised to provide a 30 day time frame for agency review. This time frame is consistent with the public review period.

9. The advisory committee also recommended that the rule be revised to provide flexibility on the annual modeling meeting requirement. The rule no longer requires an annual modeling meeting where ODOT, the MPOs and DEQ have agreed that such a meeting is not necessary.

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State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

# Rule Implementation Plan

## Summary of the Proposed Rule

The proposed rule establishes criteria for demonstrating consistency between the transportation-related requirements of a governing State implementation plan (SIP) and transportation plans, programs, and projects approved or adopted under the Intermodal Surface Transportation Efficiency Act. Transportation conformity acts as the enforcer to keep state/local transportation planning consistent with state/local air quality planning. The proposed rule will affect all areas classified as nonattainment or maintenance under the Clean Air Act. In such metropolitan areas (Eugene-Springfield, Salem-Keizer, Portland METRO area, and Medford-Ashland) the rules will affect transportation planning activities and projects approved by the metropolitan planning organizations. In non-metropolitan areas (Lakeview, Oakridge, Grants Pass, La Grande, Klamath Falls) the rule will be implemented by the Oregon Department of Transportation and will affect transportation projects in those areas.

## Proposed Effective Date of the Rule

The rule will be effective upon filing with the Secretary of State. This will occur no later than March 10, 1995.

## Proposal for Notification of Affected Persons

All affected parties will receive a copy of the adopted rule. In addition, the Department will be making presentations to all affected parties regarding the requirements of the rule once it is adopted and filed with the Secretary of State's office.

## Proposed Implementing Actions

DEQ will be a participant in the various committees and processes established under the rule for interagency consultation. There will be a new staff position in the Air Quality Planning and Development Section to implement these rules. Presently, the position is being funded with an EPA Special Projects grant. Permanent, long-term funding will be assessed during that time and long-term funding sources, such as federal transportation revenue, will be explored, if needed.

The regulated community will have to perform air quality emissions analyses and will be required to implement transportation control measures that are included in a State or Federal implementation plan.

## Proposed Training/Assistance Actions

DEQ provide a summary of the rule to all affected DEQ staff and to the regulated community. In addition, DEQ intends to make presentations regarding the requirements of the rule to all affected DEQ staff and to the affected local governments and member jurisdictions of the metropolitan planning organizations. DEQ expects to have a staff person who will coordinate statewide implementation of the rule.

# Environmental Quality Commission

☒ Rule Adoption Item
☐ Action Item
☐ Information Item

**Agenda Item E**
**March 3, 1995 Meeting**

**Title:**

Adoption of Air Quality Prevention of Significant Deterioration (PSD) Amendments and Related Forest Health Restoration Rules.

**Summary:**

These rules address the following:

1. Make state PSD rules consistent with federal rules by replacing total suspended particulate (TSP) measurement with measurement of particulate matter smaller than 10 microns (PM 10), which is a more protective measure of air quality and human health.
2. Update the boundaries of Oregon's 12 Class I wilderness areas to reflect expansions mandated by Congress since 1977.
3. Provide a more realistic baseline for determining the impacts of PM10 emissions from prescribed burning in forests in NE Oregon to address forest health problems.
4. Adopt amendments to Oregon's Smoke Management Plan which reflect #3 above and smoke management and air quality monitoring improvements for NE Oregon.

Some public comment was received during the hearing process reflecting concern about prescribed burning. The Department believes those concerns are addressed by requirements in the smoke management plan to burn only under optimum conditions, reduction of wildfires because of increased emphasis on removal of fuel loads and fire suppression. The rule anticipates no net increase in total emissions from prescribed forest burning and wildfires combined.

**Department Recommendation:**

Adopt Rules and Amendments to Smoke Management Plan as Presented in Attachments A and B.

| Report Author | Division Administrator | Director |
|---|---|---|

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

State of Oregon
# Department of Environmental Quality Memorandum†

**Date:** January 19, 1995

**To:** Environmental Quality Commission

**From:** Lydia Taylor, Interim Director Lydia Taylor

**Subject:** Agenda Item E, March 3, 1995, EQC Meeting

Air Quality Prevention of Significant Deterioration (PSD) Amendments, and related Forest Health Restoration Program

## Background

On November 15, 1994, the Director authorized the Air Quality Division to proceed to a rulemaking hearing on the following proposed PSD rule amendments:

(1) Revising the particulate matter PSD Increments by replacing Total Suspended Particulate (TSP) with Particulate Matter less than 10 microns (PM10);

(2) Revising the Class I Area boundary date to reflect Congressional increases in the size of Oregon Class I Areas since 1977;

(3) Revising the PSD baseline date for the Blue Mountains of Oregon to reflect a more representative baseline for regulating PM10 emissions from future forest land burning to address forest health problems; and

(4) Adopting an amendment to the Oregon Smoke Management Program made by Oregon Department of Forestry which incorporates prescribed burning emission limits and smoke management/air quality monitoring improvements for areas in and around the Blue Mountains in northeastern Oregon.

These amendments, if adopted, would be submitted to the Environmental Protection Agency as a revision to the Oregon Clean Air Act Implementation Plan.

Pursuant to the authorization, hearing notice was published in the Secretary of State's Bulletin on December 1, 1994. The Hearing Notice and informational materials were mailed to the mailing list of those persons who have asked to be notified of rulemaking

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actions, and to a mailing list of persons known by the Department to be potentially affected by or interested in the proposed rulemaking action on November 30, 1994.

A Public Hearing was held January 4 and 5, 1995, in La Grande, Portland, and Medford, Oregon, with Brian Finneran and Howard Harris serving as Presiding Officers. The Presiding Officer's Report (Attachment C) summarizes the testimony presented at the hearings.

Written comment was received through January 6, 1995. Minor modifications were made to the rules following the public comment period.

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

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

1. **Replacement of the TSP Increments with PM10 Increments.** PM10 is particulate matter smaller than 10 microns in size, while TSP is total suspended particulate, which is particulate of all sizes. PSD increments essentially establish the level to which it is permissible to allow air quality to deteriorate in "clean air" areas which meet air quality health standards. In June of 1993, the Environmental Protection Agency (EPA) revised its PSD rules to replace TSP with PM10 Increments to make these rules consistent with identical revisions made to national ambient air quality standards in 1987. This action was taken based on scientific evidence that the smaller size particulate matter (PM10) posed the greater public health risk. The Department needs to replace its TSP Increments with PM10 Increments to make its PSD rules consistent with federal PSD rules in order to maintain full state delegation of the state PSD program.

2. **Revising the Class I Area boundaries.** The 1990 Clean Air Act Amendments specify that the boundaries of areas designated as Class I must now conform to all boundary changes made since August 7, 1977. At that time, Congress designated all wilderness areas over 5,000 acres and all national parks over 6,000 acres as Class I Areas, to provide additional airshed protection because of their pristine nature. Oregon currently has 12 Class I Areas, 11 of which have been expanded by Congress since 1977. Adding the date "November 15, 1990" to the Department's rule is needed in

order to incorporate expansions which have occurred to 11 Class I Areas since 1977 (See description and map in Attachment B-7). This will make Department PSD rules consistent with the 1990 Clean Air Act Amendments, and is necessary to maintain full state delegation of the state PSD program.

3. **Revision to the PSD baseline date for NE Oregon.** Some of the highest tree mortality in the country is occurring in the forests of the Blue Mountains. As much as 50 percent of the national forest land, or approximately three million out of six million acres, is estimated to be dead or dying. Failure to address this problem will likely result in catastrophic wildfire, causing property damage and threatening public safety. In order to reduce this threat and restore forest ecosystem health, federal land managers in the four national forests in the Blue Mountains are proposing a significant increase the use of prescribed fire in the Blue Mountains, from about 25,000 to about 115,000 acres/year, mostly during the spring burning season. Such a significant increase in prescribed burning could also lead to increased local and regional smoke impacts in northeast Oregon.

This revision to the PSD rule (OAR 340-31-005, "Baseline Concentration") involves changing the baseline date for the Blue Mountains of NE Oregon for tracking PSD Increment consumption[††]. The Department does not believe the current date (1978) is representative of "normal" emissions from forest burning in this area. Under federal PSD rules, baseline dates are triggered when major increases in emissions occur in a given area[†††]. Since the Clean Air Act allows states to set specific PSD baseline dates for any area in a state, the Department is proposing to set a more contemporary baseline date (1993) for NE Oregon. Included would be a provision allowing a prior year average to be used to estimate the baseline if this average is more representative of normal emissions. It is the Department's intent to use the period of 1980 to 1993 as the baseline period, as it roughly covers one drought cycle and has data available from which a baseline can be calculated. This new baseline would be the basis for regulating PM10 emissions from prescribed burning in this area.

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[††]This revision is unrelated to, and has no impact on, the date change described in #2 above for Class I Area boundaries.

[†††]Under the federal PSD rules, the baseline date for determining increment consumption is the date a major new source (or major modification) locates in a specific airshed in a state.

4. **Adoption of amendments to the Oregon Smoke Management Program.** These amendments are part of a comprehensive strategy to address the forest health problem in the Blue Mountains which the Oregon Department of Forestry has incorporated into its Operational Guidance for the Oregon Smoke Management Program (see Attachment B-8). This comprehensive strategy was developed as part of a coordinated effort between the Department, federal land management agencies, Oregon Department of Forestry, and Washington and Idaho state air regulatory agencies, and contains a combination of emission limitations, mandatory smoke management controls, increased tracking and monitoring of prescribed burning, increased emphasis on non-burning alternatives, and the above revision to the Department's PSD baseline date for forest burning in the Blue Mountains. Adoption of amendments to the Oregon Smoke Management Program incorporates the comprehensive forest health restoration strategy in the Oregon SIP, and satisfies the enforcement requirements of the SIP.

**Relationship to Federal and Adjacent State Rules**

Department's PSD rules were established under authority of Part C of the federal Clean Air Act.

**Authority to Address the Issue**

ORS 468.020 and 468A.035

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

1. The **PM10 Increments** were adopted by EPA to make its PSD rules consistent with identical revisions made to national ambient air quality standards in 1987, replacing TSP with PM10. The Department is proposing adoption of these federal requirements verbatim, and since no impact on the regulated community is expected, no advisory committee review was obtained.

2. The inclusion of **changes to Class I Area boundaries** was made by Congress as part of the 1990 Clean Air Act Amendments. The Department is proposing adoption of these federal requirements verbatim, and since no impact on the regulated community is expected, no advisory committee review was obtained.

3. The proposed **revision to the PSD baseline date for NE Oregon** was developed as a result of meetings over a two-year period involving representatives from state and federal air quality agencies, the U.S. Forest Service, and the Bureau of Land

Management (BLM), from which a consensus was reached on a strategy to address the forest health problem in the Blue Mountains of NE Oregon which would balance the need for increased prescribed burning with the need to protect air quality.

4. **The adoption of amendments to the Oregon Smoke Management Program** is associated with a Memorandum of Understanding (MOU) between DEQ, the U.S. Forest Service, BLM, and the Oregon Department of Forestry, to address the forest health problem in the Blue Mountains. Included in this MOU was Appendix 5, developed as an amendment to the Operation Guidance for the Oregon Smoke Management Plan. Appendix 5 contains the prescribed burning emission limit mentioned above and a wildfire emission target level for the Blue Mountains. It also contains a mandatory smoke management program and air quality monitoring network for NE Oregon, similar to that developed for Western Oregon 10 years ago that has been successful in reducing air quality impacts.

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

1. The **PM10 Increments** were adopted by EPA to make its PSD rules consistent with identical revisions made to national ambient air quality standards in 1987, replacing TSP with PM10. The Department is proposing adoption of these federal requirements verbatim.

2. The inclusion of **changes to Class I Area boundaries** was made by Congress as part of the 1990 Clean Air Act Amendments. The Department's rules need to be changed to reflect any Class I Area expansion which have occurred since 1977.

3. The proposed **revision to the PSD baseline date for NE Oregon** was developed as part of a comprehensive strategy to address forest health in the Blue Mountains of NE Oregon, which would balance the need for increased forest health prescribed burning with the need to protect air quality.

4. Adoption of **amendments to the Oregon Smoke Management Program** incorporates the comprehensive forest health restoration strategy in the Oregon SIP, and satisfies the enforcement requirements of the SIP.

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

The following summarizes public comment and Department responses described in Attachment D. Four persons representing environmental groups provided testimony,

focusing on prescribed burning (see #1-4 below). Comments were also received from the EPA Region 10 office (see #5 below). It should be noted that no testimony or comments were received from the public or any groups in NE Oregon, where the proposed forest health prescribed burning is being planned.

1. The Department received several comments expressing concern about the possibility of increased local and regional air quality impacts due to the proposed significant increase in prescribed burning being planned in NE Oregon.

The Department's response is that there should be no net increase in total forest burning emissions (i.e., combined prescribed burning and wildfire emissions). The proposed increase in prescribed burning is needed to reduce the threat of catastrophic wildfire and restore forest ecosystem health in the Blue Mountains. To accommodate this, the Oregon Smoke Management Program was amended to incorporate a comprehensive strategy which would include emission limits for prescribed burning, mandatory smoke management/air quality monitoring improvements, and increased emphasis on mechanical removal and fire suppression efforts. Since mandatory smoke management will require prescribed burning be conducted under optimum conditions, and that the use of prescribed burning and mechanical removal will lessen fuel loads/fire hazard, thereby reducing wildfire emissions, the Department expects a net improvement in air quality under this comprehensive strategy.

2. There were also concerns expressed about the need for tracking and monitoring prescribed burning activity in NE Oregon.

The Department's response is that a Smoke Management Monitoring Network will be established to track smoke impacts in the largest communities in NE Oregon: La Grande, Pendleton, Enterprise, Milton-Freewater, Baker City, John Day, and Burns. This will be "real-time" monitoring that provides current readings of smoke levels, allowing for air quality to be assessed in these communities immediately prior to burning, and adjustments or prohibition of burning to be made once underway. The network will provide a 24-hour record, so that any smoke impacts occurring overnight will be documented.

3. Three persons commented that all populated areas identified in the NE Oregon Smoke Management Program (i.e., those identified in #2 above) should be classified as "designated areas" in order to be protected from smoke impacts.

The Department believes that the special protection measures planned for the larger communities in NE Oregon provide even greater protection from smoke impacts than

those communities which are currently "designated areas" under the Western Oregon Smoke Management Program. This is because in addition to restricting prescribed burning upwind of these communities, each of these communities will be sited with air quality monitoring equipment as part of new Smoke Management Monitoring Network, which will allow smoke impacts to be immediately detected, and corrective action to be taken.

4. One person recommended against DEQ's proposed change of the PSD baseline date, stating any increased prescribed burning in NE Oregon should not be allowed.

As described above, the Department believes that a comprehensive forest health strategy is needed for NE Oregon, and in order to implement this strategy, a new contemporary PSD baseline is needed which combines wildfire and prescribed burning emissions for tracking airshed deterioration. Since the Clean Air Act allows states to set specific PSD baseline dates for specific areas in a state (providing it is as stringent as the federal rule), the new baseline date for NE Oregon will be similar to the federal rule which "triggers" PSD only when a major increase in emissions occurs in an area.

5. In response to the above comments, the Department did not propose any changes to the proposed amendments. However, some comments were received from EPA indicating minor revisions that were needed. These involved a minor clarification regarding the Class I Area boundary date, and specifying "arithmetic" mean for the PM10 Increment in Table 1 of the PSD rule. These revisions were made and are indicated in Attachment A.

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

1. **Replacing TSP Increments with PM10 Increments** in the Department's PSD rule will tie PM10 increment consumption to the PM10 NAAQS, which is more protective of public health. In terms of the regulated community, the Department's current PSD rules for major new industrial sources and major modifications of existing sources in OAR 340 Division 28 already require sources to demonstrate compliance with PSD Increments for particulate matter. Replacing TSP with PM10 will result in no additional regulatory burden. For the Department, an implementation plan will be prepared which addresses how the PM10 Increments will be implemented through the Department's PSD permitting program. No significant workload increase is expected.

2. **Changes to Class I Area boundaries** are not expected to have any impact on the public, and little impact on the regulated community. Under the Department's Visibility Impact rules major new industrial sources and major modifications must demonstrate on

a case-by-case basis through air modeling that no significant visibility impairment will occur within any Oregon Class I Area. Should this occur the source would have to mitigate the visibility impact. Sources will have to continue to model for visibility impacts under this proposed rulemaking. It is possible that expansion of the boundaries of the 1977 Class I Areas may result in some major new or modified sources being slightly closer to the border of an expanded Class I Area, increasing the potential for visibility impact. However, it is unlikely that this would affect the results of a visibility impact analysis. No significant additional workload to the Department is expected.

3. The proposed **change to the PSD baseline date**, by its relation to the MOU and the smoke management plan amendments described above, will affect the Forest Service and BLM by setting an annual emission limit on prescribed burning and target level for wildfire in NE Oregon, and requiring these agencies to track emissions during the year to ensure the limits are not exceeded. This activity is expected to begin in the spring of 1995. The additional workload to these agencies will be covered by existing staff. The Oregon Department of Forestry will have a coordinating role in this effort. The Department's role is expected to involve additional oversight of slash burning activity in NE Oregon, which can be covered by existing staff.

In terms of impact on the public, the future limits on forest burning should not result in increased emissions over current levels (i.e., average emissions over the last 15 years), and under the smoke management and monitoring improvements planned for this area, a net improvement in air quality in NE Oregon is expected by the Department.

4. **The adoption of amendments to the Smoke Management Program**, as described above, will affect the Forest Service and BLM by requiring them to track annual emissions from prescribed burning and wildfire. Most of the prescribed burning is being planned for the springtime. Prescribed burning will have to be curtailed if the emission limit is reached. Should unexpected increases in wildfires cause the target level to be exceeded, the annual prescribed burning limit would be adjusted downward to offset these increases. These amendments will be implemented through Appendix 5 of the Oregon Department of Forestry's Operational Guidance for the Oregon Smoke Management Program.

In addition, the other measures to protect air quality, such as the mandatory smoke management program and air quality monitoring network, will be implemented and require additional expenditures by the Forest Service and BLM. The additional workload to these agencies will be covered by existing staff. The Oregon Department of Forestry will operate the mandatory smoke management program and is expected to be reimbursed for this effort by both federal agencies. The Department will be involved in setting up

the monitoring network and providing technical assistance, and will be reimbursed for this effort by the Forest Service.

**Recommendation for Commission Action**

It is recommended that the Commission adopt the proposed PSD rule amendments as presented in Attachment A of the Department Staff Report.

**Attachments**

A. Rule (Amendments) Proposed for Adoption
B. Supporting Procedural Documentation:
   1. Legal Notice of Hearing
   2. Public Notice of Hearing (Chance to Comment)
   3. Rulemaking Statements (Statement of Need)
   4. Fiscal and Economic Impact Statement
   5. Land Use Evaluation Statement
   6. Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements
   7. Summary of Class I Area Expansions since the 1977 Clean Air Act Amendments.
   8. Appendix 5 - Criteria for National Forest and BLM Lands in the Blue Mountains of NE Oregon (Draft). Proposed amendment to the Operational Guidance for the Oregon Smoke Management Program.
C. Presiding Officer's Report on Public Hearing
D. Department's Response to Comments
E. Rule Implementation Plan

**Reference Documents (available upon request)**

The Clean Air Act Amendments of 1990, Part C, Prevention of Significant Deterioration of Air Quality.

Federal Register, Vol. 58, No. 105, 6/3/93, 31622

Code of Federal Regulations, 51.166, Prevention of Significant Deterioration of Air Quality.

Oregon Administrative Rules, Division 31, Air Pollution Control Standards for Air Purity and Quality.

Appendix 5 - Criteria for National Forest and BLM Lands in the Blue Mountains of NE Oregon (Draft). Amendment to the Operation Guidance for the Oregon Smoke Management Program, Directive 1-4-1-601. State of Oregon Department of Forestry.

Memorandum of Understanding between Oregon Department of Environmental Quality and Oregon Department of Forestry and The United States Department of Interior Bureau of Land Management and The United States Department of Agriculture Forest Service.

Approved:

Section: John Kowalczyk

Division: Gregory A. Green

Report Prepared By: Brian Finneran

Phone: 229-6278

Date Prepared: January 19, 1995

BF:bf

rev: 2/10

# Proposed Rule Amendments

**KEY**
**BOLD & UNDERLINED: NEW LANGUAGE**
**STRIKEOUT: DELETED TEXT**

DIVISION 31

AIR POLLUTION
CONTROL STANDARDS FOR
AIR PURITY AND QUALITY

## Ambient Air Quality Standards

**Definitions**

**340-31-005** As used in this Division:

(4) "Baseline Concentration" means:

(a) **Except as provided in subsection (4) (c) of this rule, the** ~~The~~ ambient concentration level for sulfur dioxide and **PM10** ~~total~~ ~~suspended particulate~~ which existed in an area during the calendar year 1978. If no ambient air quality data is available in an area, the baseline concentration may be estimated using modeling based on actual emissions for 1978. Actual emission increases or decreases occurring before January 1, 1978 shall be included in the baseline calculation, except that actual emission increases from any major source or major modification on which construction commenced after January 6, 1975 shall not be included in the baseline calculation.

(b) The ambient concentration level for nitrogen oxides which existed in an area during the calendar year 1988.

**(c) For the area of northeastern Oregon within the boundaries of the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests, the ambient concentration level for PM10 which existed during the calendar year 1993. The Department shall allow the use of a prior time period upon a determination by the Department that it is more representative of normal emissions.**

# Prevention of Significant Deterioration

**Restrictions on Area Classifications**

**340-31-120**

(1) All of the following areas which were in existence on August 7, 1977, shall be Class I areas and may not be redesignated:
   (a) Mt. Hood Wilderness;
   (b) Eagle Cap Wilderness;
   (c) Hells Canyon Wilderness;
   (d) Mt. Jefferson Wilderness;
   (e) Mt. Washington Wilderness;
   (f) Three Sisters Wilderness;
   (g) Strawberry Mountain Wilderness;
   (h) Diamond Peak Wilderness;
   (i) Crater Lake National Park;
   (j) Kalmiopsis Wilderness;
   (k) Mountain Lake Wilderness;
   (l) Gearhart Mountain Wilderness.

(2) All other areas, in Oregon are initially designated Class II, but may be redesignated as provided in this rule.

(3) The following areas may be redesignated only as Class I or II:
   (a) An area which as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore;
   (b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

**(4) The extent of the areas referred to in sections (1) and (3) of this rule shall conform to any changes in the boundaries of such areas which occurred between August 7, 1977, and November 15, 1990.**

**TABLE 1**
**(340-31-110)**
**MAXIMUM ALLOWABLE INCREASE**
Micrograms per cubic meter

CLASS I

| POLLUTANT | |
|---|---|
| Particulate matter: | |
| **PM10** ~~TSP~~, Annual **arithmetic**~~geometric~~ mean | **4** ~~5~~ |
| **PM10** ~~TSP~~, 24-hour maximum | **8** ~~10~~ |
| Sulfur dioxide: | |
| Annual arithmetic mean | 2 |
| 24-hour maximum | 5 |
| 3-hour maximum | 25 |
| Nitrogen dioxide: | |
| Annual arithmetic mean | 2.5 |

CLASS II

| | |
|---|---|
| Particulate matter: | |
| **PM10** ~~TSP~~, Annual **arithmetic**~~geometric~~ mean | **17** ~~19~~ |
| **PM10** ~~TSP~~, 24-hour maximum | **30** ~~37~~ |
| Sulfur dioxide: | |
| Annual arithmetic mean | 20 |
| 24-hour maximum | 91 |
| 3-hour maximum | 512 |
| Nitrogen dioxide: | |
| Annual arithmetic mean | 25 |

CLASS III

| | |
|---|---|
| Particulate matter: | |
| **PM10** ~~TSP~~, Annual **arithmetic**~~geometric~~ mean | **34** ~~37~~ |
| **PM10** ~~TSP~~, 24-hour maximum | **60** ~~75~~ |
| Sulfur dioxide: | |
| Annual arithmetic mean | 40 |
| 24-hour maximum | 182 |
| 3-hour maximum | 700 |
| Nitrogen dioxide: | |
| Annual arithmetic mean | 50 |

# NOTICE OF PROPOSED RULEMAKING HEARING

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

Department of Environmental Quality, Air Quality Division
**OAR Chapter 340**

| **DATE:** | **TIME:** | **LOCATION:** |
|---|---|---|
| January 4 | 7 p.m. | Rooms 201 & 202, Hoke College Center, Eastern Oregon State College, La Grande, OR |
| January 5 | 7 p.m. | 811 S.W. 6th Ave., Room 3A, Portland, OR |
| January 5 | 7 p.m. | 10 S. Oakdale, (Auditorium) Medford, OR |

**HEARINGS OFFICER(s):** Brian Finneran and other TBA

**STATUTORY AUTHORITY:** ORS 468.020, ORS 468A.310(2)

**ADOPT:** none

**AMEND:** OAR 340-31-005 (4), OAR 340-31-110 Table I, OAR 340-31-120, OAR 340-20-047

**REPEAL:** none

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

**SUMMARY:**

This rulemaking consists of four amendments relating to its Prevention of Significant Deterioration (PSD) rules:

(1) Revising the particulate matter increments by replacing Total Suspended Particulate (TSP) with Particulate Matter less than 10 microns (PM10), in order to be consistent with federal PSD rules;

(2) Revising the Class I boundary date to reflect Congressional increases in the size of Oregon Class I Areas since 1977;

(3) Revising the PSD baseline date for NE Oregon to reflect a more representative baseline for regulating PM10 emissions from future prescribed burning; and

(4) Amending the Oregon Smoke Management Program to incorporate prescribed burning emission limits and other measures to protect air quality in NE Oregon.

These amendments, if adopted, would be submitted to the Environmental Protection Agency as a revision to the Oregon Clean Air Act Implementation Plan.

**LAST DATE FOR COMMENT:** January 5, 1994.
**DATE PROPOSED TO BE EFFECTIVE:** Upon adoption by the Environmental Quality Commission and subsequent filing with the Secretary of State.

| | |
|---|---|
| **AGENCY RULES COORDINATOR:** | Chris Rich, (503) 229-6775 |
| **AGENCY CONTACT FOR THIS PROPOSAL:** | Brian Finneran |
| **ADDRESS:** | Air Quality Division<br>811 S. W. 6th Avenue<br>Portland, Oregon 97204 |
| **TELEPHONE:** | (503) 229-6278<br>or Toll Free 1-800-452-4011 |

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

Brian Finneran — 11-15-94

Signature — Date

State of Oregon
# Department of Environmental Quality Memorandum[†]

**Date:** November 10, 1994

**To:** Interested and Affected Public

**Subject:** Rulemaking Proposal - Air Quality Prevention of Significant Deterioration (PSD) Amendments, and related Forest Health Restoration Program.

This memorandum contains information on a proposal by the Department of Environmental Quality (the Department) to adopt the following rule amendments:

(1) Revising the particulate matter PSD Increments by replacing Total Suspended Particulate (TSP) with Particulate Matter less than 10 microns (PM10);

(2) Revising the Class I boundary date to reflect Congressional increases in the size of Oregon Class I Areas since 1977;

(3) Revising the PSD baseline date for the Blue Mountains of Oregon to reflect a more representative baseline for regulating PM10 emissions from future forest land burning to address forest health problems; and

(4) Adopting an amendment to the Oregon Smoke Management Program made by Oregon Department of Forestry which incorporates prescribed burning emission limits and smoke management/air quality monitoring improvements for areas in and around the Blue Mountains in northeastern Oregon.

These amendments, if adopted, would be submitted to the Environmental Protection Agency as a revision to the Oregon Clean Air Act Implementation Plan.

## What's in this Package?

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

Attachment A The actual language of the proposed rule (amendments).

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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).

| | |
|---|---|
| Attachment B | The "Legal Notice" of the Rulemaking Hearing (required by ORS 183.335). |
| Attachment C | The official Rulemaking Statements for the proposed rulemaking action (required by ORS 183.335). |
| Attachment D | The official statement describing the fiscal and economic impact of the proposed rule (required by ORS 183.335). |
| Attachment E | A statement providing assurance that the proposed rules are consistent with statewide land use goals and compatible with local land use plans. |
| Attachment F | Questions to be Answered to Reveal Potential Justification for Differing from Federal Requirements. |
| Attachment G | Summary of Class I Area Expansions since the 1977 Clean Air Act Amendments. |
| Attachment H | Appendix 5 - Criteria for National Forest and BLM Lands in the Blue Mountains of NE Oregon (Draft). Proposed amendment to the Operational Guidance for the Oregon Smoke Management Program. |

## Hearing Process Details

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

| | |
|---|---|
| **Date:** | January 4, 1995 - Hoke College Center, Rooms 201 & 202, Eastern Oregon State College, La Grande, OR<br>January 5, 1995 - DEQ Headquarters, Room 3A, 811 SW 6th Ave., Portland, OR<br>January 5, 1995 - Auditorium, 10 S. Oakdale, Medford, OR |
| **Time:** | 7 p.m. (all hearings) |
| **Place:** | see above |

**Submittal Deadline for Written Comments:** Thursday, January 5, 1995.

Brian Finneran is expected to be the Presiding Officer at the hearings in La Grande and Portland, and a DEQ staff person to be announced will be the Presiding Officer at the Medford hearing. Following close of the public comment period, the Presiding Officer will prepare a report which summarizes the oral testimony presented and identifies written comments submitted. The Environmental Quality Commission (EQC) will receive a copy of the Presiding Officer's report and all written comments submitted. The public hearings will be tape recorded, but the tape will not be transcribed.

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

## What Happens After the Public Comment Period Closes?

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

The EQC will consider the Department's recommendation for rule adoption during one of their regularly scheduled public meetings. The targeted meeting date for consideration of this rulemaking proposal is March 3, 1995. This date may be delayed if needed to provide additional time for evaluation and response to testimony received in the hearing process. You will be notified of the time and place for final EQC action if you present oral testimony at the hearing or submit written comment during the comment period or ask to be notified of the proposed final action on this rulemaking proposal.

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

## Background on Development of the Rulemaking Proposal

**What is the problem?**

1. **Replacement of the TSP Increments with PM10 Increments** is needed in order to make the Department's PSD rules consistent with federal rules. PM10 is particulate matter smaller than 10 microns in size, while TSP is total suspended particulate, which is particulate of all sizes. PSD increments essentially establish the level to which it is permissible to allow air quality to deteriorate in "clean air" areas which meet air quality health standards. In June of 1993, the Environmental Protection Agency (EPA) revised its PSD rules to replace TSP with PM10 Increments to make these rules consistent with identical revisions made to national ambient air quality standards (NAAQS) in 1987. This action was taken based on scientific evidence that the smaller size particulate matter (PM10) posed the greater public health risk.

2. **Revising the Class I Area boundaries** is needed in order to make the Department's PSD rules consistent with the Clean Air Act and to provide continued airshed protection for all Class I areas. The 1990 Clean Air Act Amendments specify that the boundaries of areas designated as Class I must now conform to all boundary changes made since August 7, 1977. At that time, Congress designated all wilderness areas over 5,000 acres and all national parks over 6,000 acres as Class I Areas, to provide additional airshed protection because of their pristine nature. Oregon currently has 12 Class I Areas, 11 of which have been expanded by Congress since 1977. **Attachment F** summarizes the Class I Area expansions in Oregon.

3. The **revision to the PSD baseline date for NE Oregon** is not required by EPA, but is being proposed by the Department as part of a comprehensive strategy to address the forest health problem in the Blue Mountains of NE Oregon.

Some of the highest tree mortality in the country is occurring in the forests of the Blue Mountains. As much as 50 percent of the national forest land, or approximately three million out of six million acres, is estimated to be dead or dying. This decline in forest health has been be attributed to a combination of factors - eight years of drought, inappropriate tree species, insect infestation (primarily the Spruce Budworm), past forest management practices, and the removal of natural fire through an active fire suppression program over the last 40 years. Failure to address this problem may result in catastrophic wildfire, causing property damage and threatening public safety from both exposure to fire and smoke. In order to reduce the threat of catastrophic wildfire and restore forest ecosystem health, federal land managers in the four national forests in the Blue Mountains are proposing to increase the use of prescribed fire in the Blue Mountains. They have identified a critical need to increase prescribed burning from a total of about 25,000 to about 115,000 acres per year, which could result in a 4-fold increase in particulate emissions. From an air quality standpoint, such a significant

increase in prescribed burning could also lead to increased smoke impacts in populated areas as well as wilderness/recreation areas of northeast Oregon.

This revision to the PSD rule involves amending the statewide baseline date of 1978 ("Baseline Concentration" in OAR 340-31-005) for tracking PSD Increment consumption. PSD increments establish the level to which it is permissible to allow air quality to deteriorate in areas which currently meet air quality health standards. In regards to the strategy to address forest health in northeast Oregon, the Department does not believe this date is a representative baseline date as it does not reflect "normal" emissions from forest burning in this area. Federal PSD rules allow different baseline dates for areas based on the date when major increases in emissions occur in a given area[††]. Since the Clean Air Act allows states to set specific PSD baseline dates for any area in a state, the Department would like to set a more contemporary time period (1993) for NE Oregon. Included would be a provision allowing prior years to be used to estimate the baseline if these years are determined by the Department to be more representative of normal emissions. It would be the Department's intent to use the period of 1980 to 1993 as the baseline period, as it roughly covers one drought cycle and has data available from which a baseline can be calculated. This new baseline would be the basis for regulating PM10 emissions from prescribed burning in this area.

4. **Adoption of amendments to the Oregon Smoke Management Program** is also being proposed as part of a comprehensive strategy to address the forest health problem in the Blue Mountains. These amendments would be made by the Oregon Department of Forestry to the Operational Guidance for the Oregon Smoke Management Program (see **Attachment G**), and incorporated into the Oregon State Implementation Plan (SIP). This comprehensive strategy was developed as part of a coordinated effort between the Department, federal land management agencies, Oregon Department of Forestry, and Washington and Idaho state air regulatory agencies, and contains a combination of emission limitations, mandatory smoke management controls, increased tracking and monitoring of prescribed burning, increased emphasis on non-burning alternatives, and the above revision to the Department's PSD baseline date for forest burning in the Blue Mountains (see additional discussion on Page 6, no.3 and 4).

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[††] Under the federal PSD rules, the baseline date for determining increment consumption is the date a major new source (or major modification) locates in a specific airshed in a state.

**How does this proposed rule help solve the problem?**

1. **Replacing TSP Increments with PM10** will make Department PSD rules consistent with federal PSD rules, and is necessary to maintain full state delegation of the state PSD program.

2. **Changing the Class I boundary date** from August 7, 1977 to November 15, 1990 will incorporate expansions which have occurred in the Class I areas during this time. This will make Department PSD rules consistent with the 1990 Clean Air Act Amendments, and is necessary to maintain full state delegation of the state PSD program.

3. **Adoption of a revised PSD baseline date for NE Oregon** that is more representative of normal forest emissions is part of a comprehensive strategy for the Blue Mountains to prevent increased smoke impacts on the public and meet Clean Air Act requirements.

4. **Adoption of amendments to the Oregon Smoke Management Program** incorporates the comprehensive forest health restoration strategy in the Oregon SIP, and satisfies the enforcement requirements of the SIP.

**How was the rule developed?**

1. The **PM10 Increments** were adopted by EPA to make its PSD rules consistent with identical revisions made to national ambient air quality standards (NAAQS) in 1987, replacing TSP with PM10. The Department is proposing adoption of these federal requirements verbatim, and since no impact on the regulated community is expected, no advisory committee review was obtained.

2. The inclusion of **changes to Class I Area boundaries** was made by Congress as part of the 1990 Clean Air Act Amendments. The Department is proposing adoption of these federal requirements verbatim, and since no impact on the regulated community is expected, no advisory committee review was obtained.

**3.** The proposed **revision to the PSD baseline date for NE Oregon** was developed as a result of meetings of representatives from state and federal air quality agencies, the U.S. Forest Service, and the Bureau of Land Management (BLM) over a two-year period, to discuss solutions to the forest health problems in the Blue Mountains of NE Oregon which would balance the need for increased prescribed burning with the need to protect air quality. In determining the appropriate level of increased prescribed burning, the

concept of a "no net increase" in the combined PM10 emissions from prescribed burning and wildfire was put forward by the Department as a means of identifying a level on burning that would continue to meet PSD requirements. This concept involved targeting reductions in wildfire emissions to offset increases in prescribed burning. To accomplish this, an annual prescribed burning limit and an annual wildfire target level were established using as a baseline past actual emissions from both sources over the last 15 years in the Blue Mountains, which is considered a representative period encompassing one drought cycle. These annual limits were based on information on records of past acres burned, estimated fuel loadings, and estimates of tons consumed.

A more contemporary baseline similar to the federal rule was chosen over the current PSD baseline of 1978 for several reasons: (1) 1978 wildfire emissions were abnormally low and not representative of "normal" emissions; (2) wildfire emissions fluctuate greatly from year to year, favoring a long term annual average; (3) no prescribed burning emissions data was available for 1978, (4) forest land managers believe forest conditions have more or less stabilized over the last 15 years; and (5) this period represents a typical drought cycle in this region of the state, where wildfire emissions show a direct relationship to annual precipitation.

4. **The adoption of amendments to the Oregon Smoke Management Program** is associated with a Memorandum of Understanding (MOU) between DEQ, the U.S. Forest Service, BLM, and the Oregon Department of Forestry, to address the forest health problem in the Blue Mountains. Included in this MOU was Appendix 5, developed as an amendment to the Operation Guidance for the Oregon Smoke Management Plan. Appendix 5 contains the prescribed burning emission limit mentioned above and a wildfire emission target level for the Blue Mountains. It also contains a mandatory smoke management program and air quality monitoring network for NE Oregon, similar to that developed for Western Oregon 10 years ago that has been successful in reducing air quality impacts.

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

1. **Replacing TSP Increments with PM10 Increments** in the Department's PSD rule will tie PM10 increment consumption to the PM10 NAAQS, which is more protective of public health. In terms of the regulated community, the Department's current PSD rules for major new industrial sources and major modifications of existing sources (OAR 340-28-1940) already require sources to demonstrate compliance with PSD Increments for particulate matter. Replacing TSP with PM10 will result in no additional regulatory burden. No additional workload to the Department or any other agency is expected.

2. **Changes to Class I Area boundaries** are not expected to have any impact on the public, and little impact on the regulated community. Under the Department's Visibility Impact rules (OAR 340-28-2000), major new industrial sources and major modifications must demonstrate on a case-by-case basis through air modeling that no significant visibility impairment will occur within any Oregon Class I Area. Should this occur the source would have to mitigate the visibility impact. Sources will have to continue to model for visibility impacts under this proposed rulemaking. It is possible that expansion of the boundaries of the 1977 Class I Areas may result in some major new or modified sources being slightly closer to the border of an expanded Class I Area, increasing the potential for significant visibility impairment. The likelihood of this occurring cannot be estimated at this time. Any additional workload to the Department by this change could easily be handled by existing Department staff.

In terms of the Department's Visibility Protection Program, which protects Class I Areas in the central and northern Cascade Class I Areas, expansion of the Class I Area boundaries in this region is not expected to have any impact on forestry prescribed burning, since this activity is already prohibited in this area during the summer months under this program. Prescribed burning in southern and eastern Oregon is not required to address visibility impacts in Class I Areas, as no problems have been identified in these areas.

3. The proposed **change to the PSD baseline date**, by its relation to the MOU and the smoke management plan amendments described above, will affect the Forest Service and BLM by setting an annual emission limit on prescribed burning and target level for wildfire in NE Oregon, and requiring these agencies to track emissions during the year to ensure the limits are not exceeded. This activity is expected to begin in the spring of 1995. The additional workload to these agencies will be covered by existing staff. The Oregon Department of Forestry will have a coordinating role in this effort. The Department's role is expected to involve additional oversight of slash burning activity in NE Oregon, which can be covered by existing staff.

In terms of impact on the public, the future limits on forest burning should not result in increased emissions over current levels (i.e., average emissions over the last 15 years), and under the smoke management and monitoring improvements planned for this area, a net improvement in air quality in NE Oregon is expected.

4. **The adoption of amendments to the Smoke Management Program**, as described above, will affect the Forest Service and BLM by requiring them to track annual emissions from prescribed burning and wildfire. Prescribed burning will have to be

curtailed if the emission limit is reached. Should unplanned wildfire cause the target level to be exceeded over a 5-10 year averaging period, the annual prescribed burning limit would be adjusted downward to offset the increases in wildfire emissions.

In addition, the other measures to protect air quality, such as the mandatory smoke management program and air quality monitoring network, will be implemented and require additional expenditures by the Forest Service and BLM. The additional workload to these agencies will be covered by existing staff. The Oregon Department of Forestry will operate the mandatory smoke management program and is expected to be reimbursed for this effort by both federal agencies. The Department will be involved in setting up the monitoring network and providing technical assistance, and will be reimbursed for this effort by the Forest Service.

In terms of impact on the public, the above burning limits, and smoke management and monitoring improvements should result in an improvement in air quality in NE Oregon.

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

The Department's PSD rules were established under authority of Part C of the federal Clean Air Act.

**How will the rule be implemented?**

1. **The PM10 Increments** will be implemented through the Department's PSD rules in Division 31, and the PSD permitting provisions contained in Division 28, as part of the state's new source review regulations.

2. The **Class I boundary date amendment** will also be implemented through the Department's PSD rules in Division 31, and the PSD permitting provisions contained in Division 28, as part of the state's new source review regulations.

3. The **change to the PSD baseline date** will be implemented through the Department's PSD rules in Division 31, and through Appendix 5 of the Oregon Department of Forestry's Operational Guidance for the Oregon Smoke Management Program.

4. The **adoption of amendments to the Oregon Smoke Management Program** will be implemented through Appendix 5 of the Oregon Department of Forestry's Operational Guidance for the Oregon Smoke Management Program.

**Are there time constraints?**

1. The Clean Air Act indicates that states have 25 months to implement **revised PSD Increments** following promulgation by EPA. The PM10 Increments were adopted by EPA on June 3, 1993, so the Department has until July of 1995. Based on this deadline it is beneficial to proceed with adoption at this time.

2. The **change to Class I boundary date** was specified in the Clean Air Act, but no timetable was given for states to adopt this change. However, it is timely to make this PSD revision part of this rulemaking action.

3. **Revising the PSD baseline date for NE Oregon** needs to be completed prior to the initiation of any significant increase in prescribed burning in the Blue Mountains of NE Oregon, which is expected to begin in the spring of 1995.

4. **The adoption of amendments to the Oregon Smoke Management Program** also needs to be completed prior to the initiation of any significant increase in prescribed burning in the Blue Mountains of Oregon.

## Contact for more information:

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

Brian Finneran
Air Quality Division
Department of Environmental Quality
811 S.W. Sixth Avenue
Portland, OR 97204-1390

(503) 229-6278
1-800-452-4011 (in Oregon)

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

# Rulemaking Proposal
for
**Prevention of Significant Deterioration (PSD) Amendments**

# Rulemaking Statements

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

## 1. Legal Authority

This proposal would amend OAR 340-20-047, the Oregon Clean Air Act Implementation Plan. The amendments are proposed under authority of ORS 468.020 and ORS 468A.310(2).

## 2. Need for the Rule

These amendments are needed pursuant to Part C of the 1990 Clean Air Act Amendments relating to requirements for Prevention of Significant Deterioration of Air Quality.

1. Adoption of Federal PSD Increments for PM10. Currently, new major industrial sources in attainment areas must not exceed the maximum allowable increases (increments) for particulate matter under the state PSD permitting program. These increments are based on Total Suspended Particulate (TSP), which is basically particulate matter of all sizes. On June 3, 1993, the Environmental Protection Agency (EPA) replaced TSP with PM10, which is only small particulate matter (under 10 microns in size), since this size fraction poses the greatest health risk. This action was taken by EPA in response to an identical revision to the National Ambient Air Quality Standard in 1987.

2. Revision to the Class I Boundary Date. The 1977 Clean Air Act Amendments designated all national parks over 6,000 acres and all wilderness areas over 5,000 acres as federal Class I Areas, which were to be given additional airshed protection because of their pristine nature. The 1990 Clean Air Act Amendments specified that the boundaries of these areas must now conform to any boundary changes made since August 7, 1977. Out of Oregon's 12 areas initially designated as Class I, 11 have had their boundaries expanded since 1977.

3. Revision to the PSD Baseline Date for NE Oregon. Oregon PSD rules differ from federal PSD rules by setting a statewide baseline or "trigger" date of 1978 for tracking PSD increment consumption, rather than establishing separate baseline areas with different trigger dates. In the Blue Mountains of NE Oregon, a major portion of the six million acres of national forest are either dead or dying, and there is a clear need to increase the level of prescribed forest burning in order to prevent catastrophic wildfire and restore and maintain forest ecosystem health. The Department believes the statewide baseline date of 1978 is not a representative baseline date for emissions from forest burning in this region of the state, and that a more contemporary baseline date similar to federal PSD rules is needed for regulating PM10 emissions from future prescribed burning.

4. Amendments to the Oregon Smoke Management Plan to address NE Oregon forest burning. A comprehensive strategy has been developed to address the forest health problem in the Blue Mountains and protect air quality in NE Oregon, which is based in part on revising the PSD baseline date as described above. Annual emission limits for prescribed burning and wildfire were determined based on a revised PSD baseline of 1980-1993. Additional measures such as mandatory smoke management controls, increased tracking and monitoring of prescribed burning, and increased emphasis on non-burning alternatives would be part of this strategy. This rulemaking proposes to incorporate this strategy into the Oregon Smoke Management Program.

## 3. Principal Documents Relied Upon in this Rulemaking

The Clean Air Act Amendments of 1990, Part C, Prevention of Significant Deterioration of Air Quality.

Federal Register, Vol. 58, No. 105, 6/3/93, 31622

Code of Federal Regulations, 51.166, Prevention of Significant Deterioration of Air Quality.

Oregon Administrative Rules, Division 31, Air Pollution Control Standards for Air Purity and Quality.

Appendix 5 - Criteria for National Forest and BLM Lands in the Blue Mountains of NE Oregon (Draft). Amendment to the Operation Guidance for the Oregon Smoke Management Program, Directive 1-4-1-601. State of Oregon Department of Forestry.

Memorandum of Understanding between Oregon Department of Environmental Quality and Oregon Department of Forestry and The United States Department of Interior Bureau of Land Management and The United States Department of Agriculture Forest Service.

## 4. Advisory Committee Involvement

The proposed revision to the PSD Baseline Date for NE Oregon and Amendments to the Oregon Smoke Management Program were developed as a result of meetings involving representatives from state and federal air quality agencies, the U.S. Forest Service, and the Bureau of Land Management (BLM) over a two-year period, to discuss solutions to the forest health problems in the Blue Mountains of NE Oregon which would balance the need for increased prescribed burning with the need to protect air quality.

The PSD PM10 Increments were adopted by the Environmental Protection Agency to make its PSD rules consistent with identical revisions made to federal particulate air quality standards in 1987, replacing TSP with PM10. The inclusion of changes to Class I Area Boundaries was made by Congress as part of the 1990 Clean Air Act Amendments. The Department is proposing adoption of these federal requirements verbatim, and since no impact on the regulated community is expected, no advisory committee review was necessary.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
**Prevention of Significant Deterioration (PSD) Rule Amendments**

# Fiscal and Economic Impact Statement

## Introduction

This proposed rulemaking is not expected to have a significant fiscal or economic impacts.

**1. Adopting Federal PSD Increment for PM10.** Currently, new major industrial sources in attainment areas must not exceed the maximum allowable increases (increments) for particulate matter under the state PSD permitting program. These increments are based on Total Suspended Particulate (TSP), which is basically particulate matter of all sizes. On June 3, 1993, the Environmental Protection Agency (EPA) replaced TSP with PM10, which is only small particulate matter (under 10 microns in size), since this size fraction poses the greatest health risk. This action was taken by EPA in response to an identical revision to the National Ambient Air Quality Standard in 1987.

**2. Revising the Class I Boundary Date.** The 1977 Clean Air Act Amendments designated all national parks over 6,000 acres and all wilderness areas over 5,000 acres as federal Class I Areas, which were to be given additional airshed protection because of their pristine nature. The 1990 Clean Air Act Amendments specified that the boundaries of these areas must now conform to any boundary changes made by Congress since August 7, 1977. Out of Oregon's 12 areas initially designated as Class I, 11 have had their boundaries expanded since 1977.

**3. Revising the PSD Baseline Date for NE Oregon.** Oregon PSD rules differ from federal PSD rules by setting a statewide baseline or "trigger" date of 1978 for tracking PSD increment consumption, rather than establishing separate baseline areas with different trigger dates. In the Blue Mountains of NE Oregon, a major portion of the six million acres of national forest are either dead or dying, and there is a clear need to increase the level of prescribed forest burning in order to prevent catastrophic wildfire and restore and maintain forest ecosystem health. The Department believes the statewide baseline date of 1978 is not a representative baseline date for emissions from forest burning in this region of the state, and that

a more contemporary baseline date similar to federal PSD rules is needed for regulating PM10 emissions from future prescribed burning.

**4. Amending the Oregon Smoke Management Plan to address NE Oregon forest burning.** A comprehensive strategy has been developed to address the forest health problem in the Blue Mountains and protect air quality in NE Oregon, which is based in part on revising the PSD baseline date as described above. Annual emission limits for prescribed burning and wildfire were determined using a more recent baseline time period (1980-1993). Additional measures such as mandatory smoke management controls, increased tracking and monitoring of prescribed burning, and increased emphasis on non-burning alternatives would be part of this strategy. This rulemaking proposes to incorporate this strategy into the Oregon Smoke Management Program.

**General Public**

No economic impact on the general public is expected as a result of these proposed rule amendments.

**Small Business**

No economic impact on small business is expected as a result of these proposed rule amendments.

**Large Business**

1. Replacing TSP Increments with PM10 Increments is expected to have no impact on large businesses. Under the Department's PSD requirements for major new industrial sources and major modifications of existing sources (OAR 340-28-1940), these sources must already show compliance with PSD Increments for particulate matter.

2. Changing of the Class I boundary date is expected to have no impact on large businesses. This change incorporates additions that have been made to Oregon's Class I Areas by Congress since 1977. Under the Department's Visibility Impact rules (OAR 340-28-2000), major new industrial sources and major modifications must demonstrate on a case-by-case basis through air modeling that no significant visibility impairment within any Class I Area in Oregon. Should this occur the source would have mitigate this visibility impact. Sources will have to continue to model for visibility impacts under this proposed rulemaking.

3. Revising the PSD Baseline Date for NE Oregon will not affect large businesses.

4. Amending the Oregon Smoke Management Plan to address NE Oregon forest burning will not affect large businesses.

**Local Governments**

This rulemaking will not affect local governments.

**State Agencies**

There should be no economic impact on the Department as a result of these proposed rule amendments.

1. Replacing TSP Increments with PM10 Increments will not affect any other state agency.

2. Expansion of the Class I Area boundaries is not expected to have any impact on state agencies. The Oregon Department of Forestry conducts prescribed burning near many of these areas, and under the DEQ Visibility Protection Program is currently prohibited from conducting this burning during the summer months near Class I Areas in the central and northern Cascade Class I Areas. Prescribed burning in other areas of the state is not required to address visibility impacts in Class I Areas.

3. Revising the PSD Baseline Date for NE Oregon will not affect any other state agency.

4. Amending the Oregon Smoke Management Plan to address NE Oregon forest burning will require the Oregon Department of Forestry to provide smoke management forecasting in the Blue Mountains in conjunction with the Forest Service and BLM. These agencies will cover the costs incurred by Department of Forestry in providing this service.

**Assumptions**

This rulemaking involves the following assumptions:

1. Adopting Federal PSD Increment for PM10. It is assumed that major new and modified industrial sources will encounter no additional regulatory burden under the state PSD permitting program in calculating PM10 increment consumption rather than TSP increment consumption.

2. Revising the Class I Boundary Date. It is possible that expansion of the boundaries of the 1977 Class I Areas may create some situations where major new or modified sources may be slightly closer to the border of an expanded Class I

Area, increasing the potential for significant visibility impairment. It is assumed that the impact of this scenario cannot be estimated by the Department at this time.

3. Revising the PSD Baseline Date for NE Oregon. None.

4. Amending the Oregon Smoke Management Plan to address NE Oregon forest burning. The development of the annual prescribed burning emission limit and wildfire target for NE Oregon was based on information on records of past acres burned, estimated fuel loadings, and estimates of tons consumed.

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

All four of the proposed amendments relate to Part C of the federal Clean Air Act which contains provisions for Prevention of Significant Air Quality.

**How will the rule be implemented**

1. The PM10 Increments will be implemented through the Department's PSD rules in Division 31, and the PSD permitting provisions contained in Division 28, which are part of the state New Source Review program.

2. The Class I boundary date amendments will be implemented through the Department's PSD rules in Division 31, and the PSD permitting provisions contained in Division 28, which are part of the state New Source Review program.

3. The change to the PSD baseline date will be implemented through the Department's PSD rules in Division 31, and through Appendix 5 to the Operational Guidance for the Oregon Smoke Management Plan.

4. The amendments to the Oregon Smoke Management Program would be implemented through Appendix 5 to the Operational Guidance for the Oregon Smoke Management Program.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
**Prevention of Significant Deterioration (PSD) Rule Amendments**

# Land Use Evaluation Statement

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

The Department is proposing four amendments relating to its Prevention of Significant Deterioration (PSD) rules:

(1) Revising the particulate matter increments by replacing Total Suspended Particulate (TSP) with Particulate Matter less than 10 microns (PM10), in order to be consistent with federal PSD rules;

(2) Revising the Class I boundary date to reflect Congressional increases in the size of Oregon Class I Areas since 1977;

(3) Revising the PSD baseline date for NE Oregon to reflect a more representative baseline for regulating PM10 emissions from future prescribed burning; and

(4) Amending the Oregon Smoke Management Program to incorporate prescribed burning emission limits and other measures to protect air quality in NE Oregon.

These amendments, if adopted, would be submitted to the Environmental Protection Agency as a revision to the Oregon Clean Air Act Implementation Plan.

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

**Yes_X_ No___**

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

Air Contaminant Discharge Permit (ACDP). These proposed rules provide for technical changes to the PSD rules which are implemented through the ACDP and Federal

Operating Permit (FOP) programs. Certain sources previously subject to ACDP permits are now permitted under the FOP program. However, procedurally, a land use compatibility statement is required from the appropriate city or county for both permits. When DEQ's land use rules (Division 18) are next amended they will provide an update on the air permitting programs, specific to the recent inclusion of the FOP program.

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

**Yes_X_ No___ (if no, explain):**

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

Not Applicable.

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

Not Applicable.

Division

Robert Shane
Intergovernmental Coord.

11/15/94
Date

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

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

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

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

   The applicable federal requirements to this rulemaking involves Prevention of Significant Deterioration (PSD) increments, which specify the level to which it is permissible to allow air quality to deteriorate in "clean air" areas that meet air quality standards. Federal PSD rules set a "baseline" date for tracking the use or consumption of PSD increments based on the date a major emission increase occurs in a given area for a given pollutant. Federal PSD rules define this date on a case-by-case basis, depending upon when a major new source or modification of an existing source submits a completed air quality permit application. For PM10 (particulate matter less than 10 microns in size), the Department's rule currently defines the baseline date as 1978 for all areas of the state, regardless of whether a major emission increase has occurred in a given area. The Clean Air Act allows states to set specific PSD baseline dates for any area in a state, providing it is as stringent as the federal rule.

   This rulemaking is proposing the PSD baseline date for PM10 in the Blue Mountains of northeastern Oregon from 1978 to 1993 for purposes of regulating future prescribed burning in this area. Starting in 1995, an increase in prescribed burning is planned for this area, as part of a comprehensive strategy to address the forest health problem, as described in the attached staff report. This proposed new baseline better reflects current forest conditions, and would closely follow the federal rule. Since PM10 emissions from forest burning in 1978 were much lower than in 1993, this change represents a relaxation to the current rule for this specific area of the state.

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

   The federal requirements are performance based. The baseline date under the federal PSD rules is triggered by the submittal of a completed major source permit application. The Department is proposing to follow this approach for this

area of the state where a major increase in PM10 emissions from prescribed burning is being planned. To date no major increase in emissions has occurred in this area.

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

   Yes. Regarding PSD increment consumption, the federal baseline date is not "triggered" until a major emissions increase occurs in an area. A significant increase in prescribed burning being planned for the Blue Mountains of northeast Oregon. The Department believes that in this case it is appropriate to change its rule and follow the federal approach of establishing a contemporary baseline in response to a major increase in emissions.

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

   Yes. The proposed change to the PSD baseline date for this area is part of a comprehensive strategy to address the forest health problem by increasing prescribed burning. This strategy will allow the U.S. Forest Service and BLM to satisfy PSD requirements by demonstrating that a "no net increase" in PM10 emissions will occur by using a contemporary baseline similar to federal rules. Using a non-contemporary baseline such as 1978 would significantly limit the amount of prescribed burning that could occur, thereby allowing the forest health problem to continue, which would greatly increase the risk of catastrophic wildfire, causing property damage and threatening public safety from both exposure to fire and smoke.

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

   Not applicable.

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

   Not applicable.

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

   Not applicable.

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

   Not applicable.

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

   Not applicable.

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

    Not applicable.

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

    The proposed change to the PSD baseline date for this area addresses the problem of forest health in the Blue Mountains and the potential for severe air quality impacts from catastrophic wildfire by allowing the limited use of prescribed fire to reduce fuel loading and restore forest ecosystem health.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
**Prevention of Significant Deterioration (PSD) Amendments**

# Additional Background Information

ATTACHMENT G

## Summary of Class I Area Expansions since the 1977 Clean Air Act Amendments

| Class I Area | 1977 Acreage | 1990 Acreage | Authority[1] |
|---|---|---|---|
| 1. Crater Lake N.P. | 160,290 | 183,315 | B |
| 2. Diamond Peak Wild. | 36,637 | 52,337 | A |
| 3. Eagle Cap Wild. | 293,775 | 360,275 | A |
| 4. Gearhart Mtn Wild. | 18,709 | 22,809 | A |
| 5. Hells Canyon Wild. | 109,740 | 131,033 | A |
| 6. Mountain Lakes Wild. | 23,071 | same | |
| 7. Mt. Hood Wild. | 14,160 | 47,160 | C |
| 8. Mt. Jefferson Wild. | 100,208 | 107,008 | A |
| 9. Mt. Washington Wild. | 46,116 | 52,516 | A |
| 10. Strawberry Mtn. Wild. | 33,653 | 69,350 | A |
| 11. Three Sisters Wild. | 201,702 | 285,202 | C |
| 12. Kalmiopsis Wild. | 76,900 | 179,700 | C |

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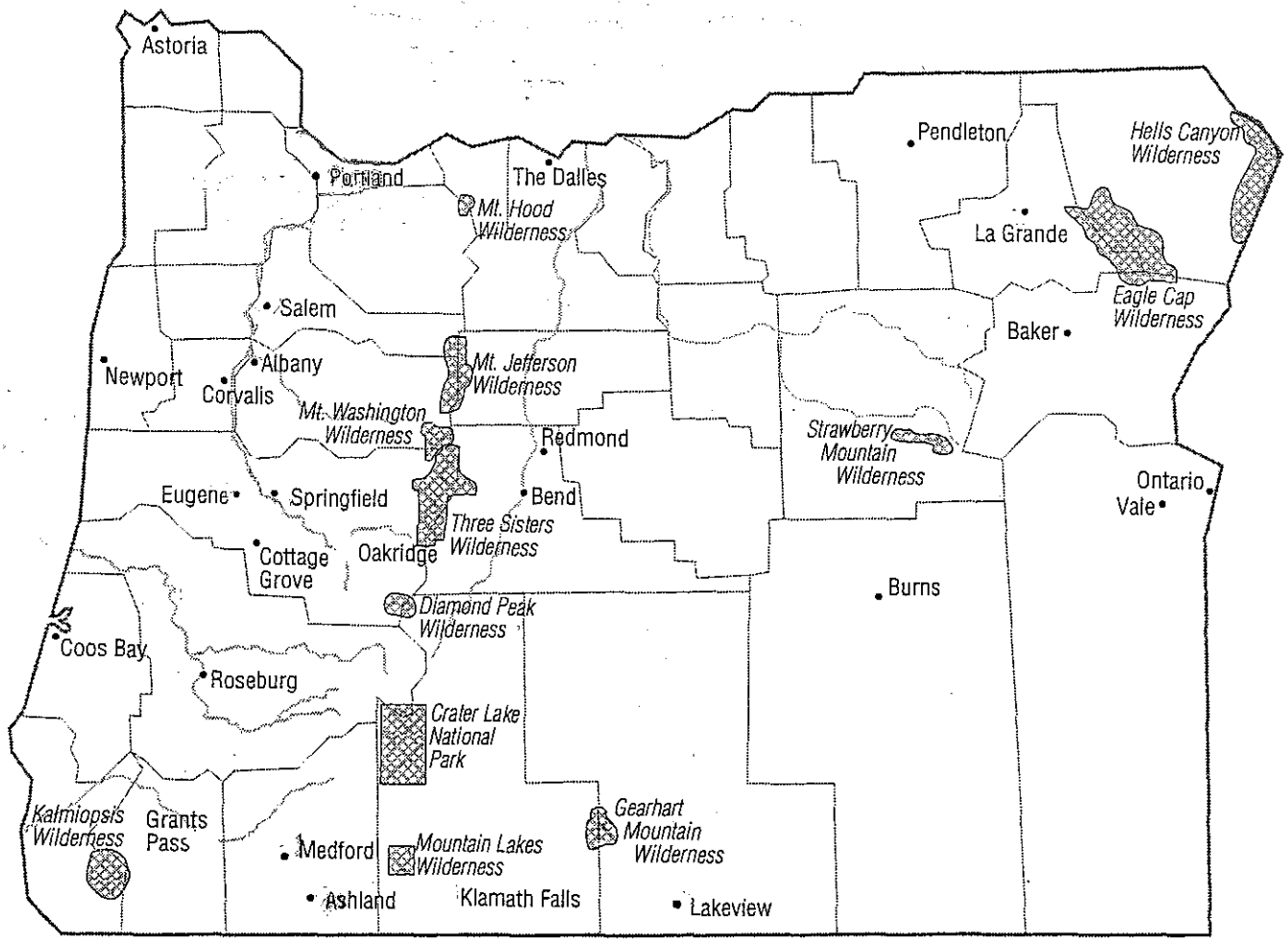
[1]Authority:

A Oregon Wilderness Act of 1984. Public Law 88-577. Enacted by 98th Congress.

B Crater Lake boundary revision of 1980. Public Law 96-553. Enacted by 96th Congress.

C Endangered American Wilderness Act of 1978. Public Law 95-237. Enacted by 95th Congress.

# OREGON CLASS I AREAS



# OPERATIONAL GUIDANCE FOR THE OREGON SMOKE MANAGEMENT PROGRAM

## APPENDIX 5

## CRITERIA FOR NATIONAL FOREST AND BLM LANDS IN THE BLUE MOUNTAINS OF NE OREGON

### I. PURPOSE:

The purpose of this program is to set forth additional procedures and guidance for establishing a mandatory smoke management program to protect areas of Oregon, Washington, and Idaho from smoke impacts caused by increased prescribed burning on national forest lands in the Blue Mountains [1] of NE Oregon and to ensure that state and federal air quality requirements are met.

### II. PROGRAM OPERATION:

1. The level of prescribed burning (including prescribed natural fire) to be conducted by the **USDA Forest Service** in the national forests of the Blue Mountains shall not exceed the emission limit identified in #3b below. Determination of this limit was based on emission estimates by the **Oregon Department of Environmental Quality (ODEQ), the Oregon Department of Forestry (ODF)** and the Forest Service, applied to prescribed burning and wildfire which represents a "no net increase" over the baseline period discussed below. ODEQ and the Forest Service will attempt to verify these emission estimates at a later date and any changes to the emission estimates contained herein shall be made accordingly.

2. The baseline time period for the Blue Mountains shall be the time period from 1980 to 1993, inclusive. Average annual emissions during this time period were determined as follows:

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[1] Blue Mountains are defined as comprising the Umatilla, Wallowa-Whitman, Ochoco, and Malheur National Forests in NE Oregon; the forest lands of the Baker Resource Area, Vale BLM District; Central Oregon Resource Area, Prineville BLM District; and Three Rivers Resource Area, Burns BLM District. Due to the limited acreage expected to be burned by the BLM, the "no net increase" provisions and the emission limits described in #1 to #4 under Program Operation apply only to prescribed burning (including prescribed natural fire) conducted by the Forest Service in the four national forests identified above.

a. **Past Wildfire emissions**. Burn records from the four national forests in the Blue Mountains indicate that during the baseline period approximately 360,000 acres were burned which, based on the best estimate of fuel consumption rates and emission factors, was an average of approximately **11,900 tons** PM10 per year.

b. **Past Prescribed Burning emissions**. Burn records from the four national forests in the Blue Mountains were only available starting in 1987. However, average annual emissions from prescribed burning during the 1987-1993 period were considered to be representative of average annual emissions during the 1980-93 baseline period. A total of approximately 175,300 acres were burned during 1987-1993 which, based on best estimates of the type of burn activity (broadcast, pile, and understory burning), fuel consumption rates, and emission factors, was an average of approximately **5,600 tons** PM10 per year.

c. **Total Baseline emissions** for past wildfire and prescribed burning were **17,500 tons** PM10 per year.

3. The prescribed burning emission limit for future burning in the Blue Mountains was determined by subtracting the expected target level for future wildfires from the total baseline emission level above. The wildfire target level was based on the approximate average annual wildfire emissions during the 1940-1980 period of active fire suppression, prior to the current forest health crisis.

a. **Wildfire target level** [2] = **2,500 tons** PM10 per year.

b. **Prescribed Burning emission limit**. 17,500 - 2,500 = **15,000 tons** PM10 per year.

4. The Forest Service shall track the number of acres burned from prescribed fire and wildfire and determine total PM10 emissions in order not to exceed the annual prescribed burning emission limit and to determine if the wildfire target level is being achieved.

5. ODF shall issue smoke management instructions as needed for the Forest Service and **USDI Bureau of Land Management (BLM)** for prescribed burning activity in the Blue Mountains. The Forest Service and BLM shall comply with all smoke management instructions issued by ODF.

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[2] Wildfire Target Level is an average annual wildfire emission level for the Blue Mountains that is anticipated to occur in the future based on past fire suppression efforts (prior to the current forest health crisis), future increased fire suppression efforts, new uses of prescribed fire, increased slash utilization and mechanical removal efforts. Neither ODF nor USFS have any direct authority to regulate emissions from wildfires.

6. The Forest Service and BLM shall conduct prescribed burning under smoke dispersion conditions which minimize smoke impacts and protect air quality in NE Oregon, SE Washington and Western Idaho. Burning may be conducted upwind only after careful evaluation of meteorological conditions and potential impacts in any of the following areas:

   a. any PM10 Nonattainment Area;
   b. any Designated Area; and
   c. any of the cities identified in the Smoke Management Monitoring Network shown on the map in this appendix.

7. For purposes of visibility protection, the Eagle Cap, Strawberry Mountain, and Hells Canyon Class 1 areas shall be protected from visibility impairment consistent with the current Oregon Visibility Protection Plan.

8. ODF shall participate with the Forest Service and BLM in real-time monitoring of smoke impacts through a smoke management network operated by the Forest Service, with technical assistance from ODEQ. ODEQ shall provide real-time air quality information as needed from current monitoring locations in Pendleton and La Grande. If measurable smoke impacts are indicated, the Forest Service shall determine the burning activity causing the impact and reduce the duration and intensity of the impact through aggressive mop-up or other means.

9. The Forest Service and BLM shall visually monitor smoke behavior for as long as significant smoke is produced. This includes aerial monitoring when appropriate. Smoke behavior related to prescribed burns over 5000 tons consumed shall be documented and provided to ODF.

10. Alternatives to prescribed burning and emission reduction practices shall be used when practicable and economically feasible.

11. For all prescribed burn units, Part I of the Smoke Management Plan Data shall be completed before burning. Part II of the Data Form shall be completed and all planned burn units reported to ODF by 10 a.m. the day of the burn. Part III of the Data Form shall be completed and all planned burn units reported to ODF by noon the day after the burn.

12. To evaluate compliance with the smoke management burning instructions, ODEQ may conduct an annual review of approximately 1% of the units burned by the Forest Service and BLM in the Blue Mountains.

13. ODF, ODEQ, BLM and the Forest Service shall participate in coordination and training as needed.

14. The implementation and termination dates of this appendix shall be agreed upon by ODF, ODEQ, BLM and the Forest Service.

State of Oregon
# Department of Environmental Quality Memorandum

**Date:** January 19, 1995

**To:** Environmental Quality Commission

**From:** Brian Finneran and Howard Harris

**Subject:** Presiding Officer's Report for Rulemaking Hearing
Hearing Dates and Time: January 4 and 5, 1995, at 7 p.m.
Hearing Locations: La Grande, Portland, Medford

Title of Proposal: Air Quality Prevention of Significant Deterioration (PSD) Amendments, and related Forest Health Restoration Program.

Rulemaking hearings on the above titled proposal were convened at 7 p.m., at all three locations. People were asked to sign witness registration forms if they wished to present testimony. People were also advised that the hearing was being recorded and of the procedures to be followed.

Eight persons were present at the Medford hearing. Three provided testimony. Three persons attended the Portland hearing, but no testimony was given. No one attended the La Grande hearing. Prior to the deadline for public comments, two persons submitted written comments.

## INDEX OF COMMENTS RECEIVED

1. Wallace Skyrman
   Coalition to Improve Air Quality
   Central Point, Oregon

2. Phyllis M. Hughes
   Air Quality Coordinator
   Rogue Group, Sierra Club
   Jacksonville, Oregon

3. Frank H. Hirst
   Air Quality Representative
   Ashland League of Women Voters

4. Dr. Bob Palzer
   Air Quality Coordinator
   Oregon Chapter, Sierra Club
   Portland, Oregon

5. Dave Bray
   Permits Program Manager
   EPA Region 10
   Seattle, Washington

## ATTACHMENT D

## SUMMARY OF COMMENTS RECEIVED AND THE DEPARTMENT'S RESPONSE

1. Comment

Air quality in NE Oregon is worsening due to increased wildfires and prescribed burning. The 4 to 5 fold increase in prescribed burning that is being proposed by the U.S. Forest Service in NE Oregon will significantly degrade air quality in this region and visibility in wilderness areas. 1 4

Response

Over the last 15 years, wildfires have increased dramatically in NE Oregon as a direct result of the forest health problem. The proposed increase in prescribed burning is designed to reduce the threat of catastrophic wildfire and restore forest ecosystem health in the Blue Mountains. With the assistance of DEQ, the Oregon Department of Forestry has amended the Oregon Smoke Management Program to incorporate a comprehensive strategy to protect air quality in this region. This strategy was supported by EPA and the neighboring state air quality agencies in Washington and Idaho which could be impacted by this burning. It includes emission limits for prescribed burning, mandatory smoke management/air quality monitoring improvements, and increased emphasis on mechanical removal and fire suppression efforts. The proposed mandatory smoke management program will now require prescribed burning be conducted under optimum conditions. Smoke impacts from wildfire are expected to be reduced by using prescribed burning and mechanical removal to lessen the fuel loads and lower the fire hazard. Under this strategy, there should be no net increase in total forest burning emissions (i.e.combined prescribed burning and wildfire emissions). In addition this strategy meets EPA's Best Available Control Measures (BACM) which represents the most stringent level of control for prescribed burning.

In terms of increased visibility impacts, because of heavy fuel loading and danger of catastrophic fire, very little prescribed burning will be occurring during the summer months, which is when the vast majority of visitation occurs in wilderness areas. Most burning is being planned for the springtime. Under this forest health strategy, the prescribed burning and mechanical removal will help reduce fuel loadings, which will help reduce the frequency and magnitude of wildfire emissions in the summertime. As a result, visibility impacts currently being caused by wildfire should be reduced.

2. Comment

DEQ's proposed change to the PSD baseline date that is part of the forest health strategy should not be supported. 4

Response

To implement the comprehensive strategy described above, DEQ has proposed combining wildfire and prescribed burning emissions for determining a PSD baseline level from which to track airshed deterioration. The Clean Air Act allows states to set specific PSD baseline dates for specific areas in a state (providing it is as stringent as the federal rule). Rather than apply the current statewide PSD baseline date of 1978, DEQ has proposed a new baseline date for this area, similar to the federal rule which "triggers" PSD only when a major increase in emissions occurs in an area. As a result of this change in the baseline date and comprehensive strategy DEQ expects there will be a net improvement in air quality over the last 15 years.

3. Comment

Wildfires in NE Oregon mostly occur in the summer when smoke dispersal conditions are good. Most of the prescribed burning will occur in late fall and winter when smoke dispersal conditions are poor, and will contribute to the residential woodstove pollution problems in these communities. 1 4

Response

Most of the prescribed burning being planned will be in the spring, when smoke dispersal conditions are generally good. In contrast to summertime wildfires, which are uncontrolled and can result in significant smoke impacts, prescribed burning can be controlled from a meteorological, fuel moisture and fuel content standpoint. In fact, springtime burning results in significantly less emissions, since less fuel is actually burned under these conditions. DEQ is not aware of any significant increases in prescribed burning being planned for the fall and winter. Current air quality monitoring in communities such as Pendleton and La Grande shows that prescribed burning is a very minor source of PM10 emissions. Prescribed burning smoke impacts are extremely rare and of limited duration. However, DEQ will be tracking this activity in upcoming years to determine if additional controls are needed. It should be noted that DEQ already has in place protective measures known as Special Protection Zones for PM10 Nonattainment areas such as La Grande, which place restrictions on prescribed burning during the winter heating season.

4. Comment

Prescribed burning poses an air quality problem in many areas of the state. In addition to establishing a mandatory smoke management program for NE Oregon, DEQ should set up a statewide smoke management program. 3 4

Response

DEQ does not believe statewide smoke management controls is necessary at this time. With western Oregon and now NE Oregon under mandatory smoke management programs, most of the forest lands in Oregon, especially those close to the heavily populated areas, will be covered by these mandatory programs.

5. Comment

All populated areas identified in the NE Oregon Smoke Management Program should be classified as "designated areas" in order to be protected from smoke impacts. 2 3 4

Response

The Department does not believe this particular classification is necessary, as special protection measures for the larger communities will be part of the comprehensive strategy to protect air quality in NE Oregon. Restrictions will be placed on prescribed burning upwind of these communities, and they will be sited with air quality monitoring equipment as part of new Smoke Management Monitoring Network described above, which will allow corrective measures to be taken if any smoke intrusions are detected. This is equal to the level of protection currently afforded those communities which are "designated areas" under the Western Oregon Smoke Management Program.

6. Comment

Smoke impacts from the increased prescribed burning in NE Oregon will not be adequately monitored, nor will DEQ be able to distinguish between slash smoke and woodstove smoke. 1 4

Response

The proposed Smoke Management Monitoring Network will track springtime smoke impacts in the largest communities in NE Oregon: La Grande, Pendleton, Enterprise, Milton-Freewater, Baker City, John Day, and Burns. This will be "real-time" monitoring that provides current readings of smoke levels, allowing for air quality to

be assessed in these communities immediately prior to burning, and adjustments or prohibition of burning to be made once underway. The network will provide a 24-hour record, so that any smoke impacts occurring overnight will be known. Analysis of monitoring data, burning and meteorological records, visual observations enable DEQ and Forestry smoke management staff to distinguish between prescribed burning smoke impacts and other smoke impacts. As indicated above, no significant increase in prescribed burning is planned during the late fall/winter heating season when woodstove smoke problems occur.

7. Comment

The new PSD baseline date for NE Oregon in OAR 340-31-005 (c) needs clarifying language in order to be fully consistent with the federal rule. This simply adding the current language used in the description of the statewide 1978 baseline. 5

Response

The current language in OAR 340-31-005 (a) describes how modeling data can be used for estimating the PSD baseline in cases where no ambient air quality data is available. It also indicates that actual emission increases from any major source which constructed January 6, 1975 shall not be used in the calculation. DEQ does not believe this language is necessary to address prescribed burning, which is the only source within the boundaries of the four national forests in this area. The Department discussed this matter further with EPA, and EPA now agrees that the original language is acceptable.

8. Comment

When revising the Class I boundary date to reflect any boundary changes which occurred between August 7, 1977, and November 15, 1990, DEQ should retain the 1977 date, since this indicates the date the Class I areas were initially established by Congress. 5

Response

DEQ agrees and will retain the 1977 date. This is a minor change.

State of Oregon
DEPARTMENT OF ENVIRONMENTAL QUALITY

Rulemaking Proposal
for
Air Quality Prevention of Significant Deterioration (PSD) Amendments, and related Forest Health Restoration Program

# Rule Implementation Plan

**Summary of the Proposed Amenements**

These are revisions to the Department's Prevention of Significant Deterioration (PSD) rules:

1. Revising the particulate matter increments by replacing Total Suspended Particulate (TSP) with Particulate Matter less than 10 microns (PM10), in order to be consistent with federal PSD rules;

2. Revising the Class I boundary date to reflect Congressional increases in the size of Oregon Class I Areas since 1977;

3. Revising the PSD baseline date for NE Oregon to reflect a more representative baseline for regulating PM10 emissions from future prescribed burning; and

4. Amending the Oregon Smoke Management Program to incorporate prescribed burning emission limits and other measures to protect air quality in NE Oregon.

**Proposed Effective Date of the Amendments**

The amendments will become effective upon adoption.

**Proposal for Notification of Affected Persons**

1. New or modified major sources will be notified of the PM10 Increments through the PSD application process, as specified in OAR Division 28.

2. New or modified major sources will be notified of the Class I boundary date amendment through the PSD application process, as specified in OAR Division 28.

3. The change to the PSD baseline date has been incorporated into the Oregon Department of Forestry's Operational Guidance for the Oregon Smoke Management Program. Federal

land managers involved in prescribed burning in the Blue Mountains of NE Oregon are currently aware of this change.

4. The adoption of amendments to the Oregon Smoke Management Program will be conveyed to the Oregon Department of Forestry by the Department.

**Proposed Implementing Actions**

1. The PM10 Increments, like the TSP Increments, will be implemented through the Department's PSD permitting provisions contained in Division 28.

2. The Class I boundary date amendment will also be implemented through the Department's PSD permitting provisions. Revised maps of Class I area boundaries will be available for new/modified major sources.

3. The change to the PSD baseline date will be implemented through the Department's PSD rules in Division 31, and through Appendix 5 of the Oregon Department of Forestry's Operational Guidance for the Oregon Smoke Management Program.

4. The adoption of amendments to the Oregon Smoke Management Program will be implemented through Appendix 5 of the Oregon Department of Forestry's Operational Guidance for the Oregon Smoke Management Program.

**Proposed Training/Assistance Actions**

Air quality managers have already been notified of these PSD amendments. The Department will distribute to appropriate staff implementation guidance regarding the replacement of TSP Increments with PM10 Increments, the change to the PSD baseline date for NE Oregon, and new maps showing changes to Class I area boundaries. No training or technical assistance for the regulated community will be needed for these amendments.

As part of the amendments to the Oregon Smoke Management Program, the Department will be providing some technical assistance to the U.S. Forest Service related to the operation of an air quality monitoring network in NE Oregon.

# Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☒ Information Item

**Agenda Item F**
**March 3, 1995 Meeting**

**Title:**

Report to 68th Legislative Assembly on Chapter 863, Oregon Laws 1991 (SB 1215)

**Summary:**

Concerned over the potential loss of small, rural retail gas stations, the three previous Legislative Assemblies attempted to fund a comprehensive package of financial assistance including loan guarantees, low interest loans, grants and insurance premium co-payments. The 1989 and 1991 Legislative Assemblies attempted to fund the program through fees on motor fuels, however, the Oregon Supreme Court in 1992 ruled that these fees were taxes and dedicated to the Highway Fund. The 1993 Legislative Assembly allocated $4,420,000 of Lottery Fund for essential service grants only. The grants were only available where the facility could meet the following criteria:

- Tank owner owns less than 12 tanks
- Only one facility in an incorporated city
- 9 or more miles between facilities in unincorporated areas
- demonstrate financial need

To date, the Department has been able to fund the following projects from a combination of petroleum loading fees (before the Supreme Court decision) and lottery funds:

- 109 site assessment grants
- 35 loan guarantees
- 48 low interest loans
- 48 essential service grants

Depending on the final costs of the 48 essential service grants now approved for construction, we may be able to approve another 5 to 7 essential service grant projects before June 30, 1995. If we are able to fund 55 projects, this would be at the high end of the number of grant projects we estimated for the 1993 Legislative Assembly.

**Department Recommendation:**

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

| Report Author | Division Administrator | Director |
|---|---|---|

February 27, 1995

†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:** March 3, 1995

**To:** Environmental Quality Commission

**From:** Lydia Taylor, Interim Director

**Subject:** Agenda Item F, March 3, 1995, EQC Meeting

Report to 68th Legislative Assembly on Chapter 863, Oregon Laws 1991 (SB 1215)

## Statement of Purpose

The purpose for this report is to inform the Commission and the Legislature what work has been accomplished on the UST Financial Assistance program during the 93-95 biennium.

## Background

In late 1984, as part of the reauthorization of the Resource Conservation and Recovery Act, Congress passed national requirements affecting the underground storage of petroleum and hazardous substances. Congress acted in response to increasing threats to the nation's groundwater and to public safety from fire and explosions, as a result of spills and leaks from underground storage tanks.

Based on this national legislation, the Environmental Protection Agency (EPA) adopted technical rules for new and existing tanks, financial responsibility rules (i.e. environmental liability insurance) and rules for State operation of the federal programs. EPA established various deadlines beginning in December 1989 (for leak detection on tanks installed before 1965) and extending through December 1998 (corrosion control and spill and overfill protection on bare steel tanks). As you can see, we are just beginning the sixth year of the ten year compliance program.

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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 its regulatory impact statement, EPA estimated that as many as 50 percent of the existing tanks would be closed rather than upgraded. For retail service stations, that also meant that as many as 50 percent of existing businesses would close because of the marginal nature of their business and the relative high cost to upgrade, buy new equipment or cleanup petroleum contaminated soil and groundwater. In Oregon, the Department estimated that the impact would fall more heavily on smaller businesses in rural areas of the state.

Concerned over the potential loss of small, rural retail gas stations, the three previous Legislative Assemblies attempted to fund a comprehensive package of financial assistance including loan guarantees, low interest loans, grants and insurance premium co-payments. The 1989 and 1991 Legislative Assemblies attempted to fund the program through fees on motor fuels, however, the Oregon Supreme Court in 1992 ruled that these fees were taxes and dedicated to the Highway Fund. The 1993 Legislative Assembly allocated $4,420,000 of Lottery Fund for essential service grants only. The grants were only available where the facility could meet the following criteria:

- Tank owner owns less than 12 tanks
- Only one facility in an incorporated city
- 9 or more miles between facilities in unincorporated areas
- demonstrate financial need

To date, the Department has been able to fund the following projects from a combination of petroleum loading fees (before the Supreme Court decision) and lottery funds:

- 109 site assessment grants
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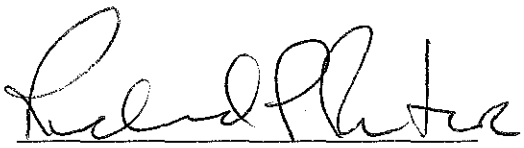
- 48 essential service grants

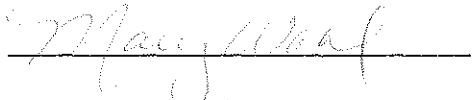
Depending on the final costs of the 48 essential service grants now approved for construction, we may be able to approve another 5 to 7 essential service grant projects before June 30, 1995. If we are able to fund 55 projects, this would be at the high end of the number of grant projects we estimated for the 1993 Legislative Assembly.

**Department Recommendation**

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

Approved:

Section: 

Division: 

Report Prepared By: Richard Reiter

Phone: 229-5774

Date Prepared: January 27, 1995

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Oregon

DEPARTMENT OF
ENVIRONMENTAL
QUALITY

# REPORT TO 68TH OREGON LEGISLATIVE ASSEMBLY

# ON

# CHAPTER 863, OREGON LAWS 1991 (SB 1215)

# Department of Environmental Quality

# January, 1995

## REPORT REQUIRED:

Chapter 863, Oregon Laws 1991, Section 62 (it is found compiled after ORS 466.835) requires beginning January 1, 1993, and biennially thereafter, the Department of Environmental Quality (DEQ) to report on implementation of the underground storage tank (UST) financial assistance program. Specifically, DEQ is to report on:

I. Status of the financial assistance program

II. Any substantive changes in the federal underground storage tank program

III. Oregon's proposed response to the substantive changes

IV. The financial capacity of the UST Compliance and Corrective Action Fund to meet its obligations and debt service to applicants and commercial lenders.

## BACKGROUND:

In 1984, Congress passed a national program to prevent and abate groundwater contamination and public health and safety problems caused by leaks of petroleum and hazardous substances from underground storage tanks (UST). Congress provided authority for the national tank program to be administered at the state level.

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The Environmental Protection Agency (EPA) adopted rules to implement the national tank program in late 1988 (technical and state program approval) and early 1989 (financial responsibility). Compliance deadlines ranging from one to ten years were established for various parts of the program.

The insurance deadlines for smaller businesses and local government have been moved several times in response to the lack of affordable insurance. In 1993 EPA established the final insurance deadlines as follows:

| Class of Tank Owner | Compliance Deadline |
|---|---|
| Owners of 1-12 Tanks | December 31, 1993 |
| Local Government | February 18, 1994 |
| Tanks owned by Indian Tribe or Indian Lands | December 23, 1998 |

In its regulatory impact statement, EPA estimated that as many as 50 percent of existing retail motor fuel businesses would have to close because of the marginal nature of their business and the relative high cost to upgrade, buy new equipment or clean up petroleum contaminated soil and groundwater. In addition to environmental costs, there are also competitive pressures on smaller stations such as higher wholesale prices for partial delivery of product, image enhancement requirements imposed by suppliers and competition from high volume, low price stations.

In Oregon, DEQ estimated that the impact would fall more heavily on smaller businesses in rural areas of the state and that as many as 1,000 small retailers would close from a total retailer population of some 2,000 locations in the late 1980s.

## 1989 LEGISLATIVE RESPONSE:

### CHAPTER 1071, OREGON LAWS 1989 (HB 3080)

Concerned about the probable lack of fuel at a reasonable price in large parts of rural Oregon, the 1989 Legislative Assembly established via HB 3080 a financial assistance program to help pay the cost of site assessments, equipment to upgrade or replace tanks and to clean up petroleum contaminated soil. The program consisted of:

1. A 50%, but not to exceed $3,000, site assessment reimbursement grant

2. An 80%, but not to exceed $64,000, loan guarantee program

3. A 7.5% fixed interest rate on a commercial loan, with the lender getting the difference between the 7.5% fixed rate and a commercial lending rate in the form of an Oregon Tax Credit.

Based on anticipated revenue, DEQ estimated 1,050 site assessment grants at $3,000 each and 200 loan guarantee and interest rate subsidy projects could be funded. Table 1 is a summary of the financial assistance disbursed to HB 3080 projects through October, 1991 which was the sunset date for HB 3080 and the start date for SB 1215.

Sixty-three of the site assessment projects listed in Appendix 1 were funded during the initial period. Thirty-three of the loan guarantee and interest rate projects listed in Appendix 2 were funded prior to October 1, 1991. The thirteen interest rate only projects listed in Appendix 3 were also funded prior to October 1, 1991.

**TABLE 1 - Summary of Disbursements through October, 1991**

| Type of Assistance | Number of Projects | Amount of Financial Assistance |
|---|---|---|
| Site assessment grants | 63 | $167,356 (1) |
| Loan guarantees | 33 | $1,573,488 (amount guaranteed) |
| Loan default reserve | 33 | $268,969 |
| Loan defaults | 0 | $0 |
| Interest rate subsidies | 46 | - $308 (amount paid to 10/91)<br><br>- $881,815 (estimated yet to be disbursed to these projects) |

(1) Does not include $3,000 disbursed from general fund revenue.

In testimony to the 1991 Legislative Assembly, DEQ reported that the level of financial assistance was insufficient to encourage lenders to determine that applicants had the credit worthiness to repay large loans, even with the subsidy of 7.5%. In addition, many potential applicants were reluctant to spend money on site assessments; they preferred to wait and invest that money in tank removals and do the site assessment at the time of tank removal. The 1991 Legislative Assembly responded by enacting SB 1215 as described in detail later in this report.

# 1991 LEGISLATIVE RESPONSE:

## CHAPTER 863, OREGON LAWS 1991 (SB 1215)

Because HB 3080 was not providing sufficient financial assistance to owners/operators of USTs, insufficient incentives to commercial lenders and because of continued concern about fuel availability at reasonable prices throughout the state, the 1991 Legislative Assembly amended HB 3080 with the passage of SB 1215. The SB 1215 financial assistance program consisted of:

1. An 80%, but not to exceed $80,000, loan guarantee program.

**(NOTE: THE FOLLOWING THREE FORMS OF ASSISTANCE VARY DEPENDING ON NUMBER OF TANKS, FINANCIAL NEED AND LOCATION.)**

2. A 7.5, 5.0, 3.0 or 1.5% fixed interest rate commercial loan, with the lender getting the difference between the fixed rate and a commercial lending rate, payable quarterly to the lender.

3. A 50%, not to exceed $50,000, pollution prevention grant or an 85%, not to exceed $85,000, essential services grant.

4. A 50, 75 or 90% co-payment on the annual premium for environmental impairment liability insurance.

Based on anticipated revenue, the Department estimated that 1,800 projects could receive some level of financial assistance. Table 2 is a summary of the financial assistance disbursed to all HB 3080 and SB 1215 projects through June, 1993. As described later, lottery funds were used to fund the program after July 1, 1993.

Appendix 1 is the complete list of site assessment projects funded under HB 3080. Appendix 2 is the complete list of loan guarantee and interest rate subsidy projects funded under HB 3080 and SB 1215. Appendix 3 is the complete list of interest rate subsidy projects funded under HB 3080 and SB 1215.

| TABLE 2 - Summary of Disbursements through June, 1993 | | |
|---|---|---|
| **Type of Assistance** | **Number of Projects** | **Amount of Financial Assistance** |
| Site assessment grants | 109 | $ 285,495 (1) |
| Loan guarantees | 35 | $1,582,272 (amount guaranteed) |
| Loan default reserve | 35 | $ 316,454 |
| Loan defaults | 0 | $ 0 |
| Interest rate subsidies | 48 | $ 194,881 (amount paid to 6/93) (2)<br><br>$ 619,396 (estimated yet to be disbursed) |
| Essential service grants | 5 | $ 322,015 (amount paid to 6/93)<br>$ 96,985 (estimated yet to be disbursed |
| Insurance premium co-payments | 5 | $ 2,615 (amount paid to 6/93)<br>$ 33,037 (estimated yet to be disbursed) |

(1) Does not include $3,000 disbursed from general fund revenue.
(2) Does not include $64,245 disbursed from general fund revenue.

## SB 1215 PROGRAM FUNDING

SB 1215 was intended to raise funds for the program by establishing a new 1.1 cent per gallon UST assessment on motor fuel going into underground storage tank for resale. No revenue was collected, however.

Effective October 1, 1991, a 1.1 cent per gallon UST assessment replaced the $10 UST regulatory fee collected under HB 3080. On October 4, 1991 the Automobile Club of Oregon and A & B Automotive and Towing Service, Inc. petitioned the Oregon Supreme

Court for a review of the 1.1 cent per gallon UST Assessment vis-a-vis Article IX, Section 3a of the Oregon Constitution (dedication of motor fuel taxes to the Highway Trust Fund). The filing of a petition stayed the collection of any additional revenue for the program. On October 29, 1992 the Oregon Supreme Court filed their opinion that the UST assessment was a tax and the proposed uses were constitutionally impermissible. The opinion became effective on December 18, 1992.

On December 18, 1992, by operation of SB 1215, the authority to collect the 1.1 cent UST assessment was repealed and in its place, authority to collect a $65 UST regulatory fee (commonly referred to as an UST petroleum loading fee) was established. The date of obligation for the UST regulatory fee was October 1, 1991.

On December 3, 1992 the Oregon Petroleum Marketers Association, a non-profit trade association of petroleum distributors and retailers filed a letter request with the Department of Revenue (DOR) to:

1. Establish a $5 UST regulatory fee for the period October 1, 1991 to January 31, 1993.

2. From February 1, 1993 forward, establish a two-tiered UST regulatory fee - $32.50 for loads less than 3,999 and $65 for loads greater than 4,000 gallons.

On December 30, 1992, a second petition was filed by Carmichael Oil, Inc., and Don Bretthauer Oil Company with the DOR requesting:

1. A refund of all petroleum loading fees paid by petitioners since the inception of the fees established in 1989 under the authorities in HB 3080 ($10 UST regulatory fee), HB 3515 ($10 petroleum loading fee) and SB 1215 ($65 UST regulatory fee).

2. A petition for a declaratory ruling on the constitutionality of the various loading fees established under HB 3080, HB 3515 and SB 1215.

3. A request for a stay of assessment of taxes, and

4. A request for expedited review and a stipulated order.

Following receipt of the two petitions, the Department of Revenue and the Department of Environmental Quality (DEQ) consulted with the Attorney General's office for advice. The Attorney General's office advised that based on the December 18, 1992 Supreme Court

decision, the UST regulatory fee of $65 per load would likely be found to be a tax and the proposed uses constitutionally impermissible. The Attorney General further advised that the Environmental Quality Commission (EQC) could modify the fee through rulemaking. On March 26, 1993, the EQC set the UST regulatory fee at zero ($0) dollars per load. As a result of this action a small amount of revenue that was collected under the $65 UST regulatory fee was returned to the fee payers by the Department of Revenue. Also as a result of this action the Oregon Petroleum Marketers Association withdrew their December 3, 1992 petition.

In letter opinions of April 29, 1993 and May 10, 1993, the Attorney General further advised that all spending of accumulated UST petroleum loading fee revenue should cease. Their advice was immediately implemented.

## PROGRAM IMPLEMENTATION

The Department proceeded to develop the program's basic rules and policies anticipating an expedited review of the case by the Oregon Supreme Court. With the rules and policies developed, program implementation would be able to proceed immediately upon a Court determination based either on the primary revenue source (1.1 cent per gallon on gasoline delivered to an underground storage tank) or the backup fee ($65 UST petroleum loading fee on all loads of petroleum withdrawn from a storage terminal).

DEQ received 1,677 Letters of Intent from motor fuel resale facilities that hoped to apply for financial assistance. The Department also received 80 applications for financial assistance. Based on limited available funds carried forward from HB 3080, the Department approved construction of five essential service grant projects (see Appendix 4) before being advised on May 10, 1993 to not spend any contested UST petroleum loading fee revenue. The DEQ did not fund any more essential service grants after May 10, 1993.

## PROGRAM STAFFING

Because of the pending Oregon Supreme Court review of the 1.1 cent UST assessment, the Department filled only 12 of the 37 financial assistance positions approved by the 1989 and 1991 legislature. These positions were used to write the rules, develop the application and related materials, operate the HELPLINE, implement the Letter of Intent and Consent Agreement requirements, review applications, and oversee construction of the HB 3080 and SB 1215 projects.

# 1993 LEGISLATIVE RESPONSE:

**CHAPTER 661, OREGON LAWS 1993 (HB 2776)**
**AND**
**CHAPTER 765, OREGON LAWS 1993 (SB 81)**

**BALLOT MEASURE 2 (MAY 17, 1994) (HJR 69)**

With the Oregon Supreme Court's decision affecting the 1.1 cent per gallon UST assessment and the Attorney General's advice regarding the $65 UST regulatory fee, the 1993 Legislative Assembly had limited options for funding an UST Financial Assistance program. After extensive debate, the Legislature took two actions:

1. Approved via HB 2776 and SB 81, a limited UST Financial Assistance program using lottery funds. $4.42 million of lottery funds were allocated to pay only essential service grants of 75% not to exceed $75,000 for facilities meeting the Tier 4 criteria previously established by DEQ. These criteria limited the program to tank owners owning less than 12 tanks, located in rural areas and demonstrating financial need. In addition, the lottery funds could be used to pay debt service on previous projects approved under HB 3080 or SB 1215 and pay DEQ's administrative costs.

2. Referred to the voters via HJR 69, Ballot Measure 2 which, if passed, would amend Article IX, Section 3a of Oregon's Constitution to allow taxes on motor fuels for limited environmental purposes, including an UST Financial Assistance program.

On May 17, 1994, Oregon's voters defeated Ballot Measure 2 by nearly 3 to 1.

Based on anticipated lottery revenue of $4.42 million, DEQ estimated some 50 essential grants could be funded. Table 3 is a summary of financial assistance dispersed between July 1, 1993 and November, 1994, including debt service on existing projects and new essential service grants. Appendix 5 is a map showing the locations of projects either completed or under construction and applications pending approval for funding. Appendix 6 is a list of projects by county shown on the map in Appendix 5 that have or may receive lottery funding during this biennium. Appendix 7 is the same list of projects showing their current application or construction status.

**TABLE 3 - Summary of Disbursements July 1993 through November 1994 Lottery Program**

| Type of Assistance | Number of Projects | Amount of Financial Assistance |
|---|---|---|
| Loan Guarantees | 35 | $1,062,134 (guarantee amount) (1) |
| Loan Default Reserve | 35 | $ 32,000 (2) |
| Loan Defaults | 0 | $ 0 |
| Interest Rate Subsidies | 48 | $ 193,916 (amount paid to 11/94)<br>$ 368,246 (estimated yet to be disbursed (3) |
| Essential Service Grants | 40 | $1,175,704 (amount paid to 11/94)<br><br>$1,316,500 (estimated yet to be disbursed) |
| Insurance Premium Co-Payments | 5 | $ 9,019 (amount paid to 11/94)<br>$ 8,210 (estimated yet to be disbursed) |

(1) Five loans fully paid by borrowers totaling $215,719 in principal no longer under obligation of guarantee.

(2) Because we have not encountered any defaults to date and because lenders report payments are being made on time, we are holding a reserve against one potential default from lottery funds.

(3) Future disbursements estimated to occur as follows:

| | |
|---|---|
| 1993-95 | $ 95,912 |
| 1995-97 | 145,041 |
| 1997-99 | 89,918 |
| 1999-01 | 35,033 |
| 2001-03 | 2,342 |
| Total | $368,246 |

## SENATE BILL 81 PROGRAM FUNDING

Table 4 is a summary of lottery funds managed between July 1993 and November 1994. DEQ expects to receive two additional allotments of some $552,000 the remainder of this biennium. With those final allotments, DEQ expects to fund at least 50 essential service grant projects during the biennium. It is expected these projects will be under construction by June 30, 1995.

**TABLE 4 - Summary of the Fund July 1993 Through November 1994 Lottery Program**

| Activity | Amount |
|---|---|
| Revenue (includes interest) | $3,375,687 |
| Program expenditures | $1,378,639 |
| Administrative expenses | $ 308,671 |
| Fund Balance | $1,688,377 |
| Projected obligations | |
| Loan default reserve | $ 32,000 |
| Interest rate subside reserve | 368,246 |
| Essential service grants | 1,316,500 |
| Insurance premium co-payments | 8,210 |

## PROGRAM STAFFING

Because of limited program funding, the 1993 Legislature reduce the staffing to five positions. These positions were used to approve applications, disburse grant funds, and inspect tank removal, new installation and contaminated soil and groundwater cleanup work.

## UST FINANCIAL ASSISTANCE PROGRAM
## September 1989 - November, 1994

Table 5 is a composite of all projects receiving financial assistance from program inception in September 1989 through November 1994.

**TABLE 5 - Summary of Disbursements September 1989 through November 1994 Total Program**

| Type of Assistance | Number of Projects | Amount of Financial Assistance |
|---|---|---|
| Site Assessment Grants | 109 | $ 285,495 (1) |
| Loan Guarantees | 35 | $1,062,134 (guarantee amount) (2) |
| Loan Default Reserve | 35 | $ 32,000 (3) |
| Loan Defaults | 0 | 0 |
| Interest Rate Subsidies | 48 | $ 388,797 (amount paid to 11/94) (4)<br>$ 368,246 (estimated yet to be disbursed (5) |
| Essential Service Grants | 40 | $1,497,719 (amount paid to 11/94)<br>$1,316,500 (estimated yet to be disbursed) |
| Insurance Premium Co-payments | 5 | $ 11,634 (amount paid to 11/94)<br>$ 8,210 (estimated yet to be disbursed) |

(1) Does not include $3,000 disbursed from general fund revenue.

(2) Five loans fully paid by borrowers totaling $215,719 in principal no longer under obligation of guarantee.

(3) Because we have not encountered any defaults to date and because lenders report payments are being made on time, we are holding a reserve against one potential default from lottery funds.

(4) Does not include $64,245 disbursed from general fund revenue.

(5) Future disbursements estimated to occur as follows:

| | |
|---|---|
| 1993-95 | $ 95,912 |
| 1995-97 | 145,041 |
| 1997-99 | 89,918 |
| 1999-01 | 35,033 |
| 2001-03 | 2,342 |
| Total | $368,246 |

# 1995 LEGISLATIVE REPORT:

## I. STATUS OF FINANCIAL ASSISTANCE PROGRAM UNDER HB 2776 AND SB 81

See Discussion under 1993 LEGISLATIVE RESPONSE (Page 8)

## II. ANY SUBSTANTIVE CHANGES IN THE FEDERAL UST PROGRAM

During this biennium, EPA adopted a self-insurance test for local government, and established February 18, 1994 as the compliance deadline for local governments to demonstrate compliance with financial responsibility.

## III. OREGON'S RESPONSE TO SUBSTANTIVE FEDERAL CHANGES

To date, Oregon has not adopted financial responsibility rules for owners/operators with 1 to 99 tanks or for local government. The Environmental Quality Commission will consider adoption of equivalent financial responsibility rules in the next 12 to 18 months.

## IV. FINANCIAL CAPACITY OF THE UST COMPLIANCE AND CORRECTIVE ACTION FUND TO MEET ITS OBLIGATIONS AND DEBT SERVICE

The Department is managing the lottery sub-account to insure 1993-95 debt service on outstanding loans can be paid, all approved essential service grants are fully funded at time of approval and administrative costs can be covered. In addition, DEQ is reserving $32,000 to cover a potential loan default. To date, there have been no defaults associated with the 35 loan guarantees and the loans are being paid off on or ahead of schedule. Five loans have been paid in full to date.

With the current fund balance of $1,688,377 it's DEQ's opinion the Lottery Sub-account can meet all of 1993-95 obligations, including debt service on outstanding loans.

## ISSUES FOR LEGISLATIVE CONSIDERATION

1. The Governor has recommended $2.0 million of lottery funds to continue the UST Financial Assistance program for small, rural businesses and meeting the 1995-97 debt service on outstanding loans. Appendix 8 is a map showing retail motor fuel sales facilities that appear to meet Tier 4 criteria and still need to comply with Federal/State UST requirements. Appendix 9 is a list of those facilities the Department believes could qualify for an essential service grant.

2. For the 48 interest rate subsidies approved between September 1989 and June 1993 the following estimated debt service remains for bienniums beyond 95-97:

| Biennium | Estimated Maximum Debt Service |
|---|---|
| 97-99 | $ 89,918 |
| 99-01 | 35,033 |
| 01-03 | 2,342 |
| Total | $127,293 |

Currently funds have not been identified to pay this debt service beyond the 95-97 Biennium.

3. House Bill 2776 extended an enforcement deferral until December 31, 1996 for a facility submitting a letter of intent by April 1, 1994. Some 1,556 retail motor fuel facilities submitted Letters of Intent in anticipation of a favorable vote on Ballot Measure 2. Ballot Measure 2 would have amended Article IX Section 3a of the Oregon Constitution to allow a tax on motor fuel for environmental purposes, including an UST Financial Assistance Program. With the defeat of Ballot Measure 2, few options exist for funding a financial assistance program for all 1,556 facilities. At least 90 percent of these facilities still have further upgrading and/or petroleum contamination work to do.

   If funds are not available for a financial assistance program, should the enforcement deferral be sunsetted earlier than December 31, 1996? With the enforcement deferral in place, these businesses have a economic advantage over their competition because they do not have to incur the cost of annual tank tightness test nor deal with immediate cleanup of petroleum contaminated soil or groundwater unless an imminent hazard is found to exist. Further, by not performing annual tank tightness tests, early detection of releases does not occur. Not only is environmental protection compromised, but the ultimate cleanup is likely to be more expensive because the contamination has spread further into the environment.

APPENDIX 1

DEQ FINANCIAL ASSISTANCE PROGRAM - SITE ASSESSMENT GRANT PROJECTS

| | FACILITY NAME | ADDRESS | CITY | ZIP | COUNTY | FACILITY NO. |
|---|---|---|---|---|---|---|
| 1 | City Limits Country Store | 5800 NW Hwy 99 West | Corvallis, OR | 97330 | Benton | 2107 |
| 2 | M & M Rentals | 1334 NW 9th St. | Corvallis, OR | 97330 | Benton | 1595 |
| 3 | Corvallis Exxon | 480 SW 4th | Corvallis, OR | 97330 | Benton | 8177 |
| 4 | Ridenour Oil Company | 1841 Main St. | Philomath, OR | 97370 | Benton | 5264 |
| 5 | Del's Chevron | 1215 S. Holladay Dr. | Seaside, OR | 97138 | Clatsop | 1013 |
| 6 | Wild Willie's Astoria Carwash | 75 West Marine Dr. | Astoria, OR | 97103 | Clatsop | 7684 |
| 7 | Rainier Texaco | 75754 Rock Crest St. | Rainier, OR | 97048 | Columbia | 6319 |
| 8 | Rainier BP | 75719 Rock Crest St. | Rainier, OR | 97048 | Columbia | 6109 |
| 9 | Pride of Oregon | 585 Newmark Street | Coos Bay, OR | 97420 | Coos | 6135 |
| 10 | Franko 9 | 646 Sixth St. | Coos Bay, OR | 97420 | Coos | 6023 |
| 11 | Crook County Airport | Prineville Airport | Prineville, OR | 97754 | Crook | 228 |
| 12 | Third Street Shell | 550 W. Third | Prineville, OR | 97754 | Crook | 6800 |
| 13 | Overall Petroleum | 480 Lamonta Rd. | Prineville, OR | 97754 | Crook | 8930 |
| 14 | Pilot Butte Exxon | 764 NE Greenwood | Bend, OR | 97701 | Deschutes | 196 |
| 15 | Speede Mart | 61396 South Hwy 97 | Bend, OR | 97702 | Deschutes | 9008 |
| 16 | Deschutes County Public Works | 61150 SE 27th St. | Bend, OR | 97702 | Deschutes | 4959 |
| 17 | Bend Oil Co. | 612 SE Third | Bend, OR | 97701 | Deschutes | 1829 |
| 18 | Plum Fierce | 612 S. Fifth St. | Redmond, OR | 97756 | Deschutes | 6810 |
| 19 | Central OR Irrigation Dist. | 847 S. 6th St. | Redmond, OR | 97756 | Deschutes | 6696 |
| 20 | Riverwoods Country Store | 19745 Baker Rd. | Bend, OR | 97702 | Deschutes | 3637 |
| 21 | Byrams Chevron | 516 SW 5th | Redmond, OR | 97756 | Deschutes | 2467 |
| 22 | Black Butte Ranch | P O Box 8000 | Black Butte, OR | 97759 | Deschutes | 4253 |
| 23 | Sisters General Store | 530 Cascade St. | Sisters, OR | 97759 | Deschutes | 5332 |
| 24 | Franko 40 | 411 Frontage Rd. | Sutherlin, OR | 97479 | Douglas | 6118 |
| 25 | Panoco 17 | 345 W. Harvard | Roseburg, OR | 97470 | Douglas | 6533 |
| 26 | McCullum's Texaco | 912 SE Stephens St. | Roseburg, OR | 97470 | Douglas | 147 |
| 27 | Mainstop Mini Market | 100 E Main St. | John Day, OR | 97845 | Grant | 7184 |
| 28 | Riley Store | Hwy 20 | Riley, OR | 97758 | Harney | 6933 |
| 29 | Hood River Supply | 1995 12th St. | Hood River, OR | 97031 | Hood River | 3522 |
| 30 | Medford Fuel | 936 South Central | Medford, OR | 97501 | Jackson | 1713 |
| 31 | Southern Pacific Transp. Co. | 147 N. Front | Medford, OR | 97501 | Jackson | 4695 |
| 32 | Central Point BP | 1065 E. Pine St. | Central Point, OR | 97502 | Jackson | 6735 |
| 33 | Dave's Mobil | 1100 Barnett | Medford, OR | 97504 | Jackson | 10083 |
| 34 | Eagle Point Chevron | 107 Main St. | Eagle Point, OR | 97524 | Jackson | 8831 |
| 35 | Colvin Oil Co. | 95 Pine St. | Rogue River, OR | 97537 | Jackson | 6633 |
| 36 | Panoco, Inc. | 348 N. Riverside | Medford, OR | 97501 | Jackson | 6523 |
| 37 | Stewart Avenue Texaco | 705 Stewart Ave. | Medford, OR | 97501 | Jackson | 5241 |
| 38 | Northrop Gas | 8380 Hwy 62 | White City, OR | 97503 | Jackson | 2556 |
| 39 | Southern Pacific Transp. Co. | 7501 Old Hwy 99 South | Jackson, OR | 97520 | Jackson | 10367 |
| 40 | Colvin Oil Co. | 1325 Court St. | Medford, OR | 97501 | Jackson | 8260 |
| 41 | Colvin Oil Co. | 800 NE "E" St. | Grants Pass, OR | 97526 | Jackson | 7328 |
| 42 | Panoco, Inc. | 530 Crater Lake Ave. | Medford, OR | 97501 | Jackson | 6515 |
| 43 | Arco 3 | 1044 NE 6th | Grants Pass, OR | 97526 | Jackson | 6597 |
| 44 | Jefferson County | 715 SE Grizzly Rd. | Madras, OR | 97741 | Jefferson | 3642 |
| 45 | Fairgrounds Texaco | 780 Union Ave. | Grants Pass, OR | 97526 | Josephine | 9187 |
| 46 | C & D Market | 109 Galice Rd. | Merlin, OR | 97532 | Josephine | 8842 |
| 47 | Cave Junction Texaco | 112 Redwood Hwy | Cave Junction, OR | 97523 | Josephine | 1718 |
| 48 | Astro 219 | 324 NE "E" St. | Grants Pass, OR | 97526 | Josephine | 6267 |
| 49 | Southern Pacific Transp. Co. | Milepost 503.3 | Chemult, OR | 97731 | Klamath | 4682 |
| 50 | Southern Pacific Transp. Co. | 1585 Oak St. | Klamath Falls, OR | 97601 | Klamath | 4681 |
| 51 | Franko 44 | E. Front St. | Merrill, OR | 97633 | Klamath | 6120 |
| 52 | Clough Oil Cardlock | Hwy 97 & 422 South | Chiloquin, OR | 97624 | Klamath | 1174 |
| 53 | Bonanza Minimart | Hwy 70 & 2nd St. | Bonanza, OR | 97623 | Klamath | 9909 |
| 54 | Franko 15 | 87614 McVay Hwy | Eugene, OR | 97405 | Lane | 6115 |
| 55 | Franko 10 | 1701 West 11th Ave. | Eugene, OR | 97402 | Lane | 6105 |
| 56 | Franko 11 | 376 Hwy 99 North | Eugene, OR | 97402 | Lane | 6104 |
| 57 | Franko 48 | 2795 Willamette St. | Eugene, OR | 97405 | Lane | 6055 |
| 58 | Springfield Arco | 3650 East Main | Springfield, OR | 97477 | Lane | 1860 |
| 59 | Florence Arco | 514 Hwy 101 South | Florence, OR | 97439 | Lane | 6136 |
| 60 | Creswell BP | 66 N. Mill | Creswell, OR | 97426 | Lane | 2135 |

APPENDIX 1, continued

SITE ASSESSMENT GRANT PROJECTS, Continued.

| | FACILITY NAME | ADDRESS | CITY | ZIP | COUNTY | FACILITY NO. |
|---|---|---|---|---|---|---|
| 61 | Panoco, Inc. | 3484 Gateway | Springfield, OR | 97477 | Lane | 6542 |
| 62 | KG One Stop Market | 85039 Hwy 101 South | Florence, OR | 97439 | Lane | 4089 |
| 63 | Santa Clara Arco | 2585 River Rd. | Eugene, OR | 97404 | Lane | 5996 |
| 64 | City Center Car Wash | 544 West 7th | Eugene, OR | 97401 | Lane | 3092 |
| 65 | Don's Texaco | 32959 Van Duyn Rd. | Eugene, OR | 97401 | Lane | 9208 |
| 66 | Greenhill Arco | 6085 W. 11th Ave. | Eugene, OR | 97402 | Lane | 318 |
| 67 | Merritt Truax, Inc. | 1395 Hwy 99 North | Eugene, OR | 97402 | Lane | 6444 |
| 68 | Panoco 3 | 485 Hwy 99 North | Eugene, OR | 97402 | Lane | 4365 |
| 69 | Southern Pacific Transp. Co. | 48134 Commercial | Oakridge, OR | 97463 | Lane | 4690 |
| 70 | Southern Pacific Transp. Co. | 341 Bethel Dr. | Eugene, OR | 97402 | Lane | 4693 |
| 71 | Pleasant Hill Texaco | 35310 Hwy 58 | Springfield, OR | 97477 | Lane | 6437 |
| 72 | Ron's Mobil Car Wash | 1517 N Coast Hwy | Newport, OR | 97365 | Lincoln | 9582 |
| 73 | Lincoln City Pride | 906 Hwy 101 South | Lincoln City, OR | 97367 | Lincoln | 315 |
| 74 | Steen's BP | 143 SW Coast Hwy | Newport, OR | 97365 | Lincoln | 1023 |
| 74 | Carver's BP | 254 West Hwy 20 | Toledo, OR | 97391 | Lincoln | 5853 |
| 74 | M & M Mart 1 | 501 Pacific Blvd South | Albany, OR | 97321 | Linn | 3448 |
| 77 | Midstate Petroleum Cardlock | 211 2nd St. | Halsey, OR | 97348 | Linn | 6960 |
| 78 | Midstate Petroleum Cardlock | 235 S. Old Salem Hwy | Albany, OR | 97321 | Linn | 8504 |
| 79 | M & M #6 | 1306 Main St. | Sweet Home, OR | 97386 | Linn | 9196 |
| 80 | Ontario Municipal Airport | 581 SW 33rd | Ontario, OR | 97914 | Malheur | 5870 |
| 81 | Pride of Oregon Station | 2795 Market St., NE | Salem, OR | 97301 | Marion | 6108 |
| 82 | Merritt Truax, Inc. | 3510 River Rd.,NE | Salem, OR | 97303 | Marion | 3619 |
| 83 | Fast Stop Gas | 104 W. Starr | Sublimity, OR | 97385 | Marion | 9754 |
| 84 | Truax Tire Stores | 686 N 2nd St. | Jefferson, OR | 97352 | Marion | 3611 |
| 85 | Southern Pacific Transp. Co. | 5424 McLoughlin Blvd. | Portland, OR | 97202 | Multnomah | 4686 |
| 86 | Panoco, Inc. | 1909 W. Burnside | Portland, OR | 97209 | Multnomah | 7546 |
| 87 | Astro 203 | 420 SE 122nd | Portland, OR | 97216 | Multnomah | 6208 |
| 88 | Barbur Blvd. Rentals | 8205 SW Barbur Blvd. | Portland, OR | 97219 | Multnomah | 9339 |
| 89 | J & H BP Service | 6215 NW St. Helens Rd. | Portland, OR | 97210 | Multnomah | 3494 |
| 90 | Unocal 5958 | 8510 SW Terwilliger | Portland, OR | 97219 | Multnomah | 1105 |
| 91 | Astro 206 | 1111 NW 21st | Portland, OR | 97228 | Multnomah | 6216 |
| 92 | Priestley Oil & Chemical | 2429 N Borthwick Ave. | Portland, OR | 97227 | Multnomah | 5724 |
| 93 | Astro 215 | 11010 SE McLoughlin | Milwaukie, OR | 97222 | Multnomah | 6277 |
| 94 | Franko 58 | 11130 NW St. Helens | Portland, OR | 97231 | Multnomah | 6000 |
| 95 | Wilhelm Trucking | 3250 NW St. Helens Rd. | Portland, OR | 97210 | Multnomah | 3493 |
| 96 | Franko 53 | 10425 SE 42nd | Milwaukie, OR | 97222 | Multnomah | 6008 |
| 97 | Skyline's Germantown Store | 8250 NW Skyline | Portland, OR | 97229 | Multnomah | 10169 |
| 98 | Richard Oats Station | 595 E. Main | Monmouth, OR | 97361 | Polk | 144 |
| 99 | Joe's Market | 373 N. Main | Falls City, OR | 97344 | Polk | 2611 |
| 100 | Umatilla Marina | 3rd & Quincy Sts. | Umatilla, OR | 97882 | Umatilla | 164 |
| 101 | Franko 21 | 1235 N. First | Hermiston, OR | 97838 | Umatilla | 6132 |
| 102 | Emery's Texaco | 363 N Main St. | Union, OR | 97883 | Union | 5198 |
| 103 | The Dalles Yacht Club | Boat Basin | The Dalles, OR | 97058 | Wasco | 9081 |
| 104 | Trapp's Veltex Station | 2702 East 2nd | The Dalles, OR | 97058 | Wasco | 1499 |
| 105 | Tigard BP | 13970 SW Pacific Hwy | Tigard, OR | 97223 | Washington | 1918 |
| 106 | Weyerhauser | 5505 SW Western Ave. | Beaverton, OR | 97075 | Washington | 3164 |
| 107 | Farmington Texaco | 13660 SW Farmington Rd. | Beaverton, OR | 97005 | Washington | 4295 |
| 108 | Fort Hill Texaco | 25715 Hwy 22 & 18 | Willamina, OR | 97396 | Yamhill | 5663 |
| 109 | Reggie's Shell | 150 N. Yamhill | Carlton, OR | 97111 | Yamhill | 1605 |

APPENDIX 2

DEQ FINANCIAL ASSISTANCE PROGRAM - LOAN GUARANTEE AND INTEREST RATE SUBSIDY PROJECTS

| | FACILITY NAME | ADDRESS | CITY | ZIP | COUNTY | FACILITY NO. |
|---|---|---|---|---|---|---|
| 1 | Baker Valley Chevron | 1702 Main St. | Baker City, OR | 97814 | Baker | 186 |
| 2 | Don's Unocal 76 | 496 Campbell St. | Baker City, OR | 97814 | Baker | 1146 |
| 3 | Dickey Prairie Store | 16560 S. Ramsby Rd. | Molalla, OR | 97038 | Clackamas | 9249 |
| 4 | CJ Alpine Service | 93770 E. Hwy. 26 | Government Camp, O | 97028 | Clackamas | 2712 |
| 5 | Clatskanie Minimart | 260 Columbia River Hwy. | Clatskanie, OR | 97016 | Columbia | 2832 |
| 6 | Davey Jones Locker | 5092 Boat Basin Dr. | Charleston, OR | 97420 | Coos | 9324 |
| 7 | Howard's Shell Service | 1025 S. Ellenburg | Gold Beach, OR | 97444 | Curry | 257 |
| 8 | Sisters Oil Company | Fir and Cascade Sts. | Sisters, OR | 97759 | Deschutes | 808 |
| 9 | Byram's Chevron | 516 SW 5th St. | Redmond, OR | 97756 | Deschutes | 2467 |
| 10 | Dale's Chevron | 203 SW 4th | Canyonville, OR | 97417 | Douglas | 1051 |
| 11 | Idleyld Trading Post | 23873 N. Umpqua Hwy. | Idleyld Park, OR | 97447 | Douglas | 1234 |
| 12 | Quines Creek Texaco | Exit 86 - I-5 | Glendale, OR | 97442 | Douglas | 570 |
| 13 | Sam's Service | 596 N. Broadway | Burns, OR | 97720 | Harney | 10049 |
| 14 | Cascade Locks Shell | 425 Wa-Na-Pa | Hood River, OR | 97031 | Hood River | 8171 |
| 15 | Clem's Country Store | 3398 Odell Hwy. | Odell, OR | 97044 | Hood River | 241 |
| 16 | Stewart Avenue Texaco | 705 Stewart Ave. | Medford, OR | 97501 | Jackson | 5241 |
| 17 | Medford Fuel | 936 S. Central | Medford, OR | 97501 | Jackson | 1713 |
| 18 | Downtown Texaco | 301 N. Central Ave. | Medford, OR | 97501 | Jackson | 6295 |
| 19 | Guthmiller's Exxon | 1765 Siskiyou Blvd. | Ashland, OR | 97520 | Jackson | 2435 |
| 20 | Jenkin's Market | 2035 SW Bridge St. | Grants Pass, OR | 97526 | Josephine | 8603 |
| 21 | Ft. Rock General Store | Roads 510 - 512 | Ft. Rock, OR | 97735 | Lake | 6960 |
| 22 | Creswell BP | 66 N. Mill St. | Creswell, OR | 97426 | Lane | 2135 |
| 23 | Gardner's Leaburg Store | 42840 McKenzie Hwy. | Leaburg, OR | 97489 | Lane | 9447 |
| 24 | KG One Stop Market | 85039 Hwy. 101, South | Florence, OR | 97439 | Lane | 4089 |
| 25 | Kelly's Market | 13298 Hwy 36 | Swisshome, OR | 97480 | Lane | 285 |
| 26 | Ron's BP | 1517 N. Coast Hwy. | Newport, OR | 97365 | Lincoln | 9582 |
| 27 | Fast Stop Gas & Grocery | 104 W. Starr | Sublimity, OR | 97385 | Marion | 9754 |
| 28 | Powell Blvd. BP | 5727 SE Powell Blvd. | Portland, OR | 97206 | Multnomah | 1917 |
| 29 | 82nd Ave. BP | 9 SE 82nd Ave. | Portland, OR | 97215 | Multnomah | 1921 |
| 30 | Foster Rd. BP | 9138 SE Foster Rd. | Portland, OR | 97266 | Multnomah | 1919 |
| 31 | Joe's Market | 373 N. Main | Falls City, OR | 97344 | Polk | 2611 |
| 32 | Emery's Texaco | 363 N. Main St. | Union, OR | 97883 | Union | 5198 |
| 33 | Minimart of Vernonia | 490 Bridge St. | Vernonia, OR | 97064 | Washington | 5648 |
| 34 | Staley's Junction | Rt. 1, Box 285A | Banks, OR | 97106 | Washington | 1908 |
| 35 | Raleigh Hills BP | 7200 SW Beav-Hills Hwy. | Portland, OR | 97225 | Washington | 10537 |

APPENDIX 3

DEQ FINANCIAL ASSISTANCE PROGRAM - INTEREST RATE SUBSIDY ONLY PROJECTS

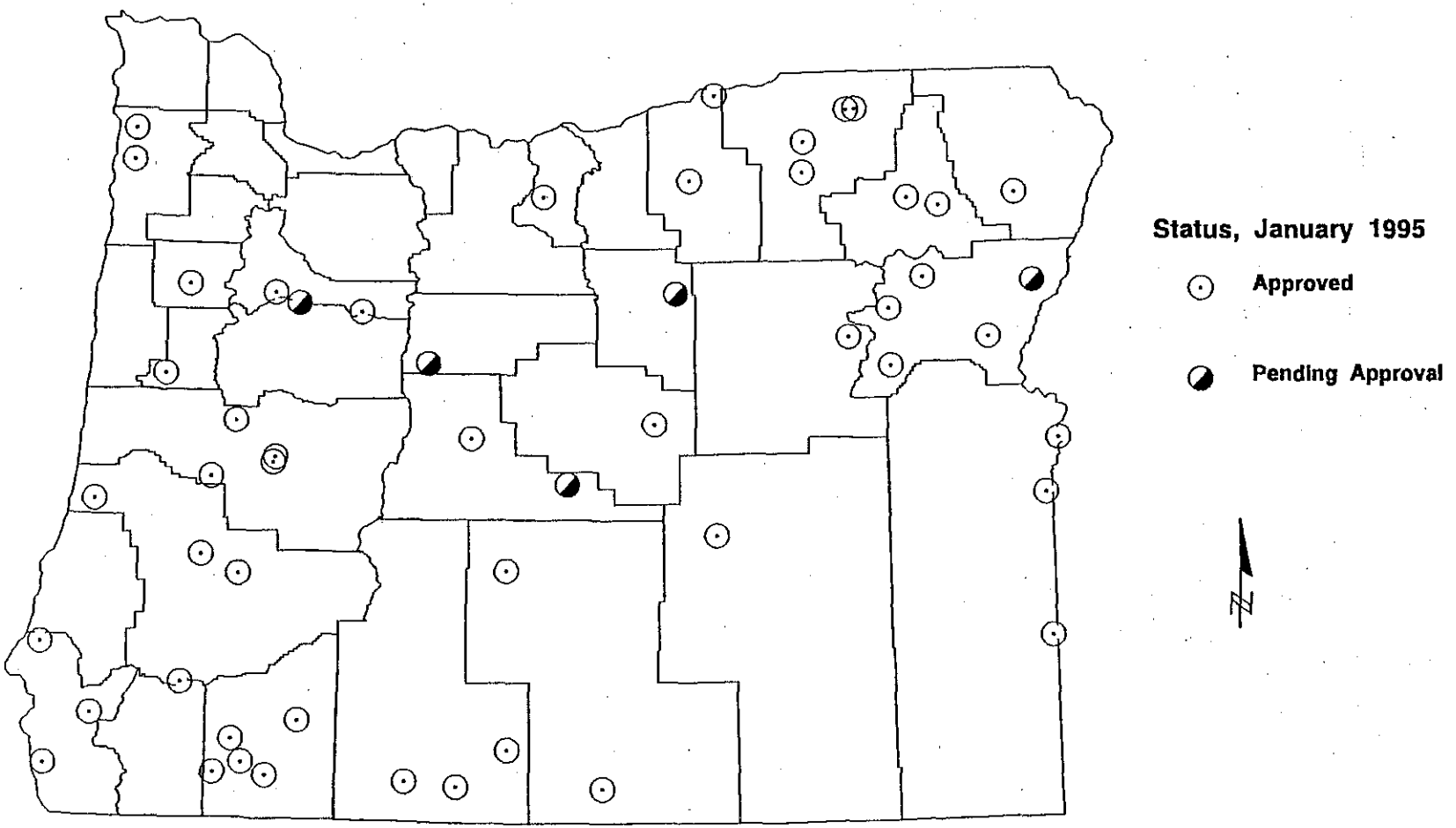
| | FACILITY NAME | ADDRESS | CITY | ZIP | COUNTY | FACILITY NO. |
|---|---|---|---|---|---|---|
| 1 | Third Street Shell | 550 West Third St. | Prineville, OR | 97754 | Crook | 6800 |
| 2 | Plum Fierce Shell | 612 S. Fifth St. | Redmond, OR | 97756 | Deschutes | 6810 |
| 3 | Red Carpet Car Wash | 1144 NE 3rd | Bend, OR | 97701 | Deschutes | 642 |
| 4 | Riverwoods Country Store | 19745 Baker Rd. | Bend, OR | 97702 | Deschutes | 3637 |
| 5 | E. D. Dirksen BP | 1847 Diamond Lake Blvd. | Roseburg, OR | 97470 | Douglas | 3465 |
| 6 | Pleasant Hill Texaco | 35310 Hwy 58 | Pleasant Hill, OR | 97455 | Lane | 6437 |
| 7 | Don's Texaco | 32959 Van Duyn Rd. | Eugene, OR | 97401 | Lane | 9208 |
| 8 | Hwy 20 Cardlock | 4195 Santiam Hwy. | Albany, OR | 97321 | Linn | 9778 |
| 9 | Mid-State Petroleum Cardlock | NW 2nd and Hwy 99E | Halsey, OR | 97348 | Linn | 6960 |
| 10 | Barbur Blvd. Rentals | 8205 SW Barbur Blvd. | Portland, OR | 97219 | Multnomah | 9339 |
| 11 | Priestley Oil & Chemical | 2429 N. Borthwick | Portland, OR | 97227 | Multnomah | 5724 |
| 12 | Trapp's Eastside Veltex | 2702 East 2nd | The Dalles, OR | 97058 | Wasco | 1499 |
| 13 | Fort Hill Texaco | 25715 Hwy 22 & 18 | Willamina, OR | 97396 | Yamhill | 5663 |

APPENDIX 4

DEQ FINANCIAL ASSISTANCE PROGRAM - ESSENTIAL SERVICE GRANT & INSURANCE PREMIUM COPAYMENT PROJECTS

| | FACILITY NAME | ADDRESS | CITY | ZIP | COUNTY | FACILITY NO. |
|---|---|---|---|---|---|---|
| 1 | Ft. Rock General Store | Roads 510 - 512 | Ft. Rock, OR | 97735 | Lake | 6960 |
| 2 | Fast Stop Gas & Grocery | 104 W. Starr | Sublimity, OR | 97385 | Marion | 9754 |
| 3 | Joe's Market | 373 N. Main | Falls City, OR | 97344 | Polk | 2611 |
| 4 | Suzi's Handy Mart | 211 N. Water St. | Weston, OR | 97886 | Umatilla | 673 |
| 5 | C & M Country Store | 10102 N. McAlister Rd. | Island City, OR | 97850 | Union | 4518 |

# Department of Environmental Quality
# Underground Storage Tanks
# Financial Assistance Program



APPENDIX 6

DEQ FINANCIAL ASSISTANCE PROGRAM - ESSENTIAL SERVICE GRANT PROJECTS

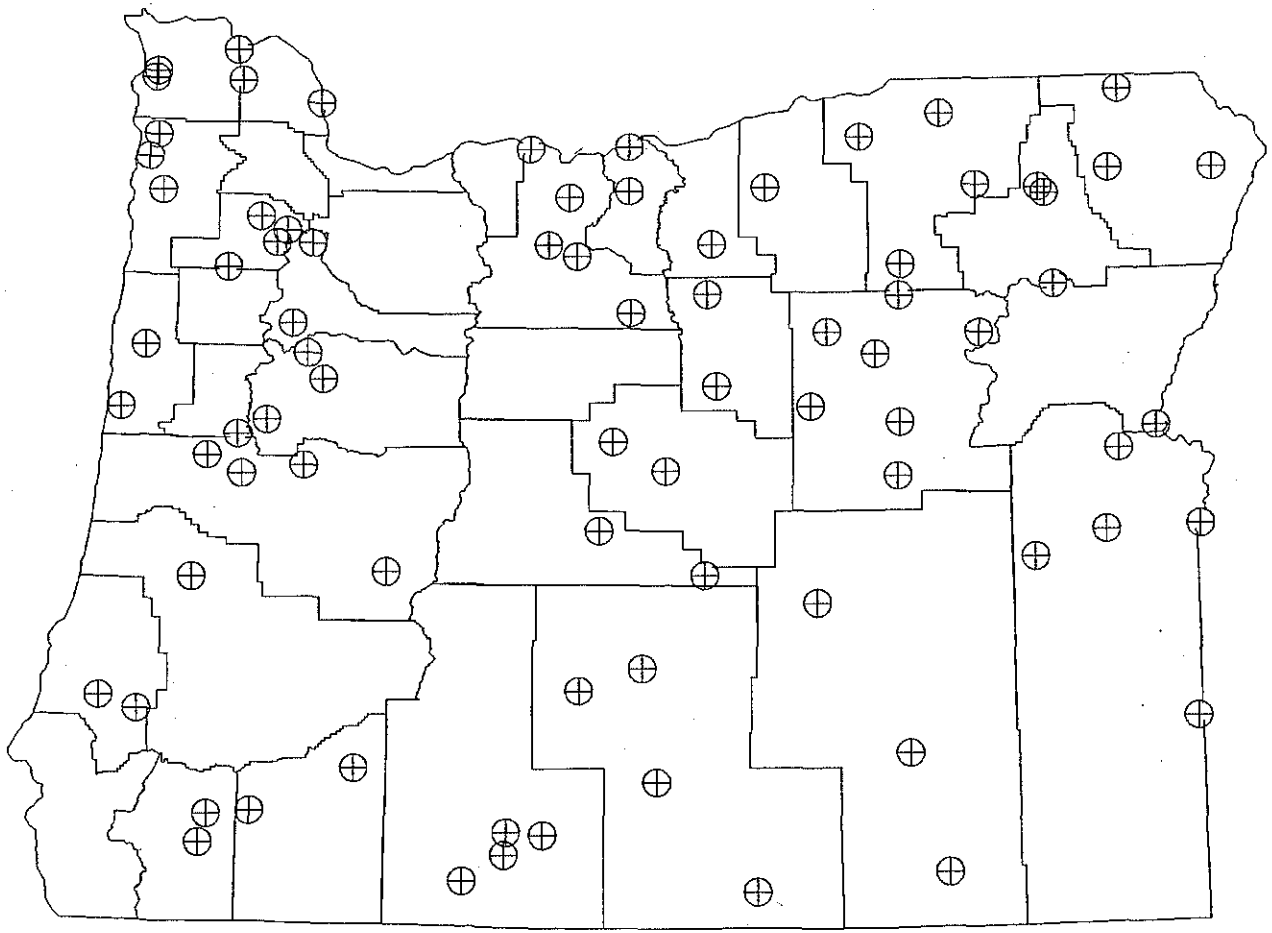
| | FACILITY NAME | ADDRESS | CITY | ZIP | COUNTY | FACILITY NO. |
|---|---|---|---|---|---|---|
| 1 | Scotty's Hells Canyon | HCR 59, Box 61 | Halfway, OR | 97834 | Baker | 336 |
| 2 | Stage Stop Service Station | 120 Granite Hwy | Sumpter, OR | 97877 | Baker | 177 |
| 3 | Stratton's Store | 107 Main St. | Unity, OR | 97884 | Baker | 6447 |
| 4 | Cole's American Station | 1110 Front St. | Haines, OR | 97833 | Baker | 10180 |
| 5 | L & L Service | Vandacar Road | Durkee, OR | 97905 | Baker | 4654 |
| 6 | Alsea Garage | 215 E. Main St. | Alsea, OR | 97324 | Benton | 1713 |
| 7 | Paulina Store | 100 Main St. | Paulina, OR | 97751 | Crook | 5272 |
| 8 | Cougar Lane Lodge | 04219 Agness Rd. | Agness, OR | 97406 | Curry | 5869 |
| 9 | Van Wormer Service | 94244 Kerber St. | Langlois, OR | 97450 | Curry | 8889 |
| 10 | Pistol River Store | 24670 Pistol River Loop | Pistol River, OR | 97444 | Curry | 7960 |
| 11 | Brothers Stage Stop | 34100 Hwy 20 East | Brothers, OR | 97712 | Deschutes | 3004 |
| 12 | Alfalfa Store | 26160 Alfalfa Rd. | Bend. OR | 97701 | Deschutes | 730 |
| 13 | Lemolo Lake Resort | HC 60 Box 79B | Idleyld Park, OR | 97447 | Douglas | 293 |
| 14 | Smith River Store | 16334 Lower Smith River | Reedsport, OR | 97467 | Douglas | 8468 |
| 15 | Loon Lake Lodge | 9011 Loon Lake Rd. | Reedsport, OR | 97467 | Douglas | 2833 |
| 16 | Glendale Gas | Sether Ave. | Glendale, OR | 97442 | Douglas | 1234 |
| 17 | Holland's Auto | 236 NE 1st. | Oakland, OR | 97462 | Douglas | 653 |
| 18 | Austin House | Hwy 26 Junction Hwy 7 | Bates, OR | 97817 | Grant | 7136 |
| 19 | Riley Store | Hwy 20 & Hwy 395, S. | Riley, OR | 97758 | Harney | 6933 |
| 20 | Applegate Store | 15095 Hwy 238 | Applegate, OR | 97530 | Jackson | 9209 |
| 21 | Gold Hill Texaco | 404 2nd Ave. | Gold Hill, OR | 97525 | Jackson | 8856 |
| 22 | Talent Gas-4-Less | 21 Talent Ave. | Talent, OR | 97540 | Jackson | 4234 |
| 23 | Jacksonville Texaco | 945 N. 5th St. | Jacksonville, OR | 97530 | Jackson | 5085 |
| 24 | Butte Falls Gas | 326 Broad St. | Butte Falls, OR | 97522 | Jackson | 1334 |
| 25 | Camp Sherman Store | Center of Main Rd. | Camp Sherman, OR | 97730 | Jefferson | 9058 |
| 26 | Bonanza Minimart | Hwy 70 & 2nd St. | Bonanza, OR | 97623 | Klamath | 9909 |
| 27 | Odessa Mercantile | 28200 Hwy 140 West | Klamath Falls, OR | 97601 | Klamath | 757 |
| 28 | Lawrence Chevron | Hwy 140 | Bly, OR | 97622 | Klamath | 2021 |
| 29 | Ft. Rock General Store | Roads 510 - 512 | Ft. Rock, OR | 97735 | Lake | 9112 |
| 30 | Westside Store | Hc 60 Box 2660 | Lakeview, OR | 97630 | Lake | 674 |
| 31 | Lowell Union Service | 113 E. Main St. | Lowell, OR | 97452 | Lane | 279 |
| 32 | Lorane Family Store | 80301 Territorial | Lorane, OR | 97451 | Lane | 9667 |
| 33 | Eugene Truck Haven | 32910 Van Duyn Rd. | Coburg, OR | 97401 | Lane | 1601 |
| 34 | Union Station | 10th & Main | Lyons, OR | 97358 | Linn | 6394 |
| 35 | Adrian Mercantile | 509 First St. | Adrian, OR | 97901 | Malheur | 607 |
| 36 | Mack's Grocery | 5586 Hwy Spur 95 | Ontario, OR | 97914 | Malheur | 211 |
| 37 | Stateline Grocery | 1330 Hwy 201 | Adrian, OR | 97901 | Malheur | 609 |
| 38 | Burns Junction | 4740 US Hwy 95 West | Jordan Valley, OR | 97910 | Malheur | 1611 |
| 39 | Route 22 Gas | 104 Breitenbush Rd. | Detroit, OR | 97342 | Marion | 9203 |
| 40 | Fast Stop Gas & Grocery | 104 W. Starr | Sublimity, OR | 97385 | Marion | 9754 |
| 41 | Lexington Service | 110 W. Main St. | Lexington, OR | 97839 | Morrow | 9723 |
| 42 | Brown's Auto & Truck Stop | 300 SE Hwy 730 | Irrigon, OR | 97844 | Morrow | 1331 |
| 43 | Joe's Market | 373 N. Main | Falls City, OR | 97344 | Polk | 2611 |
| 44 | Grass Valley Station | Hwy 97 & Mill | Grass Valley, OR | 97029 | Sherman | 9816 |
| 45 | Wheeler Marina | 278 Marine Dr. | Wheeler, OR | 97147 | Tillamook | 9893 |
| 46 | Bay City Deli Mart | 8335 Hwy 101 North | Bay City, OR | 97107 | Tillamook | 8940 |
| 47 | Fred's Market | 5th & Main | Athena, OR | 97813 | Umatilla | 236 |
| 48 | Suzi's Handy Mart | 211 N. Water St. | Weston, OR | 97886 | Umatilla | 673 |
| 49 | Pilot Rock Super Minimart | Main & Hwy 395 | Pilot Rock, OR | 97868 | Umatilla | 8906 |
| 50 | C & M Country Store | 10102 N. McAlister Rd. | Island City, OR | 97850 | Union | 4518 |
| 51 | Dollar's Corner | 808 Main St. | Cove, OR | 97824 | Union | 618 |
| 52 | Paul's Chevron | Main & Wallowa Sts. | Joseph, OR | 97846 | Wallowa | 2985 |
| 53 | Lone Elk Market | 800 Willow St. | Spray, OR | 97874 | Wheeler | 1591 |

APPENDIX 7

UST FINANCIAL ASSISTANCE PROGRAM
JANUARY, 1995

| | | APPLICANT FACILITY NO. & NAME | LOCATION / REGION | STATUS |
|---|---|---|---|---|
| APPROVED PROJECTS WITH FUNDS DISBURSED/ENCUMBERED | | | | |
| 1 | 2611 | Joe's Market (UST) | Falls City, WR-S | Project Completed - Grant paid in full |
| 2 | 673 | Suzi's Handy Mart (UST) | Weston, ER-P | Project Completed - Grant paid in full |
| 3 | 9909 | Bonanza Minimart (UST) | Bonanza, ER-B | Project Completed - Grant paid in full |
| 4 | 9754 | Fast Stop Gas & Grocery(UST) | Sublimity, WR-S | Project Completed - Grant paid in full |
| 5 | 4234 | Talent Gas-4-Less (UST) | Talent, WR-M | Project Completed - Grant paid in full |
| 6 | 9723 | Lexington Service (UST) | Lexington, ER-P | Project Completed - Grant paid in full |
| 7 | 211 | Mack's Grocery (AST) | Ontario, ER-P | Project Completed - Grant paid in full |
| 8 | 1611 | Burns Junction (AST) | Jordan Valley, ER-P | Project Completed - Grant paid in full |
| 9 | 7960 | Pistol River Store (UST) | Pistol River, WR-M | Project Completed - Grant paid in full |
| 10 | 730 | Alfalfa Store (AST) | Bend, ER-B | Project Completed - Need doc for final pmt |
| 11 | 272 | Glendale Gas (UST) | Glendale, WR-M | Project Completed - Grant paid in full |
| 12 | 9112 | Ft. Rock General Store (UST) | Ft. Rock, ER-B | Project Completed ex CU - Final pmt not yet paid |
| 13 | 5085 | Jacksonville Texaco (UST) | Jacksonville, WR-M | Project Completed ex CU - Grant paid in full |
| 14 | 4518 | C & M Country Store (UST) | Island City, ER-P | Project Completed ex CU - Final pmt not yet paid |
| 15 | 10180 | Cole's American Station(UST) | Haines, ER-P | Project Completed ex CU - Grant paid in full |
| 16 | 618 | Dollar's Corner (AST) | Cove, ER-P | Project Completed ex CU - Need doc for final payment |
| 17 | 1469 | Alsea Garage (UST) | Alsea, WR-S | Project Completed ex CU - Grant paid in full |
| 18 | 757 | Odessa Mercantile (AST) | Klamath Falls, ER-B | Project Completed ex CU - Grant paid in full |
| 19 | 1331 | Brown's Auto & Truck (UST) | Irrigon, ER-P | Project Completed ex CU - Grant paid in full |
| 20 | 9667 | Lorane Family Store (AST) | Lorane, WR-E | Project Completed ex CU - Final pmt not yet paid |
| 21 | 4654 | L & L Service (AST) | Durkee, ER-P | Project Underway |
| 22 | 1601 | Eugene Truck Haven (UST) | Coburg, WR-S | Project Completed ex CU - Final pmt not yet paid |
| 23 | 9816 | Grass Valley Station (UST) | Grass Valley, ER-B | Project Underway |
| 24 | 2833 | Loon Lake Lodge (AST) | Reedsport, WR-M | Project Underway |
| 25 | 5869 | Cougar Lane Lodge (UST) | Agness, WR-M | Project Completed ex CU - Final pmt not yet paid |
| 26 | 6447 | Stratton's Store (UST) | Unity, ER-P | Project to begin 4/95 |
| 27 | 607 | Adrian Mercantile (AST) | Adrian, ER-P | Project to begin ASAP |
| 28 | 7136 | Austin House (AST) | Bates, ER-P | Project to begin 4/95 |
| 29 | 236 | Fred's Market (UST) | Athena, ER-P | Project to begin 3/95 |
| 30 | 8940 | Bay City Deli Mart (UST) | Bay City, WR-S | Project to begin 2/95 Precon meeting has been held |
| 31 | 2021 | Lawrence Chevron (UST) | Bly, ER-B | Project to begin 3/95 Precon meeting has been held |
| 32 | 5272 | Paulina Store (AST) | Paulina, ER-B | Project to begin 3/95 Precon meeting has been held |
| 33 | 8906 | Pilot Rock Minimart (UST) | Pilot Rock, ER-P | Project to begin 10/95 |
| 34 | 1334 | Butte Falls Gas (UST) | Butte Falls, WR-M | Project to begin 2/95 Precon meeting has been held |
| 35 | 8889 | Van Wormer Service (UST) | Langlois, WR-M | Project to begin 2/95 Precon meeting has been held |
| 36 | 609 | Stateline Grocery (AST) | Adrian, ER-P | Project to begin 3/95 |
| 37 | 653 | Holland's Auto (UST) | Oakland, WR-M | Project Underway |
| 38 | 674 | Westside Store (UST) | Lakeview, ER-B | Project to begin 3/95 |
| 39 | 279 | Lowell Union Service (UST) | Lowell, WR-S | Project to begin 3/95 Precon meeting has been held |
| 40 | 6933 | Riley Store (AST) | Riley, ER-B | Project to begin 3/95 |
| 41 | 177 | Stage Stop Service (UST) | Sumpter, ER-P | Project to begin 5/95 |
| 42 | 9209 | Applegate Store (AST) | Applegate, WR-M | Project to begin 2/95 Precon meeting has been scheduled |
| 43 | 293 | Lemolo Lake Resort (UST) | Idleyld Park, WR-M | Project to begin 3/95 |
| 44 | 2985 | Paul's Chevron (UST) | Joseph, ER-P | Project to begin ASAP |
| 45 | 9203 | Route 22 Gas (UST) | Detroit, WR-E | Project to begin 2/95 Precon meeting has been held |
| 46 | 8468 | Smith River Store (AST) | Reedsport, WR-M | Project to begin ASAP |
| 47 | 9893 | Wheeler Marina (AST) | Wheeler, WR-E | Project to begin 3/95 Precon meeting has been held |
| 48 | 8856 | Gold Hill Texaco (UST) | Gold Hill, WR-M | Project to begin 4/95 |
| APPLICATIONS PENDING APPROVAL | | | | |
| 49 | 9058 | Camp Sherman Store (UST) | Camp Sherman, ER-B | |
| 50 | 3004 | Brothers Stage Stop (AST) | Brothers, ER-B | |
| 51 | 336 | Scotty's Hells Canyon (AST) | Halfway, ER-P | |
| 52 | 1591 | Lone Elk Market (UST) | Spray, ER-P | |
| 53 | 6394 | Union Station (UST) | Lyons, WR-S | |

# Department of Environmental Quality
# Underground Storage Tanks
# Financial Assistance Program



**Status, January 1995**

⊕ **Potentially Eligible**

APPENDIX 9

UST FINANCIAL ASSISTANCE PROGRAM
JANUARY 1995

POTENTIALLY ELIGIBLE TIER 4 FACILITIES

| | FACILITY NUMBER AND NAME | | CITY | COUNTY |
|---|---|---|---|---|
| 1 | 192 | Farewell Bend | Huntington | Baker |
| 2 | 10353 | Terry's Repair & Gas | Monroe | Benton |
| 3 | 7630 | Elderberry Inn | Seaside | Clatsop |
| 4 | 6536 | Westmart Foodstore | Westport | Clatsop |
| 5 | 6323 | Gearhart Texaco | Gearhart | Clatsop |
| 6 | 10101 | Runyon's | Birkenfeld | Columbia |
| 7 | 623 | River Town Store | Columbia City | Columbia |
| 8 | 8714 | Remote Store/Post Office | Remote | Coos |
| 9 | 5242 | Dora Store | Myrtle Point | Coos |
| 10 | 5217 | Post General Store | Post | Crook |
| 11 | 9221 | Art's Place | Prineville | Crook |
| 12 | 529 | Millican Trading Post | Millican | Deschutes |
| 13 | 9360 | The Gas Station | Elkton | Douglas |
| 14 | 5323 | Fatland's, Inc. | Condon | Gilliam |
| 15 | 4772 | Jackson Mini Station | Canyon City | Grant |
| 16 | 391 | OK Garage | Long Creek | Grant |
| 17 | 1223 | Southfork Gas & Minimart | Dayville | Grant |
| 18 | 3600 | Seneca Grocery | Seneca | Grant |
| 19 | 1460 | Boyer's Cash Store | Monument | Grant |
| 20 | 4070 | Granite Store | Granite | Grant |
| 21 | 610 | Wagontire Station | Riley | Harney |
| 22 | 10762 | Fields General Store | Fields | Harney |
| 23 | 5360 | Frenchglen Mercantile | Frenchglen | Harney |
| 24 | 5177 | Hampton Station | Hampton | Harney |
| 25 | 5673 | Prospect Village Service | Prospect | Jackson |
| 26 | 9359 | Wilderville Automotive | Wilderville | Josephine |
| 27 | 5628 | Galice Store | Merlin | Josephine |
| 28 | 2811 | Wimer Market | Wimer | Josephine |
| 29 | 149 | New Beatty Store | Beatty | Klamath |
| 30 | 6073 | Mountain High Service | Sprague River | Klamath |
| 31 | 10737 | Crater Lake-Mazama | Crater Lake | Klamath |
| 32 | 1209 | Saddle Mountain Grocery | Klamath Falls | Klamath |
| 33 | 11061 | Christmas Valley Market | Christmas Valley | Lake |
| 34 | 142 | Chewaucan Garage | Paisley | Lake |
| 35 | 3966 | Silver Lake Chevron | Silver Lake | Lake |
| 36 | 9924 | Adel Store | Adel | Lake |
| 37 | 9768 | Marcola Kitchen & Gas | Marcola | Lane |
| 38 | 580 | Alvadore Store | Alvadore | Lane |
| 39 | 7262 | Horton Market | Horton | Lane |
| 40 | 10024 | Siletz BP | Siletz | Lincoln |
| 41 | 9830 | Tidewater Service | Waldport | Lincoln |
| 42 | 223 | Kirk's BP | Halsey | Linn |
| 43 | 8506 | The Mechanic | Scio | Linn |
| 44 | 5794 | Eldon Townsend | Lacomb | Linn |
| 45 | 9932 | Vilsmeyer Grocery | Brogan | Malheur |
| 46 | 615 | Coleman Service | Harper | Malheur |
| 47 | 9601 | Juntura One Stop | Juntura | Malheur |
| 48 | 10213 | Lake Owyhee Resort | Nyssa | Malheur |
| 49 | 9824 | Rome RV & Cafe | Jordan Valley | Malheur |
| 50 | 5920 | Blondie's Market | Donald | Marion |
| 51 | 1213 | Wilco Farmers | St. Paul | Marion |
| 52 | 3840 | Ball Bros. Chevron | Turner | Marion |
| 53 | 9669 | Ione Gas Service | Ione | Morrow |
| 54 | 3110 | Dan's Auto Repair | Moro | Sherman |
| 55 | 542 | J & J Minimart | Rufus | Sherman |
| 56 | 1506 | Beaver Texaco | Tillamook | Tillamook |
| 57 | 1511 | Bayside Gardens Texaco | Nehalem | Tillamook |
| 58 | 222 | Dave May Chevron | Rockaway | Tillamook |
| 59 | 5393 | Helix Welding | Helix | Umatilla |
| 60 | 9753 | Dan's Ukiah Service | Ukiah | Umatilla |
| 61 | 6539 | Echo Mobil Station | Echo | Umatilla |
| 62 | 8953 | Dale Store | Dale | Umatilla |
| 63 | 9848 | Crazy Carl's Blue Mtn Lodge | Meacham | Umatilla |
| 64 | 185 | Murdock's Service | North Powder | Union |
| 65 | 9836 | Summerville Store | Summerville | Union |
| 66 | 237 | Imbler Market | Imbler | Union |
| 67 | 10678 | Troy Cafe | Troy | Wallowa |
| 68 | 1508 | Goebel's Texaco | Wallowa | Wallowa |
| 69 | 10112 | Imnaha Resort | Imnaha | Wallowa |
| 70 | 8173 | H & H Auto Service | Mosier | Wasco |
| 71 | 4303 | Antelope Store & Cafe | Antelope | Wasco |
| 72 | 10411 | Pine Hollow Lakeside Resort | Wamic | Wasco |
| 73 | 4138 | Walter's Corner | Maupin | Wasco |
| 74 | 8619 | Dufur Texaco | Dufur | Wasco |
| 75 | 6386 | Wright Chevron | Fossil | Wheeler |
| 76 | 247 | Schee's Grocery | Mitchell | Wheeler |
| 77 | 268 | Charles Terry's Service | Dundee | Yamhill |
| 78 | 273 | Senz Auto | Yamhill | Yamhill |
| 79 | 9662 | Gonzales Service | Dayton | Yamhill |
| 80 | 190 | T J's Super Service | Sheridan | Yamhill |

# Environmental Quality Commission

☐ Rule Adoption Item
☐ Action Item
☒ Information Item

**Agenda Item** G
**March 3, 1995 Meeting**

**Title:**

Informational Report: Environmental Partnerships for Oregon Communities

**Summary:**

The purpose of this report is to provide the Commission the opportunity to review the status of implementation of the Environmental Partnerships for Oregon Communities (EPOC) pilot projects in Nyssa, Powers, and Rainier.

A Mutual Agreement and Order (MAO) has been signed by the City of Nyssa, the Oregon Health Division/Drinking Water Program and the Department. The MAO addresses wastewater, drinking water and underground storage tank compliance issues. The Nyssa MAO is the first multi-media, multi-agency order for a city using the EPOC approach. The order reflects community involvement in prioritizing compliance issues, and flexibility in how compliance in all areas of known violations is to be achieved by the city. Similar MAOs are being prepared for Powers and Rainier.

The Nyssa order is the first of its kind in the country, and will be subject to unsolicited review by EPA and other parties interested in compliance flexibility.

The major innovations in the EPOC project are the collaborative process by which the MAO is reached, and the multi-media, multi-agency scope of the MAOs. EPOC represents a significant learning experience for the Department and other agencies involved. The potential for better enabling small local governments to achieve compliance is being demonstrated by the pilot projects, and the EPOC approach is being extended to other cities across the state.

**Department Recommendation:**

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

Report Author | Division Administrator | Director

2/14/95

†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:** February 15, 1995

**To:** Environmental Quality Commission

**From:** Lydia Taylor, Interim Director

**Subject:** Agenda Item G, March 3, 1995 EQC Meeting
**Environmental Partnerships for Oregon Communities (EPOC) Program**

## Statement of Purpose

The purpose of this report is to provide the Commission the opportunity to review and comment on the status of implementation of the Environmental Partnerships for Oregon Communities pilot projects in Nyssa, Powers, and Rainier.

A recently completed EPA report, "Case Study Assessments of Community Environmental Compliance Flexibility: Environmental Partnerships for Oregon Communities, and Idaho Small Community Mandates Pilot Projects", suggests that the EPOC effort is an excellent example of an innovative program that works with communities to address environmental management issues. A copy of the report's Executive Summary is provided for the Commission's review (Attachment A).

## Background

A fact sheet describing the EPOC program, an outline of the partnership process and a flow chart are included as Attachment B. The EPOC process has been developed by staff over the past year through working with Nyssa, Powers and Rainier.

A Mutual Agreement and Order (MAO) has been signed by the City of Nyssa, the Oregon Health Division/Drinking Water Program and the Department. The MAO addresses wastewater, drinking water and underground storage tank compliance issues. A summary of the environmental compliance issues, and the schedule for achieving compliance, are described in Attachment C.

The City of Powers is reviewing a draft MAO with formal City Council action expected in April. The MAO is on public notice, and a public hearing is scheduled for March 23 in

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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).

Powers. The City is operating under enforcement orders for both the drinking water system and the wastewater treatment facilities. A draft summary and schedule for achieving compliance are described in Attachment D.

EPOC staff have been working with the City of Rainier for a shorter period of time, since late 1994. The Rainier pilot is benefitting from the experience and process developed with the other two pilot cities. A preliminary evaluation of environmental requirements that apply to Rainier, and related compliance concerns, has been completed and is with the City for review and discussion. Public participation and discussion about priorities for compliance are just starting in the community. A MAO is expected to be completed in mid-year.

The EPOC staff have worked more closely with another partner, the Oregon Economic Development Department, on the Rainier project. This pilot is identifying additional opportunities for better coordination between small city planning and economic development efforts and environmental requirements. This may lead to EPOC focusing additional effort on small cities that are faced with compliance issues and are simultaneously planning for economic development.

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

The Nyssa MAO is the first multi-media, multi-agency order for a city using the EPOC approach. The order reflects community involvement in prioritizing compliance issues, and flexibility in how compliance in all areas of known violations is to be achieved by the city.

The order is the first of its kind in the country, and will be subject to unsolicited review by EPA and other parties interested in compliance flexibility. The EQC needs to be aware that EPOC orders are different from traditional DEQ (and EPA) orders for municipalities, and may be subject to challenges.

**Alternatives and Evaluation**

The EPOC program represents one of the first attempts nationwide at exploring legal mechanisms to allow for structured community input and prioritization into the enforcement process, and compliance flexibility in meeting existing environmental regulations.

The Department's current direction is to continue to pursue flexibility options for small cities that can lead to achieving compliance with environmental requirements. This path continues to move the agency away from what has been historically a media-by-media regulatory approach for municipalities that are in violation of environmental regulations.

**Summary of Public Input Opportunity**

The EPOC Citizens Advisory Committee met four times during 1994 to advise the Department on the development and implementation of the EPOC pilot program.

Numerous public meetings have been conducted in Nyssa, Powers and Rainier to discuss the EPOC approach and the compliance issues in those cities. The comments from these cities have also been used in shaping the program.

## Conclusions

The major innovations in the EPOC project are the process by which the MAO is reached, and the multi-media, multi-agency scope of the MAOs. EPOC represents a significant learning experience for the Department and other agencies involved. The potential for better enabling small local governments to achieve compliance is being demonstrated by the pilot projects, and the EPOC approach is being extended to other cities across the state.

## Intended Future Actions

The Department is taking steps to start the EPOC process with two other cities immediately.

Also, the EPOC partners are taking an active role in working with cities that are funded through the U.S. Forest Service and the Economic Development Department to complete community assessments (Strengths, Weaknesses, Opportunities and Threats analyses) and strategic plans for community/economic development. Oakland is the first city to receive a wastewater/drinking water infrastructure assessment through the EPOC program for use in the city's planning process. Other infrastructure assessments are being planned.

A "Guide to State Environmental Requirements for Small Governments" has been developed by the EPOC staff at the request of the EPOC Citizens Advisory Committee. The guide will be a valuable resource for local government officials, administrators and staff, and will be available for distribution in the spring of this year.

## Department Recommendation

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

## Attachments

A. Transmittal memo and Executive Summary, "Community Environmental Compliance Flexibility: Case Study Assessments in Idaho and Oregon", US EPA, Office of Policy, Planning and Evaluation, January 1995.

B-1. Environmental Partnerships for Oregon Communities (EPOC) Fact Sheet.
B-2. EPOC Team Process.
B-3. EPOC Flow Chart.

C. City of Nyssa/EPOC Summary: Compliance with Public Health & Environmental Requirements

D. DRAFT: City of Powers/EPOC Summary: Compliance with Public Health & Environmental Requirements

**Reference Documents (available upon request)**

City of Nyssa, Mutual Agreement and Order.

City of Nyssa, Implementation Plan for the Mutual Agreement and Order.

Final Report, "Community Environmental Compliance Flexibility: Case Study Assessments in Idaho and Oregon", US EPA, Office of Policy, Planning and Evaluation, January, 1995.

Approved:

Section: Peter A. Dalke

Division: Tom Bispham

Report Prepared By: Peter Dalke

Phone: 503 229-5588

Date Prepared: February 9, 1995

e:\wp51\epoc.eqc
2/9/95

ATTACHMENT A
DEPARTMENT OF ENVIRONMENTAL QUALITY
RECEIVED
JAN 27 1995
NORTHWEST REGION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 23 1995

OFFICE OF
POLICY, PLANNING AND EVALUATION

MEMORANDUM

SUBJECT: Final Report -- "Community Environmental Compliance Flexibility: Case Study Assessments in Idaho and Oregon"

FROM: David M. Gardiner
Assistant Administrator

TO: The Administrator
The Deputy Administrator
Assistant Administrators
General Counsel
Associate Administrators
Regional Administrators

I would like to commend to your attention the attached report, "Community Environmental Compliance Flexibility: Case Study Assessments in Idaho and Oregon" prepared by OPPE's Program Evaluation Division. This report describes, analyzes and assesses the attempts of two States to provide flexibility to local governments in complying with Federal and State environmental mandates through the identification of community priorities and the development of legally binding multi-media agreements.

There is much to be learned from these pilot projects. They are excellent examples of innovative, place-based environmental management. These projects utilize "bottom-up" approaches -- extensive stakeholder analysis and public participation -- to ensure maximum consideration for community values in the prioritization process. Effective working partnerships were formed between municipalities, State environmental and health agencies, and at least six federal agencies (including EPA).

The report documents the implementation of these pilots, compares and contrasts their methodologies, and raises policy issues related to their implementation in order to inform federal, State, and local environmental officials who may initiate similar efforts. In preparing this report, OPPE staff visited four of the seven pilot communities and interviewed local elected and appointed officials as well as staff of the State agencies. This work was carried out with the cooperation and assistance of Region 10 and the two States.

I know you will find this information informative, and the policy issues provocative. Should you have any questions/comments or desire a briefing on this work please contact Len Fleckenstein, Acting Director of the Program Evaluation Division, at (202) 260-5333.

Attachment

cc: Deputy Regional Administrators
Office Directors, OAR, OPPTS, OSWER, OW
Regional Office Division Directors
Regional Office Small Community Coordinators
Local Government Advisory Group Members
Small Towns Task Force Members

United States
Environmental Protection
Agency

Policy, Planning,
And Evaluation
(2134)

EPA 230-R-95-001
January 1995

EPA

# Community Environmental Compliance Flexibility: Case Study Assessments In Idaho And Oregon

# Community Environmental Compliance Flexibility:

# Case Study Assessments in Idaho and Oregon

Prepared by:

Lynda S. Dowling
Louis Sweeny
Andy Spielman (Project Manager)
Len Fleckenstein (Project Advisor)
Elvira Dixon (Project Secretary)

Program Evaluation Division
Office of Policy, Planning and Evaluation
United States Environmental Protection Agency

January 24, 1995

# I. EXECUTIVE SUMMARY

## BACKGROUND

In June of 1994, the Program Evaluation Division (PED) of EPA's Office of Policy, Planning and Evaluation (OPPE) was asked by EPA Region 10, Idaho Division of Environmental Quality (IDEQ), and Oregon Department of Environmental Quality (ODEQ) to assess their experiences as the first two States to implement community environmental compliance flexibility projects.

In accepting this request, OPPE's hope was to better understand the opportunities and barriers to providing additional flexibility to local governments through setting priorities among mandates and developing enforceable, multi-media compliance schedules. This report analyzes issues related to multi-media, "place-based" (i.e., community specific) environmental management; as well as issues of partnership and coordination among agencies of State governments, and between agencies of federal, State, and local governments. The report is designed to share lessons learned with EPA staff, the two States engaged in this work, as well as with other States who might be interested in pursuing similar projects.

Information presented in this report was developed through extensive interviews with pilot project staff and management in both States; site visits and discussions with elected and appointed officials in participant communities; and OPPE participation in pilot project planning meetings in Idaho, Oregon, and the Seattle office of EPA Region 10.

It is important to note that this effort represents an early-look at the implementation of these pilot projects. The pilots are not completed in any community. Idaho has not reached the stage of attempting to sign compliance agreements with any community, and Oregon has thus far reached that stage with the first of three communities. Much has been accomplished in the pilot communities; however, implementation was still in progress in both States at the time that this report was written.

## THE IDAHO and OREGON PILOT PROJECTS

On the surface the two pilot programs are remarkably similar. Each involves a partnership between small communities and State DEQs working to diagnose environmental concerns and compliance status, involve and educate the public, discuss and broadly rank community priorities, and develop a legally enforceable compliance agreement. A closer look, however, reveals key differences in the approach each State is taking to implement its pilot program. What follows is a description of each approach.

*Idaho Small Community Mandates Pilot Project*

Four Idaho communities are participating in the project, all of which are located in South Central Idaho, along the Snake River and Camus Prairie. They are Hagerman, Gooding, Fairfield, and Jerome. These four communities were "self-selected" as they approached the Idaho Rural Development Council (IRDC) and the Governor with a proposal for this project as a means to address "overwhelming unfunded mandates...and rural communities' infrastructure needs."

The IDEQ approach is to work in partnership with a number of state and federal agencies. These include the Wood River Resource Conservation District, the Idaho Department of Commerce, the University of Idaho Department of Agricultural Economics and Rural Sociology which conducted economic analysis, the US Forest Service which provided planning grants, the National Park Service which provided other planning support, and EPA Region 10 which gave funds to carry out the project. IDEQ set up three advisory committees to carry out their work.

The scope of the Idaho pilots includes federal and State mandates (both environmental and non-environmental) as well as other non-mandated community funding priorities. Through a series of community meetings, members of the public, civic leaders, and city officials will prioritize actions and expenditures. To the extent that these include environmental mandates, IDEQ may propose a formal extended compliance agreement between their agency, the City, and potentially EPA.

*Environmental Partnerships for Oregon Communities*

Three Oregon cities have been selected to participate in that State's pilot program. They include: Nyssa in eastern Oregon on the Idaho border; Powers in the southwest bordering the Siskiyou National Forest; and Rainier, northwest of Portland along the Columbia River. These three communities were selected as pilot communities from applications received in response to a DEQ announcement published by the Oregon League of Cities. Cities were selected based upon a series of criteria which included: non-compliance with major environmental mandates, diverse environmental facilities, economic development goals, geographic location, and size.

ODEQ works in close partnership with two other State agencies--the Oregon Health Division, and the Oregon Economic Development Department. EPA Region 10 has not been asked to play an active role in working with the communities. However, as is the case with Idaho, EPA Region 10's Small Communities Program provides substantial assistance to the program through, among other ways, the facilitation of a regional working group.

The scope of the Oregon pilots includes only environmental mandates. Priority actions and expenditures are established jointly by members of the public, civic leaders, and city officials working together with DEQ and Health Division staff. The end result is a formal, legally binding compliance agreement between the two State agencies and the City.

## PRINCIPAL FINDINGS

The two States pilot projects raise important policy issues for EPA, as well as other States considering such programs. These include:

*Policy Issues*

1. Inter-governmental Relations -- Is the concept of community environmental compliance flexibility as it is being developed in Idaho and Oregon a viable concept for achieving compliance within the federal regulatory framework, and improving inter-governmental relationships?

2. Public Participation -- What type and amount of public interaction and access should these projects include?

3. Prioritization Processes -- Who should be making decisions regarding a community's priorities? To what extent should these decisions be risk-based? To what extent should environmental priorities vie with non-environmental priorities?

4. The Legal Agreement -- What type of compliance agreement balances the ability to provide reasonable flexibility to local governments with EPA's responsibilities to ensure compliance with statutes?

5. The Role of EPA -- How can EPA's role as a facilitator of these projects be further defined? Does this role vary depending on the status of program delegations or other issues?

*Conclusions*

1. States interested in considering municipal compliance flexibility programs can learn from the approaches and early implementation experiences of Idaho and Oregon.

2. These pilots are examples of community-based environmental management and planning and are extremely illustrative of the need to establish partnerships among the many entities concerned with, and actively involved in, environmental decision-making at the local level.

3. Because the pilots are so dependent on cooperation between local, State, and federal agencies, clear support for these efforts from senior management within those agencies is vital to their success.

4. These pilots require skills and investments outside the traditional role of regulatory agencies, e.g., facilitation and community organizing.

5. The practicality of the State regulatory agency as the hub of broad-based community planning (i.e., not limited to environmental issues) is questionable.

6. Ambiguity on the part of EPA about how it may react to the agreements represents both a serious barrier and an opportunity for States in implementing these pilots.

   The concept of community environmental compliance flexibility offers significant potential for better enabling small local governments to achieve compliance. The projects offer valuable insight into opportunities for improving state and federal agency working relationships with local governments. The Idaho and Oregon projects should continue to be monitored by EPA as models, both to further assess what barriers and opportunities exist within EPA to providing additional flexibility to local governments and to evaluate them as approach to place-based environmental planning.

7. Because national regulatory standards are usually established using risk-based decisions, EPA has historically sought some degree of risk-based decision-making in community priority setting. Traditional risk analysis does not appear to be a predominant tool utilized by either State DEQ in their priority setting methodologies.

# Environmental Partnerships for Oregon Communities

## A New Approach To Solving Environmental Problems

The Oregon Department of Environmental Quality (DEQ) and the Oregon Health Division have developed a new approach to assist small communities faced with a multitude of new and more stringent state and federal environmental regulations.

*Environmental Partnerships for Oregon Communities* is a state program that can help communities comply with mandates for wastewater treatment, safe drinking water, solid and hazardous waste management and air quality. The Environmental Partnerships program presents a unique opportunity for a community-based cooperative approach to addressing environmental mandates.

Small communities have few administrative and technical staff to assess problems, and limited financial resources to meet requirements. Non-compliance with mandates results in costly fines, and poses risks to public health, ecosystems, and quality of life. Non-compliance also hinders the community's ability to sustain and expand local economies.

The Environmental Partnerships teams, including representatives from state agencies and local government, will work together with local citizens to define environmental problems, evaluate public health and ecological risks, and determine the relative urgency for solving each problem. After the problems are prioritized, a legally binding agreement outlining a schedule for addressing the problems will be negotiated between the state agencies and the community.

## Program Goals

The goals of the Environmental Partnerships program are:

- To establish multiple-agency environmental teams to work with small communities.
- To help communities identify, define, evaluate, and prioritize mandates.
- To inform local citizens about environmental requirements and involve them in the decision-making process.
- To negotiate an enforceable agreement and schedule for achieving compliance.

Public participation and input are important components of the program. Citizen input is coordinated between the state agencies, city administration, local elected officials and community leaders.

Participation in the program does not relieve the community from compliance, but rather provides a process for prioritizing problems to proactively plan and budget for compliance.

The Environmental Partnerships' pilot projects have been established with Nyssa in Eastern Oregon near the Oregon-Idaho border, Powers in the Siskiyou Mountains of southwestern Oregon, and Rainier on the Columbia River.

DEPARTMENT OF ENVIRONMENTAL QUALITY
811 S.W. SIXTH AVENUE • PORTLAND, OREGON 97204

For more information about Environmental Partnerships contact:

*Jan Renfroe, Sharon Morgan or Pete Dalke,* Environmental Partnerships Project Coordinators, Oregon Department of Environmental Quality, 2020 S.W. 4th Avenue, Suite 400, Portland, OR 97201. People may also call (503) 229-5263 or toll free in Oregon 1-800-452-4011. People with hearing impairments can call DEQ's TDD at (503) 229-6993.

## Accessibility Information

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September 1994

# ENVIRONMENTAL PARTNERSHIPS for OREGON COMMUNITIES
# TEAM PROCESS

The EPOC process consists of a series of phases, or steps, to be carried out by a multi-agency team comprised of the Department of Environmental Quality (DEQ), Oregon Health Division (OHD), the Oregon Economic Development Department (OEDD) and the City. Some phases will overlap or perhaps be revisited during the process; however, the EPOC team, as well as the process, shall remain flexible throughout the project.

Steps in the EPOC project:

**DIAGNOSIS/ASSESSMENT:**
In a joint effort between the community and the participating state agencies, the DEQ and OHD will perform a diagnostic review of the City's compliance status with all potential environmental requirements. The diagnosis will ensure that all relative requirements are addressed in the context of this project.

**EVALUATION:**
During the evaluation, the DEQ, OHD and OEDD will assist the City in determining the ecological, public health and financial significance associated with complying with the environmental requirements. The EPOC team will also help the City define its administrative and technical capabilities in the context of achieving compliance with the requirements.

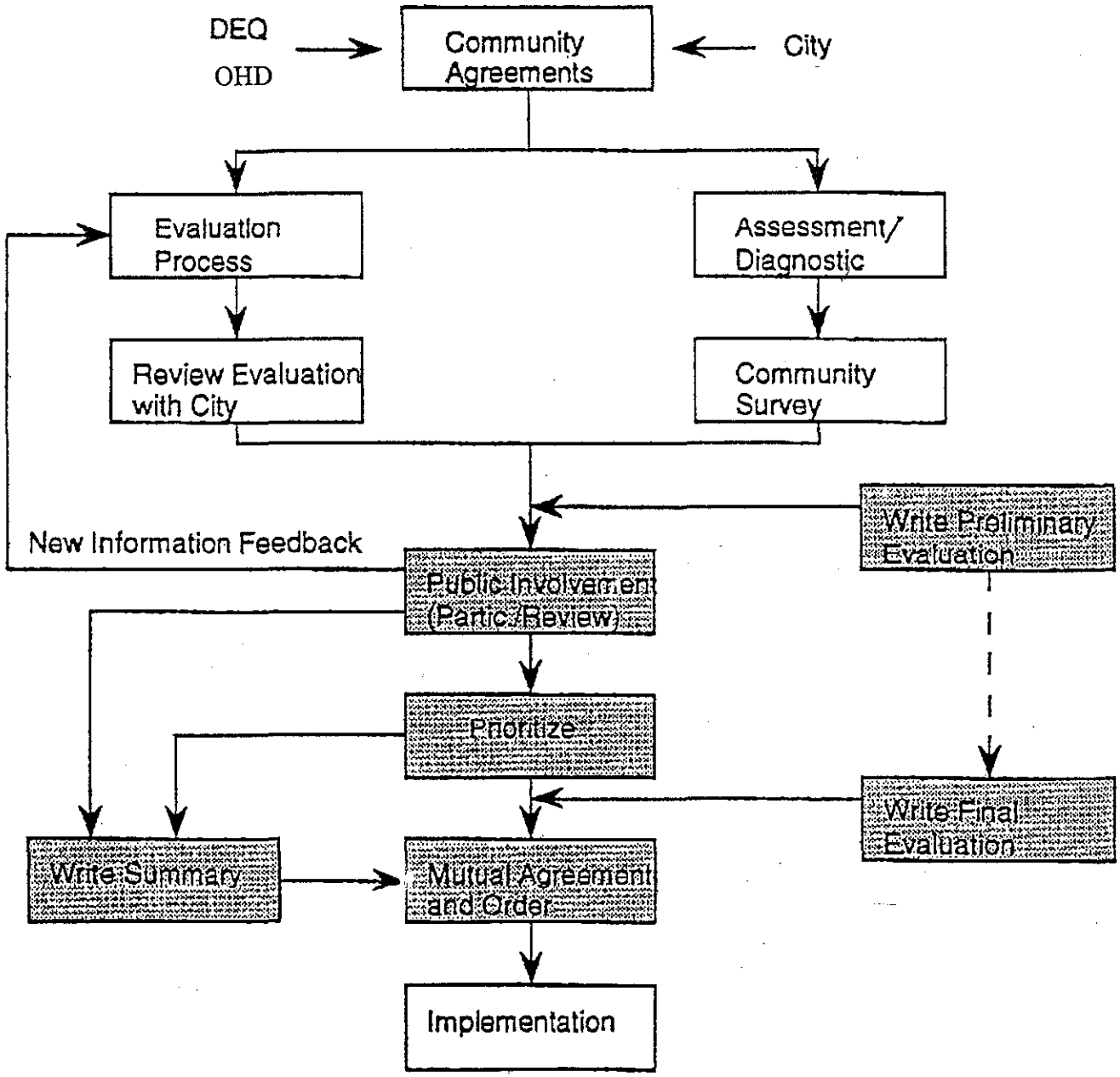
**PUBLIC INVOLVEMENT/PARTICIPATION:**
The state agencies will work with the community as needed to develop an effective mechanism for providing public information and education, as well as eliciting input from community residents and other interested parties. (The Rural Development Initiatives will assist with this phase as appropriate.) This component of the project will be especially important during the urgency analysis phase.

**URGENCY ANALYSIS:**
In this phase, the state agencies will assist the City to prioritize actions required to achieve compliance with the environmental mandates as defined during the evaluation. In general, the EPOC's philosophy is to allow the City to make these priority decisions based on sound information obtained during the diagnostic, evaluation and public participation phases of the project.

**WRITTEN AGREEMENT:**
The EPOC team will coordinate the development of a written agreement between the City, OHD and DEQ called a Mutual Agreement and Order (MAO). The MAO is a legally binding document that will include a time schedule for addressing the mandates and other environmental problems facing the community.

**IMPLEMENTATION:**
Implementation of the MAO will likely be accomplished by regional staff within DEQ and OHD. A staff person from the EPOC project will continue to track progress and provide technical assistance and support.

# Environmental Partnerships for Oregon Communities: Process Flowchart




= Urgency Analysis Stages

ATTACHMENT C

# CITY OF NYSSA

# ENVIRONMENTAL PARTNERSHIPS for OREGON COMMUNITIES

# SUMMARY

## COMPLIANCE WITH PUBLIC HEALTH & ENVIRONMENTAL REQUIREMENTS


ENVIRONMENTAL PARTNERS

City of Nyssa
*Gordon Zimmerman*

Oregon Health Division
*Tom Johnson - Portland*
*Dave Leland - Portland*
*Gary Burnett - Pendleton*

Oregon Department of Environmental Quality
*Dick Nichols*
*Pete Dalke*
*Sharon Morgan*

## *INTRODUCTION*

The Environmental Partnerships for Oregon Communities (EPOC) is a lottery funded pilot project established to assist small communities in coordinating the multiple environmental requirements facing them. The scope of the project involves informing communities about the State and Federal environmental requirements, identifying areas of non-compliance with those requirements and establishing a schedule for achieving compliance. The result of compliance will be a viable community that is more protective of its public health and the environment.

The EPOC team includes the City of Nyssa, Oregon Health Division (OHD) and the Department of Environmental Quality (DEQ). The project also involves the Oregon Economic Development Department (OEDD), which administers loans/grants for constructing wastewater treatment facilities and drinking water systems.

The basic premise behind EPOC is the understanding that small communities frequently do not have the financial and administrative capacity to simultaneously address all the multiple environmental requirements. Participation in EPOC allows Nyssa to work with the State agencies to identify the requirements, prioritize the actions necessary to achieve compliance, and establish a flexible schedule for achieving compliance in a reasonable amount of time. Participation in the project is not intended to relieve the City of complying with the requirements.

Since January 1994 EPOC has evaluated the City's compliance status with six State and Federal environment programs. Those six programs are: the Drinking Water Program (administered by the OHD); Wastewater Treatment Facilities, Underground Storage Tanks (USTs); Hazardous Waste; Solid Waste; and Air Quality (the latter five administered by the DEQ).

The City has made significant strides in complying with the requirements, particularly with the drinking water system and wastewater treatment facility. However, areas where non-compliance were noted include: the discharge from the wastewater treatment plant does not always receive adequate treatment; monitoring of the gasoline leak that occurred at the City Shop from an UST has not been completed; and four groundwater drinking water wells may be directly influenced by surface water.

There do not appear to be any on-going air quality standards violations in Nyssa. The City does receive odor complaints; these complaints coincide with operations at The Amalgamated Sugar Company. Solid waste is currently handled by Malheur County and properly disposed of at the Lytle Boulevard Landfill. A hazardous waste technical assistance visit was conducted of the City Maintenance Shop by DEQ staff. A few problems were noted regarding the storage and handling of used oil and the cleanup of gasoline contaminated soil. These issues were addressed by the City and are no longer a concern. Therefore, because compliance with the air quality, solid waste and hazardous waste requirements is occurring, these programs are not included in

the scope of the EPOC project.

During September 1994, Gordon Zimmerman, Nyssa City Manager, conducted informational meetings about Nyssa's participation in EPOC. The purpose of the presentations was twofold: 1) to inform the public about the EPOC project and the City's compliance status with the environmental requirements, and 2) to solicit public input for prioritizing the necessary actions required to achieve compliance.

The final product of this pilot project is a formal, legally binding agreement called a Mutual Agreement and Order (MAO). The Agreement is between Nyssa and the State agencies and includes a schedule for completing the actions necessary to achieve compliance with the environmental requirements. Agreeing to the schedule in the MAO reflects the City's commitment to address the issues identified. Fines can be assessed by the State agencies should the dates in the MAO be missed, unless Nyssa can show that the reason(s) for the missed date(s) is beyond their control.

The draft MAO will be placed on Public Notice in November and a Public Hearing will be conducted on December 13, 1994, in Nyssa prior to the monthly City Council Meeting. The MAO will be available for public review and comment during the Public Notice period. Comments regarding the MAO can be submitted to Nyssa City Hall or DEQ until December 16, 1994. If you would like to receive a copy of the draft MAO for review or would like more information about the EPOC project, please contact one of the people listed at the end of this document.

The following is a summary of the compliance issues discussed in the MAO.

## *WASTEWATER TREATMENT FACILITIES*

The City discharges treated wastewater (effluent) year-round to the Snake River. Presently, due to inadequate treatment, the City's effluent occasionally violates water quality standards in the River and exceeds required limitations. Sludge, generated by the treatment of the wastewater, at times has not been treated properly prior to applying it on land. Furthermore, the collection system pipes, which transport the wastewater to the treatment plant, are old and deteriorating.

Humans exposed to wastewater that has not been adequately treated have an increased likelihood of contracting a water borne disease (gastrointestinal). Improper sludge handling exposes humans to pathogens. Deteriorating sewer lines can collapse, as did the line on King Street, which exposed humans to raw sewage and potentially contaminated one of the City's drinking water wells.

Furthermore, potential businesses or residents that want to move into the area, may look

unfavorably on these risks. A wastewater treatment facility needs to adequately collect, treat and dispose of the City's wastewater, and at the same time maintain sufficient capacity in the collection and treatment systems to accommodate growth and additional connections.

The City has received a grant to evaluate the collection system. A TV camera has taken pictures of the sewer lines to locate cracking pipes. Once identified, these failing pipes can be replaced. The City received a second grant to analyze the wastewater treatment system itself. The City will evaluate the components of the plant, as well as the treatment process. Two reports are scheduled to be completed during the first quarter of 1995 and will include alternatives for upgrading the treatment plant in order to be in compliance. When these reports are completed, Nyssa will be able to prioritize the actions required to achieve compliance with the environmental requirements.

### *DRINKING WATER SYSTEM*

The source of drinking water for Nyssa is from six shallow groundwater wells. The existing drinking water system has insufficient water reserves to adequately supply drinking water to the customers, and at the same time provide sufficient fire protection within Nyssa city limits. Water rationing occurs during the summer.

The interior wall of the elevated 100,000 gallon storage reservoir was painted with a lead based paint. That paint is peeling and could eventually cause increased levels of lead in the water supply if not corrected.

Nyssa has received a loan/grant combination to upgrade the drinking water system. In November 1992 the citizens passed a bond measure to help pay for the improvements. The upgrades will include an improved distribution system; 4 new wells drilled adjacent to the 4 wells along the Snake River; additional wells drilled; and metering of all customers. The improvements are scheduled to be completed by the summer of 1995.

All the wells that serve the Nyssa water system are relatively shallow (45' - 60') and tap an aquifer (underground water) that is unconfined. An unconfined aquifer is one that does not have an impenetrable layer above it. As a result, when the wells are producing water, there is the potential that the wells could be drawing in surface water, if a surface water body is close by. This could be the case with the four drinking water wells located on the banks of the Snake River.

Generally, groundwater is free of disease-causing organisms such as bacteria, viruses, and protozoans. This is because these organisms have been filtered out and otherwise eliminated as the water moves through the ground. Sometimes, however, if wells are located near a surface water, such as the Snake River, the wells will draw in water from the surface water. If this happens, then there is less opportunity for the disease-causing organisms to be filtered out and

eliminated before the water enters the well and is pumped into the water systems.

Some of the disease-causing organisms will be killed by chlorine disinfection; however, others, such as Giardia, are very hardy and can survive disinfection. For this reason, Federal drinking water requirements are more stringent for systems that use surface water as their source of drinking water supply.

Nyssa currently does not filter its drinking water because the water is from a groundwater source rather than a surface water source. Filtration of groundwater is not generally required under the State Drinking Water requirements. However, the City will be required to conduct additional sampling of the four wells along the Snake River to determine if the wells are directly influenced by surface water, and therefore, more likely to have organisms, such as Giardia, present.

If it is determined that the groundwater wells are directly influenced by surface water, then the requirements for a surface water source will apply to Nyssa's system and additional treatment of the drinking water will be required.

### *UNDERGROUND STORAGE TANKS*

The City removed two underground storage tanks from the City shop in 1989 after a gasoline leak was discovered. Because it was believed that the leak may have contaminated the groundwater in that area, four monitoring wells were installed. The results of the monitoring well samples indicated no detection of gasoline contamination in the three down gradient wells and a small amount in the up gradient well. After more investigation, it was believed that the up gradient well could have been contaminated by a different leaking gasoline tank located offsite.

The groundwater monitoring wells still exist, but no further sampling has occurred since 1989. Further monitoring is required to ensure that contamination does not exist or has not migrated off-site. To officially close-out a site, the DEQ requires that one year of quarterly sampling occur (all wells sampled every three months for one year), and that all sample results indicate no contamination or contamination below the required limitation.

Monitoring USTs is important because a leaking tank can contaminate the groundwater, as well as surface waters.

### Establishing the Compliance Schedules

The City reviewed and discussed the draft MAO at their October 11, 1994, City Council Meeting. During a meeting held October 14, 1994, the City and DEQ staff negotiated the MAO compliance schedules. The dates were established as follows:

Wastewater Treatment Facility:

The two wastewater treatment facility reports are due February 28, 1995, based on the engineer's estimated time for completion.

If recommendations in the Operations/Maintenance Report allow the City to achieve compliance within six months after DEQ approves the Report, then the City shall carry out those recommendations. If, however, the Report recommends upgrading the facility in order to achieve compliance, then the City will be granted 3 1/2 years to develop a Facilities Plan and complete the necessary improvements. This schedule is reasonable and has been an acceptable time frame used for other Oregon communities faced with upgrading their treatment facilities.

Drinking Water System

A cross-connection inspector shall be hired by July 1, 1995. This date coincides with the proposed completion of the drinking water system improvements, and is the beginning of a new fiscal quarter, allowing the City time to address any budgetary concerns.

The City is in the process of upgrading the drinking water system, with the improvements scheduled to be completed July 1995. The upgrades include establishing a different water source, which may involve installing new wells along the Snake River and abandoning the existing wells #1 through #4. The City requested that the microscopic particulate analysis (MPA) sampling be postponed until the new water sources are on line. The City could then continue the MPA sampling on the new wells. The OHD and DEQ agreed to this proposal.

MPAs will be conducted during specific times of the year when the flows in the Snake River are low and demand on the water system is high (usually late summer) and when the river flows are relatively high (usually winter). Therefore, the City shall continue the MPA sampling on the new well system in the summer of 1995. MPAs will also be conducted in winter 1995 and completed the following summer of 1996.

Underground Storage Tanks

By no later than April 1, 1994, the City shall begin quarterly monitoring of the groundwater monitoring wells installed around the City Shop. This date coincides with the beginning of a new fiscal quarter, allowing the City time to budget for the sampling costs. The DEQ agreed to this schedule because of other budgetary constraints placed on the City. Furthermore, the 1989 sample results revealed little or no petroleum contamination indicating no immediate threat to public health or the environment.

For more information about the EPOC project or to be added to the mailing list to receive a copy of the MAO, please contact:

**Mr. Gordon Zimmerman**
**Nyssa City Hall**
**14 South Third Street**
**Nyssa OR 97913**
**503-372-2264**

**Sharon Morgan**
**Oregon Department of Environmental Quality**
**2020 SW Fourth Street Suite 400**
**Portland OR 97201**
**503-229-5590**

You can also call the Department of Environmental Quality toll free at 1-800-452-4011 and ask for Sharon Morgan at extension 229-5590. The hearing impaired can receive help by calling 503-229-5471. This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact Sharon Morgan at 229-5590 to request an alternate format.

ATTACHMENT D

# CITY OF POWERS

# ENVIRONMENTAL PARTNERSHIPS for OREGON COMMUNITIES

# SUMMARY

## COMPLIANCE WITH PUBLIC HEALTH & ENVIRONMENTAL REQUIREMENTS

DRAFT

ENVIRONMENTAL PARTNERS

| City of Powers | Oregon Health Division | Oregon Department of Environmental Quality |
|---|---|---|
| *City Council* | *Tom Johnson* | *Dick Nichols* |
| *Susan Chauncey* | *Dave Leland* | *Pete Dalke* |
| | *Tom Charbonneau* | *Sharon Morgan* |

## INTRODUCTION

The Environmental Partnerships for Oregon Communities (EPOC) program was established to assist small communities in coordinating the environmental requirements facing them. The scope of the program involves helping communities to identify, define, evaluate, and prioritize State and Federal environmental requirements, and establishing a schedule for achieving compliance with the requirements. The result of compliance is a livable city that is more protective of its public health and the environment.

The City of Powers expressed an interest to be a pilot project city in the EPOC program. A project team was established for the pilot project in early 1994. The EPOC project team includes the City of Powers, the Oregon Health Division (OHD) and the Department of Environmental Quality (DEQ). The project team also involves the Oregon Economic Development Department (OEDD) which administers loans and grants for constructing wastewater treatment facilities and drinking water systems, and Rural Development Initiatives which assisted with the Powers Community Assessment and Strategic Plan development.

The EPOC approach starts with the understanding that small communities frequently do not have the financial and administrative capacity to address several environmental requirements at the same time. Participation in EPOC allows Powers to work with DEQ, OHD and OEDD to identify the requirements, prioritize the actions necessary to achieve compliance, and establish a flexible schedule for achieving compliance in a reasonable amount of time. Participation in the project is not intended to relieve the City of complying with the requirements.

Public participation and input are an important part of the project. Citizen input is coordinated between the city administration, elected city officials, community leaders and the state agencies.

## SUMMARY OF THE POWERS EPOC PILOT PROJECT

Since January 1994 EPOC has evaluated the City's compliance status with five State and Federal environmental programs. The six programs are: the Drinking Water Program (administered by the OHD); Wastewater Treatment Facilities; Underground Storage Tanks (USTs); Hazardous Waste; Solid Waste; and Air Quality (the latter five are administered by the DEQ). The City also applied for and received a solid waste recycling grant from DEQ prior to the start of the EPOC project.

During 1994, EPOC staff made numerous visits to the city to meet with staff and city officials. Several informational meetings were conducted to discuss Power's participation in EPOC. The purpose of the presentations to the City Council and the Community Response Team, and discussions with many individuals, were twofold: 1) to inform the public about the EPOC project and the City's compliance status with the environmental requirements, and 2) to hear and discuss public input for prioritizing the necessary actions required to achieve compliance.

During the project, the City has received a $5,000 intergovernmental agreement and the loan of

two personal computers and software from DEQ to help with the EPOC project. Also, EPOC staff have helped the City in applying for and receiving a $20,000 grant for administrative staff through OEDD and the Coos Curry Douglas Regional Strategy program.

The final product of the EPOC pilot project is a formal, legally binding agreement called a Mutual Agreement and Order (MAO). The Agreement is between Powers, OHD and DEQ and includes a schedule for completing the actions necessary to achieve compliance with the environmental requirements. The schedule is intended to reflect the priorities as formally established by the City Council, and concurred with by the OHD and DEQ. The MAO formally and legally reflects the City's commitment to address the issues identified. Fines can be assessed by the State agencies should the dates in the MAO be missed, unless Powers can show that the reason(s) for the missed date(s) is beyond their control.

The draft MAO will be placed on Public Notice in February and a Public Hearing will be conducted on March 23, 1995, in Powers. The MAO will be available for public review and comment during the Public Notice period. Comments regarding the MAO can be submitted to Powers City Hall or DEQ until March 24, 1995. If you would like to receive a copy of the draft MAO for review or would like more information about the EPOC project, please contact one of the people listed at the end of this document.

## SUMMARY OF POWERS' ENVIRONMENTAL REQUIREMENTS AND COMPLIANCE STATUS

The City has been issued compliance orders for both its drinking water and wastewater systems. Recently, the city has made strides toward complying with the requirements. Areas where non-compliance were noted include: the treatment and disinfection of drinking water; maintenance of a cross-connection program to prevent drinking water contamination; wet weather overflows of raw sewage to the Coquille River; and the discharge from the wastewater treatment plant does not always receive adequate treatment. These compliance issues are addressed in more detail below and in the Mutual Agreement and Order.

The city owns an underground storage tank (UST), located at the public works shop adjacent to the wastewater treatment plant. The tank is used to store gasoline. A major concern with all USTs in general is the threat of leaks and contamination of nearby surface water and groundwater. The city's tank is not known to be leaking at this time. However, state law requires that the tank be removed, upgraded or replaced by January 1, 1998, to meet current UST standards.

The City and DEQ have recently reviewed the status of hazardous waste generated in the course of day-to-day City operations. The City generates very little hazardous waste and falls into the category of a conditionally-exempt hazardous waste generator. This status means that the City must comply with fewer regulations than other generators of hazardous waste. Nothing that posed a clear and immediate danger to public health or the environment was observed during the visit. Recommendations are being forwarded to the city on more appropriate storage and

disposal practices of used oil, aerosol cans, waste paint and other wastes.

Any gasoline or other pollution that is found in the area around the underground tank, or found spilled on the ground in the area of the city shop and treatment plant, must be cleaned up by the City.

Recently, the City ceased open burning operations at the City dump. The City has a closure permit for the dump site that expires July 1, 1996. The City has met many of the conditions of the permit, and will need to work with the DEQ to complete the closure by that time. Outstanding issues include fencing the site to control access to the site and help prevent illegal dumping, the appropriate removal of any waste at the site (for example, waste tires), and recycling of the scrap metal and white goods (for example, refrigerators) at the site.

The City needs to submit a letter to the DEQ addressing these concerns and requesting termination of the closure permit. The city must continue to pay a solid waste permit fee of $150 per year until the permit is terminated.

The City is closing the permitted transfer station at the former dump site. Solid waste collection is currently handled by both the City and a private hauler. Disposal is at the Beaver Hill incinerator and disposal site.

The air quality in Powers is generally good. Since there are no on-going air quality standards violations in Powers and compliance with the air quality requirements is occurring, this program is not included in the scope of the EPOC project. The City has been advised that woodstove smoke could become more of a public health issue in the future. The community may want to consider voluntary actions that can be taken to improve local air quality at times of poor ventilation and high woodstove usage. The DEQ can provide additional technical assistance on voluntary programs at the request of the City.

## CITY OF POWERS
## BACKGROUND AND SUMMARY OF COMPLIANCE ISSUES

### DRINKING WATER SYSTEM

The Powers water system comprises two separate water sources, one at the south fork of the Coquille River, and the other at Bingham Creek. Water flows by gravity from the Bingham Creek source directly into the city's distribution system; water from the Coquille is pumped into a 380,000 gallon reservoir, then flows by gravity through the distribution system. The distribution system, which serves a population of around 675 people, is made up of about 335 unmetered service connections. The standard practice is to pump water from the creek in the fall, winter, and spring, then add the river to meet summer demand. Water is disinfected with chlorine prior to entering the distribution system. No other treatment is employed.

The Safe Drinking Water Act was amended by Congress in 1986 to include tighter requirements for protecting public waters and public health. Among the amendments was the inclusion of the Surface Water Treatment Rule (SWTR) which requires that all public drinking water obtained from surface sources be treated by filtration and disinfection.

Powers currently does not filter its drinking water, and consequently does not meet State Drinking Water requirements. The State of Oregon, Health Division, had placed the city under an administrative order to comply with the SWTR by July 1993. This date has recently been extended to July 1995. (The proposed MAO will further extend this date to approximately December, 1995)

Generally, filtration is an issue because surface water is likely to contain disease-causing organisms such as bacteria, viruses, and protozoans. Some of the disease-causing organisms will be killed by chlorine disinfection; however, others, such as Giardia, are very hardy and can survive disinfection. Of particular concern are sensitive segments of population such as infants and small children, pregnant and nursing women, persons suffering from chronic or acute diseases, and elderly people. Filtration removes particles of solid matter from the water by passing it through sand or other porous material, reduces the turbidity or cloudiness of water, and removes many of the microorganisms which may contaminate the water. Filtration also allows for more efficient disinfection, a treatment process through which disease-carrying organisms (pathogens) are killed. For this reason, Federal drinking water requirements are more stringent for systems that use surface water as their source of drinking water supply.

There are many other concerns and compliance issues with the drinking water in addition to filtration. Inadequate disinfection (chlorine contact time) occurs when the Bingham Creek source is used for much of the year. Additional water storage capacity is needed for the City to provide for adequate fire protection, and to allow maintenance and cleaning of the reservoir. Pipe sizing and lack of looping causes problems with system pressurization, especially during heavy demand periods. The system is unmetered, so water consumption is not accurately monitored or controlled, and costs of services are not equitably distributed. Monitoring of the water supply

has demonstrated corrosion problems and the exceedance of action levels for the presence of lead in the drinking water.

Along with the risks to public health, the drinking water problems facing the community also limit the opportunities for economic growth or diversification. The Health Division has imposed a restriction on water system use -- no water main extensions to new areas will be allowed until the system complies with the surface water treatment rule requirements. Successful efforts to expand the county park and bring in job-creating businesses may be delayed until the drinking water problems are solved.

## WASTEWATER TREATMENT FACILITIES

The City discharges treated wastewater (effluent) year-round to the South Fork of the Coquille River. The sewage collection system pipes, which transports the wastewater to the treatment plant, are old and deteriorating. The sewage collection system is almost all gravity sewers. The sewers serving the south side of town (south of the South Fork Coquille River) were mostly built between 1940 and 1962. The north side was constructed in 1962. Presently, raw sewage overflows to the river occur frequently during wet weather. The City's treatment plant effluent occasionally violates water quality standards in the River, and exceeds requirements for pollutants as established in the discharge permit. Sludge, generated by the treatment of the wastewater, may not be treated properly prior to applying it on land.

The sewage collection system is in a poor state. Wastewater flow volumes in the north and south systems have been measured at 0.91 million gallons per day (MGD) and 1.12 MGD respectively on a single day in December 11, 1993. When excessive flows occur, much of the raw sewage overflows into the Coquille River. There are three known bypass points: one at the sewage treatment plant, one at the east end of Date Street, and one at the south end, or upstream side, of the siphon underneath of the sewer crossing of the South Fork Coquille River. Overflows all go into the South Fork Coquille River. The present situation is that any heavy precipitation will result in an overflow. The City has been directed by the DEQ for the past eight years to correct the overflow problem, beginning with the issuance of a new wastewater discharge permit in 1986.

The City has taken steps to eliminate bypasses at the river crossing siphon. However, an overflow occurred at the siphon in January, 1995, and overflows continue to be a frequent occurrence at the other two locations.

There are numerous environmental and health based concerns with raw sewage overflows. Humans exposed to wastewater that has not been adequately treated, or treated at all in the case of bypasses, have an increased likelihood of contracting water borne disease (gastrointestinal). The Department's 305(b) Water Quality Status Assessment Report shows that the South Fork of the Coquille River is water quality impaired for water contact recreation because of excessive bacteria. This is not just a warm weather issue, as many people fish in the river just below

Powers in the winter months.

A good share of the bacteria problem is likely due to the overflows of untreated sewage during storm events. A related concern about the collection system is that the deteriorating sewer collection lines can collapse, risking personal injury in addition to human exposure to raw sewage.

The wastewater treatment plant itself is about thirty years old. It is not known how much useful life remains with the plant or if extensive refurbishing of the plant to extend its life would be a wise investment for the City. At this time, further review by the City's engineer is needed to determine if the existing treatment plant is adequate or needs to be replaced. A major concern is the volume of water that reaches the wastewater treatment plant during wet weather. Unless the amount of water being collected in the sewer system and sent to the treatment plant is greatly reduced, any new treatment plant would need to be built with a much greater capacity than the current plant.

The City retained a consultant, utilizing funds available through the Economic Development Department, to prepare a Collection System Inflow and Infiltration (I&I) Study. This study was submitted to the City and DEQ in April, 1994. The study's conclusions indicate that I&I in the City is about 2,800 gallons per day per capita which is about 10 times over the U.S. Environmental Protection Agency's indicator rate for excessive I&I. A TV/video camera was used to take pictures of the sewer lines in mid-1994 to locate broken and cracking pipes. Failing sewer pipes can be replaced to help reduce the I&I problem. The consultant went on in the study to prioritize areas of town that are badly in need of pipe repair and replacement.

The City received a separate grant to analyze the wastewater treatment plant. The City and its engineer are evaluating both the Collection System Study and the Wastewater Treatment Plant Evaluation to determine the priority for the necessary repairs for both the collection and treatment systems.

A wastewater treatment facility needs to adequately collect, treat and dispose of the City's wastewater, and at the same time maintain sufficient capacity in the collection and treatment systems to accommodate growth and additional connections. Potential businesses or residents that want to move into the area may look unfavorably on the risks associated with a wastewater treatment system in a state of ill-repair.

The DEQ approved the City's sludge management plan in 1987. Since then, the U.S. EPA has adopted new sludge management regulations. It is not known whether the practices under the current plan will meet the new regulations. Additional quantities of sludge will be generated when the raw sewage bypass problem is corrected and more sewage arrives at the plant for treatment. The likelihood is that the sludge management plan will have to be updated in the future, especially as more sludge is produced at the plant.

## UNDERGROUND STORAGE TANKS

The City owns one 1,000 gallon UST located at the public utilities shop. The City has tentatively decided to decommission the tank well in advance of the January 1, 1998, required date to avoid paying the annual insurance premium required for the tank. One option is to replace the UST with a 500 gallon above ground dual tank for storing gasoline and diesel. A second option is to contract, perhaps in conjunction with the U.S. Forest Service and the School District, with a local business for provision of gasoline and diesel fuel. This approach has the added advantages of eliminating the City's liability for a tank and supporting local businesses.

The Department has mailed the appropriate UST decommissioning forms to the City with instructions to contact the DEQ regional office prior to the start of any work to decommission the tank. When the tank is decommissioned by removal, DEQ will inspect the hole to determine if any gasoline has escaped to the environment. If not, the issue will be closed. If gasoline has leaked from the tank, further evaluation and cleanup will be needed.

The Department is unaware of any other unused or abandoned tanks for which the City is responsible.

As opposed to the drinking water and wastewater infrastructure projects, there are no grants or loans available through OEDD or DEQ for decommissioning of the City's UST.

## POWERS MUTUAL AGREEMENT AND ORDER: Establishing the Compliance Schedules

The City reviewed and discussed the draft MAO at their February 6, 1995, City Council Meeting. The proposed priorities and compliance dates in the MAO are as follows:

### Drinking Water System

The City, OHD, and DEQ agree that upgrading the drinking water system is the first priority, with the improvements scheduled to be completed in 1995. The upgrades include filtration, establishing adequate chlorine contact time for disinfection, addressing reservoir water storage and maintenance issues, addressing corrosion problems, and installing water meters.

The city is required to maintain a cross-connection program under the direction of a state-certified inspector. (A cross connection is an illegal connection of a sewer lines or other source of contamination to the water distribution lines). A state certified water treatment operator will be needed to oversee the new filtration system. Until the improvements are made and the system meets the Safe Drinking Water requirements, notices will continue to be regularly issued to the public.

The City will provide OHD with an acceptable Emergency Operations Plan by May 31, 1995. The timeline below provides detail on the Construction Plans and Specifications, and construction, schedule.

Wastewater Treatment Facility:

The City will submit to DEQ by May 31, 1995, an Emergency Bypass Plan outlining what actions the City will take every time there is an overflow of raw sewage to the river.

Engineering construction plans for the wastewater treatment collection system are anticipated February 28, 1996, or earlier. This date is based on the city engineer's estimated time for completion of the drinking water system upgrades which are given a higher priority. Prior to this, the engineer will consider alternatives for reducing inflow and infiltration to minimize the number of raw sewage overflows. When the construction plans are completed, and approved by DEQ, Powers will begin making the repairs required to achieve compliance with the environmental requirements.

It is agreed that these repairs will be completed in 1996. Once the repairs are completed, the City will monitor and analyze the results for a period of one year to determine the effect of the improvements on reducing the raw sewage overflows and meeting the performance requirements of the wastewater discharge permit.

If the improvements to the wastewater treatment system result in the City achieving compliance within fourteen (14) months after construction, then the City will only need to make the additional repairs and upgrades necessary to the wastewater system needed to continue to meet the conditions of the wastewater permit. If, however, the system repairs and improvements fail to result in achieving compliance with the permit, then the City will be granted about 2 years to develop a Facilities Plan and complete the necessary improvements to achieve compliance. Note that this will likely result in the construction of a new treatment plant that will be subject to complying with the more stringent requirements for wastewater discharges from new facilities, and perhaps land-application of treated wastewater in the summer months.

Underground Storage Tanks

The City is required to remove, upgrade or replace the underground storage tank located at the wastewater treatment plant by January 1, 1998. By no later than January 1, 1997, the City will submit a plan to DEQ for complying with this requirement. A visual inspection of the tank revealed little or no petroleum contamination on the surface, and no indications of an immediate threat to public health or the environment. City must continue to monitor the tank for any leaks or other threats as required by its permit for the tank.

**Timelines in the Proposed Mutual Agreement & Order**

March 15, 1995

Submit Construction Plans and Specifications for the water treatment system to the Oregon Health Division (OHD) for approval. Complete construction within 8 months from OHD's approval of the plans.

May 15, 1995

Secure financing for the construction of the upgrades to the water treatment system.

May 31, 1995

Submit an Emergency Operations Plan for the drinking water system to OHD.

Submit an Overflow Notification Plan to the Department of Environmental Quality.

December 31, 1995

Anticipated date for completion of the water treatment system upgrades.

February 28, 1996 (or sooner)

Anticipated date for submitting plans and specifications for rehabilitating the City's sewage collection system to DEQ for approval. Complete construction within 9 months from DEQ's approval of the plans.

April 30, 1996

Secure financing for the sewage collection system rehabilitation work.

December 31, 1996

Anticipated date for completion of the sewage collection system rehabilitation work.

March 1, 1997

Anticipated date for submission of an engineering analysis or facility plan that evaluates the effects of the sewage collection system rehabilitation work. If additional upgrades to the wastewater treatment facility are still needed in order to meet federal and state wastewater and sludge management regulations, the City will have an additional time period of approximately 2 years to come into compliance.

Note that once the Mutual Agreement and Order (MAO) is signed, this (or a similar) timeline is subject to amendments by mutual agreement of the City, OHD and DEQ (Section 44 of the draft MAO).

## GENERAL INFORMATION

For more information about the MAO or the EPOC project, please contact:

**Ms. Susan Chauncey**
**Powers City Hall**
**P.O. Box 250**
**Powers OR 97466**
**503-439-3331**

**Pete Dalke, Environmental Partnerships**
**Oregon Department of Environmental Quality**
**2020 SW Fourth Avenue, Suite 400**
**Portland OR 97201**
**503-229-5588**

You can also call the Department of Environmental Quality toll free at 1-800-452-4011 and ask for Pete Dalke at extension 229-5588. The hearing impaired can receive help by calling 503-229-5471. This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact Pete Dalke at 229-5588 to request an alternate format.

powers.sum

## Environmental Quality Commission

☐ Rule Adoption Item
☒ Action Item
☐ Information Item

**Agenda Item H**
**March 3, 1995 Meeting**

**Title:**

Petition to Amend Rule: OAR 340-45-030, Application for NPDES permit, relating to water quality. Petition filed on December 29, 1994 by Mr. Larry Tuttle, 5858 S. W. Riveridge Lane, #24, Portland, Oregon 97201 Telephone (503) 228-3845

**Summary:**

The petitioner requests the Environmental Quality Commission amend OAR 340-45-030, pertaining to applications for National Pollutant Discharge Elimination System (NPDES) permits.

The proposed amendment adds language specific to applications for new or modified NPDES permits for coal and metal-bearing ore mining operations, requiring the Department of Environmental Quality to evaluate the operating and closure records of such applicants and their affiliates or subsidiaries, and requiring rejection of application (and thus, denial of permit) to applicants with histories of operational and closure problems which might represent a risk to the State of Oregon.

The petitioner's proposed amendment would require that the DEQ not accept applications for new or modified NPDES permits for coal or metal-bearing ore mining operations unless (1) the applicant discloses the name of all affiliates, subsidiaries, officers, directors, and all shareholders holding ownership of 10% or more, and (2) the applicant discloses all permitted mining operations, or operations for which permits have been requested, within Oregon or anywhere in the U.S.

The Department would then be required to make a written finding that the applicant (including affiliates, subsidiaries, officers, directors, and shareholders as defined above) is not in violation of any permit, compliance agreement, order, regulation or law in any state; or, in the event an applicant's compliance record includes past violations, that the EQC make a finding that issuance of the permit would not present a risk to public health or the environment.

**Department Recommendation:**

It is recommended that the Commission deny the petition, and direct the DEQ to use policy directives and management initiatives to improve oversight and increase inspection frequency for permitted coal and metal-bearing ore mining operations.

| Report Author | Division Administrator | Director |
|---|---|---|

February 6, 1995

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

MW\WC13\WC13242.5

State of Oregon
# Department of Environmental Quality Memorandum†

**Date:** February 10, 1995

**To:** Environmental Quality Commission

**From:** Lydia Taylor, Acting Director

**Subject:** Agenda Item H, March 3, 1995, EQC Meeting

Petition to Amend Rule: Oregon Administrative Rules, Chapter 340, Division 45, Section 030, relating to Water Quality

Petitioner: Mr. Laurence A. Tuttle
5858 S. W. Riveridge Lane, #24
Portland, OR 97201

## STATEMENT OF THE ISSUE

The petitioner requests the Environmental Quality Commission amend OAR 340-45-030, pertaining to applications for National Pollutant Discharge Elimination System (NPDES) permits.

The proposed amendment adds language specific to applications for new or modified NPDES permits for coal and metal-bearing ore mining operations, requiring the Department of Environmental Quality to evaluate the operating and closure records of such applicants and their affiliates or subsidiaries, and requiring rejection of application (and thus, denial of permit) to applicants with histories of operational and closure problems which might represent a risk to the State of Oregon.

The petitioner's proposed amendment would require that the DEQ not accept applications for new or modified NPDES permits for coal or metal-bearing ore mining operations unless (1) the applicant discloses the name of all affiliates, subsidiaries, officers, directors, and all shareholders holding ownership of 10% or more, and (2) the applicant discloses all permitted mining operations, or operations for which permits have been requested, within Oregon or anywhere in the U.S.

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The Department would then be required to make a written finding that the applicant (including affiliates, subsidiaries, officers, directors, and stockholders as defined above) is not in violation of any permit, compliance agreement, order, regulation or law in any state; or, in the event an applicant's compliance record includes past violations, that the EQC make a finding that issuance of the permit would not present a risk to public health or the environment.

A copy of the petition and proposed amendment are presented in Attachment A.

**BACKGROUND**

1. *Statutory authority*. Oregon revised statutes do not convey explicit authority to require the level of disclosure the petitioner requests for water quality permit applications for coal or metal-bearing ore mining operations, or for any other applicant for environmental permit.

However, the state's environmental statutes do give the DEQ (subject to EQC policy direction) permission to generally regulate environmental quality through any means as may be "necessary, proper and desirable" to carry out effectively the duties, powers, and responsibilities of the Department (ORS 468.035(1)(n).) The statutes also state that the Department may require additional information as is reasonably necessary to determine the eligibility of the applicant for a permit. (ORS 468.065(4).) Water quality statutes give authority to the DEQ to take such action as necessary for prevention and abatement of water pollution, including requiring the use of "all available and reasonable methods necessary" to carry out its mission to protect water quality. (ORS 468B.020(2)(b).) Also, the EQC has broad rulemaking authority, particularly for purposes of preventing water pollution. (ORS 468.020, 468B.010.)

Pursuant to statute, the Department may refuse to issue, renew, or modify, or otherwise suspend, revoke, or deny a permit if it finds that: 1) the application contained misrepresentative or false information; 2) the permittee failed to comply with permit conditions; 3) the applicant or permittee violated applicable provisions of state environmental statutes; or 4) the applicant or permittee violated an EQC order. (ORS 468.070(1).) These criteria do not specifically list as a reason to deny a permit the applicant's past problems with compliance in other states.

In sum, although there is no express statutory authority allowing the EQC or DEQ to impose the proposed application requirements, legal counsel has advised us that the EQC may have general rulemaking authority to impose such requirements, particularly with some refinement.

2. *Permit application requirements, generally.* Applications for NPDES and WPCF permits undergo extensive review and evaluation--including public notification and hearing--prior to issuance. Applications typically include various exhibits to clarify or supplement information presented, such as plans and specifications, mixing zone studies, groundwater characterizations, maps and diagrams, etc. The focus of application review is on the affected site and its environment; what is happening or proposed to happen on the site? What are the impacts on the quality of water in its environment? Will the applicant's operation meet permit conditions, water quality policies and standards?

To better coordinate overall DEQ involvement with the applicant, the application form does ask for information about other permits pertinent to the activity or site (air quality, solid waste, stormwater, other agency, etc.). In some cases, the Department may be aware that an applicant has had trouble with permit compliance in the past. If so, and if all other applicable information is acceptable for permit issuance, then the permit may be drafted with more stringent conditions for operation, monitoring, sampling and reporting. Information about the applicant's compliance record on other sites or in other states has not routinely been requested, examined, or used as a basis for rejection of application and denial of a permit.

3. *State rules for NPDES applications.* The current rule (OAR 340-45-030) contains provisions for NPDES applications in general, requiring that applicants submit written application on forms provided by the Department, and requiring signature by a legally authorized representative. The rule also gives the Department the prerogative to request additional information as needed, to determine eligibility, and to assist in preparation of the application evaluation report and draft permit.

An application is considered complete and acceptable for processing if: (1) the appropriate forms are completed (including any necessary exhibits); (2) the application has been signed by the legally authorized representative; (3) the applicable permit fees have been paid; and (4) the application is accompanied by a completed Land Use Compatibility Statement (LUCS), signed by the local city or county land use authority.

4. *Federal regulations for NPDES applications.* The federal Clean Water Act sets forth the authority for the NPDES program. Regulations to implement the NPDES program are found at 40 CFR part 122, 123 and 124. The DEQ administers the EPA-approved state program for NPDES permits.

Federal regulations require that state application forms must contain at a minimum information required by the federal program. The application forms used and processing procedures employed by the Department are essentially the same as those of the federal Environmental Protection Agency for NPDES permits. Federal regulations do not require the depth of disclosure required by the proposed amendment. (40 CFR 122.21 and 124.3.)

Under the federal regulations, an NPDES application is considered complete when the Director receives an application form and any supplemental information which have been completed to the satisfaction of the Director. The federal regulations further state that the completeness of the application "shall be judged independently of the status of any other permit application or permit for the same facility or activity". (40 CFR 122.21 (e).)

5. *Application requirements specific to Chemical Mining*. Oregon's environmental protection requirements concerning mining operations are considered to be among the most stringent in the U. S.

In addition to the application requirements discussed above, special requirements have been adopted by state rules pertinent to chemical mining operations (i.e. mining and processing operation for metal-bearing ores employing chemicals to dissolve metals from ores). These rules are found in Chapter 340, Division 43 (340-43-000 through 180).

The purpose of the Division 43 rules is to prevent water pollution and protect the public health and environment by requiring the DEQ to apply "all available and reasonable methods for control of wastes and chemicals related to the design, construction, operation, and closure" of mining facilities which use toxic chemicals to extract metals from ores. (OAR 340-43-000(1).)

An application for a permit must include all the otherwise necessary documentation and signatures required by Division 45, along with a report that fully addresses the requirements specified in Division 43. Further, the DEQ may not issue a permit until the applicant has obtained a written determination of compliance with statewide planning goals and compatibility with local land use plans and restrictions. (OAR 340-43-020(3).) The DEQ also coordinates application review and permit issuance with the State Department of Geology and Mineral Industries (DOGAMI). The DEQ may also use information presented in environmental assessments, environmental impact statements, or other documentation prepared in accordance with fulfilling requirements for National Environmental Policy Act (NEPA) review. (OAR 340-43-030(1).)

Division 43 was revised in April of 1994 to include provisions for assumption of liability. The DEQ requires, with permit application and prior to the issuance of a permit for chemical mining, that those persons or entities having significant controlling interest in the management or policies of a chemical mining permit applicant, assume liability for any environmental harm, remediation expenses, and penalties stemming from the operation or management of the mining facility. (OAR 340-43-025.) This rule was added because the EQC recognized the common practice for corporations to establish subsidiaries as operatives for specific and discrete functions. One reason for this practice is to shield the parent corporation from any liability for the actions of the subsidiary. The revised rule in essence pierces the corporate shield, and ensures that all controlling parties are accountable and responsible for the actions of the permittee.

6. *The Formosa Silver Butte Mine in Douglas County*. The petitioner cites the case of the Silver Butte Mine operated by Formosa Exploration, Inc. as an example of a situation that could have been avoided had the proposed rule been in effect.

In 1990, Formosa Exploration, Inc. (FEI) began construction to expand a mine and mill operation on Silver Butte (also known as Silver Peak) in Douglas County, about seven miles south of Riddle. The site, located near the headwaters of Middle Creek and West Fork Creek in the South Umpqua basin, had been mined on various occasions in the past, beginning in 1910, primarily for copper and zinc ore. FEI enlarged underground mining operations, and added a crusher and a flotation mill to produce ore concentrates for off-site smelting. FEI had no past history of mine operation; it was a subsidiary of Formosa Resources Corporation of Roseburg, Oregon, a firm dealing in mineral exploration (i.e. locating potential mine sites).

The facility was issued permits from DOGAMI and DEQ; the DEQ permits included an Air Contaminant Discharge Permit for emissions from the ore crusher, a WPCF permit for treatment and disposal of process wastewater from the mill and from the tailings pond (WPCF permit No. 100672 issued May 19, 1990). The facility operated from 1990 to 1993, when DOGAMI issued a Closure Order (ID No. 10-0169, dated August 3, 1993) curtailing all mining activity, and citing improper disposal of waste rock and tailings, insufficient financial security (for reclamation purposes), and other inspection concerns. In October 1993, the DEQ recouped some oversight costs, and issued a Stipulated and Final Order which included assessment of civil penalties. During reclamation, DEQ approved an erosion control plan, and assigned coverage under the general stormwater permit (NPDES/1200-C, assigned 11-29-93).

The improper disposal of ore concentrates, waste rock and tailings increased the risk of environmental harm from toxic concentrations of acids and dissolved metals. Stormwater runoff, contaminated by sulfide-bearing ore particles, was inadvertently diverted to Middle Creek, with fatal impacts on fish and other aquatic life. According to a report prepared by the DEQ Western Region (Medford Office), water quality inspections by DEQ were not made until January 1993, and aggressive enforcement did not occur until August of that same year. The site had been given low priority for inspections in that the FEI's WPCF permit prohibited discharge of wastewater to surface water bodies (*Formosa Exploration, Incorporated, Silver Butte Mine, Douglas County, Oregon*, January 28, 1995, prepared by Dennis Belsky).

Formosa Exploration worked cooperatively with DOGAMI and reclamation was completed in May of 1994. The company invested over $1 million in site reclamation. A representative from DOGAMI is of the opinion that the area is environmentally better than it has been in years, and that the quality of water in Middle Creek was improved significantly, and will continue to do so as the reclaimed area matures (per telephone conversation with Gary Lynch, Supervisor, Mined Land Reclamation, February 1, 1995).

To summarize, the permit for this facility would in all likelihood have been issued, even if the proposed rule had been in place. The facility operator had no previous history of mine and mill operation, and therefore no record of compliance. The problems later encountered were largely due to a series of unfortunate economic trends, inappropriate management decisions by the permittee, and subsequent deviation from the approved plan of operation. (Also note that the petitioner's proposed rule revisions pertains only to NPDES permits. The Formosa facility was permitted under the WPCF program.)

7. *Status of Other Individually Permitted Mining Operations.* Most if not all of the individually permitted, large scale metal-bearing ore mining operations which historically caused significant environmental problems have been closed. There are now four metal-bearing ore mining facilities with active individual permits: Bonnanza Mining, Inc. in Baker County (NPDES), Bourne Mining Corp., Baker County (NPDES), Glenbrook Nickel Co., Douglas County (NPDES), and Oregon Placer, Inc., Douglas County (WPCF). At least two of these facilities (Bonnanza and Bourne) are not operating at this time. Two facilities have had previous problems with permit compliance (Bonnanza and Glenbrook); however, the compliance problems were minor and readily resolved.

Given the costs of start-up and operation for a large scale mining facility compared to the return on investment--especially in light of the new chemical mining rules-- it is highly unlikely that we would see many new applications for discharge permits. Several permit applications for proposed mining operations were withdrawn after the new rules

were adopted. The bulk of the mining activity in the state is in the form of recreational mining, either placer or suction dredge. These activities are covered under general permits (Categories 0600 and 0700).

8. *Similar Petition Filed with DOGAMI.* The petitioner has filed a similar proposal with the Department of Geology and Mineral Industries, proposing that this agency develop and implement an interstate violator system network, to identify mining operators with bad performance and compliance histories.

At the time this report was being written, DOGAMI staff had prepared a report to their governing board recommending that the petition be denied. A draft of the staff recommendation is included as Attachment B.

## AUTHORITY TO ADDRESS THE ISSUE

The petition was submitted pursuant to ORS 183.390 and OAR 137-01-070. The rule sets forth the requirement that the state agency shall, in writing, within 30 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings in accordance with state rules. Mr. Tuttle allowed extension of the 30-response period in order for the DEQ staff to thoroughly review the petition and to schedule presentation at the EQC meeting. (Mr. Tuttle's letter granting extension is included as Attachment C.)

## ALTERNATIVES AND EVALUATION

**Alternative #1**: Accept the petition and amendment as presented, and initiate rulemaking proceedings.

Evaluation: Adopting the proposed rule revision would result in increased staff time to process permits, and thus, increased costs for permit processing. Further, legal counsel has advised us that our statutory authority may need further refinement before the proposed rule could be implemented.

The rule would require the DEQ to make a written determination that the applicant, its affiliates, subsidiaries, corporate officers and directors, and any other entity holding 10% or more interest in the organization, are not in violation of any permit, standard, regulation, condition, requirement, compliance agreement or order, for any facility in any part of the U. S. To make this finding, the DEQ would have to conduct a rather

extensive, exhaustive, and time-consuming investigation into the permit records of organizations and individuals in other states, down to the local government level. We have no guarantee that other states or permitting agencies would have the authority, the resources or the inclination to release the information to us.

The further difficulty in making such a finding lies in the fact that different states have different approaches to water quality protection and environmental permitting and compliance. For example, the state of Idaho does not administer the NPDES program; it is run by the EPA. EPA's permitting and enforcement program focuses on major industrial and domestic dischargers. Minor NPDES dischargers may be operating in violation of their permits, but haven't been formally documented as such. Thus, a coal or metal-bearing ore mining operation in Idaho may demonstrate on paper an acceptable compliance record, but in reality may be causing significant environmental harm. A finding that the applicant has historically complied with environmental permit requirements would be meaningless.

The increased costs for undertaking this special evaluation and finding would probably have to be recovered through the imposition of additional permit processing fees. The processing fee for a typical new individual permit (minor industry) is $8,000. This fee covers about 60% of the cost of permit processing, including initial review, ground and surface water impact analysis, site visits, general coordination (with applicant, other DEQ staff, and other government agencies), preparation of the permit, public notification and hearings, and legal review (a total of about 175 FTE hours of staff time). Additional time needed to conduct the investigation into the permit records of an applicant could take anywhere from 10 to 200 FTE staff hours, depending on the number of other permits, with added costs ranging from $750 to $15,000. Time and costs could run even higher if staff evaluation included preparing documentation for EQC action.

**Alternative #2**: Deny the petition, but form an advisory committee to evaluate the issues raised and need for rule revision.

Evaluation: Working in conjunction with an advisory committee, staff could evaluate processing procedures now in place to determine possible rule amendments or policy directives that would address the intent of the petitioner's proposal. For example, application processing steps could be expanded to include a preapplication for mining concerns, such that the applicant could submit the information required by the proposed rule revision prior to full application for the permit. A fee could be developed to cover the initial costs of processing this preapplication. Rules would need amendment to accommodate this approach.

Formation of an advisory committee made up of representatives from all sides of the issues could be useful in determining or recommending a course of action for the Department. However, given the limitations of staff resources and the number of other legislative and Department issues currently under review by advisory committees, establishment of such a committee could not likely occur in the near future.

**Alternative #3**: Deny the petition, but have DEQ staff draft policy directives or implement internal procedures that would address some of the issues of concern.

Evaluation: The problems associated with the Formosa Silver Butte Mine stemmed not from the permittee's past operating and closure record, but largely from inappropriate management and operational practices employed by the permittee after the issuance of the permit. The DEQ did not inspect the facility for three years after permit issuance. Earlier and more frequent compliance inspections could have averted environmental injury.

Measures could be taken to increase the frequency of inspections for some permitted sources within the context of the current rule structure. For example, the DEQ could place a higher priority on inspections for mining facilities with new WPCF or NPDES permits, especially when the permit is issued before the facility is placed into operation. The DEQ could require that a compliance inspection be performed within six to 18 months of initiation of operation. For permittees undertaking mining activities with more potential for environmental harm, the DEQ could schedule compliance inspections at least annually. This could be accomplished through internal policy and management direction rather than formal rule amendment.

**Alternative #4**: Deny the petition. Continue with the current procedures for application content, processing and review.

Evaluation: Maintain the current structure and level of review for evaluation and issuance of permits. However, The Department could adopt a more formal approach to coordination between DOGAMI, ODFW, DSL, BLM, USFS, and other governmental agencies charged with overseeing mining operations.

## RECOMMENDATION FOR COMMISSION ACTION

It is recommended that the Commission deny the petition, but direct the DEQ to use policy directives and management initiatives to improve oversight and increase inspection frequency for permitted coal and metal-bearing ore mining operations. (Alternative #3, described above).

Staff acknowledge and appreciate the petitioner's desire for better agency control over mining operations; however staff cannot conclude that adoption of the proposed rule would result in the environmental benefits envisioned by the petitioner. The additional staff time and resultant increase in permit processing costs (likely recovered through new fees) is not justified when compared to the value of the finding; information used as a basis for the finding may be erroneous, incomplete, or unavailable, and therefore, insignificant.

**ATTACHMENTS**

A. Petition and Proposed Amendment
B. DOGAMI Staff Report (draft)
C. Letter from Mr. Tuttle allowing extension of the response period

Approved:

Section: _____

Division: _____

Report Prepared By: Janice M. Renfroe,
Policy Analyst
Water Quality Division

Phone: (503)229-5589

Date Prepared: January 29, 1995

JMR:crw
MW\WC13\WC13241.5
13 Feb 95

cc ODOJ
C Rich
P Burnet

# PETITION

In the matter of an amendment requiring an evaluation and written finding prior to the issuance of a NPDES Permit, Laurence A. Tuttle hereby petitions the Department of Environmental Quality to amend OAR 340-45-030, related to water quality.

## PETITIONER'S NAME AND ADDRESS

Laurence A. Tuttle
5858 SW Riveridge Lane, #24
Portland, Oregon 97201
(503) 228-3845 - home
(503) 221-1683 - office

## TEXT OF PROPOSED AMENDMENT

See Attachment A.

## Statement of Need, Principal Documents Relied Upon, and Statement of Fiscal Impact

1) Need for the Amendments: Uneven and confused authority among state and federal agencies regulating coal, metal, and chemical process mining on state and federal lands has created a legacy of 550,000 abandoned mine sites, twelve thousand miles of polluted rivers, and thousands of toxic waste sites. In many cases, a mining company, or its subsidiaries or affiliates, has created mine-site and other pollution problems in several locations in one or more states. This situation will continue because of chronic underfunding of state and federal agencies monitoring mining sites; vague mining laws and regulations; routine granting of variances from laws and regulations; political pressure; and, reclamation bonds set too low to insure mine cleanup.

The proposed amendment will require the Department of Environmental Quality to evaluate the operating and closure histories of an applicant and an applicant's subsidiaries or affiliates before issuing a NPDES permit. State agencies may not issue a permit to applicants which have a history of operational and closure problems which represent a risk to the State of Oregon.

2) Principal Documents Relied Upon: See Attachment B.

3) Fiscal and Economic Impact: The State of Oregon will avoid the cost of cleaning up mine sites or other pollution created by companies which have a record of operational or closure problems. A recent example is the Formosa Silver Butte Mine in Douglas County which consistently violated its operating permit for several years and eventually poisoned aquatic life in an anadromous fish-bearing stream. Supervising cleanup at Formosa has stretched already thinly-staffed state agencies. Had Formosa's record been evaluated in the context of the proposed rule, the original permit may not have been issued. The rule amendment could produce savings to the State of Oregon in the next decade of $10 million, or more.

The information needed to make the evaluation and any required findings is submitted by an applicant as part of its permit application. The agency would decide how it would contact agencies in Oregon and other states to determine the applicant's history. The most likely method would be a form letter. Estimated postage and paper costs would be $20 per application.

Laurence A. Tuttle

This 28th day of December, 1994.

**Attachment A**

**Application for NPDES Permit**

**340-45-030** (1) Any person wishing to obtain a new, modified, or renewal NPDES permit from the Department shall submit a written application on a form provided by the Department. Applications must be submitted at least 180 days before the NPDES permit is needed. All application forms must be completed in full and signed by the applicant or his legally authorized representative. The name of the applicant must be the legal name of the owner of the facilities or his agent or the lessee responsible for the operation and maintenance.

(2)Applications which are obviously incomplete or unsigned will not be accepted by the Department for filing and will be returned to the applicant for completion.

(3) Applications which appear complete will be accepted by the Department for filing.

(4) If the Department later determines that additional information is needed, it will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn of the applicant fails to submit the requested information within 90 days of the request.

(5) An application which has been filed with the U. S. Army Corps of Engineers in accordance with Section 13 of the Federal Refuse Act or an NPDES application which has been filed with the U.S. Environmental Protection Agency will be accepted as an application filed under this section provided the application is complete and the information on the application is still current.

**(6) The Department shall not accept an application for a new or modified NPDES Permit for a coal and metal-bearing ore mining operation unless an applicant provides the following:**

**(a) the name and address of the applicant and applicant's affiliates and subsidiaries. If an applicant or applicant's affiliate or subsidiary is a corporation or partnership, the applicant shall disclose the name and address of all officers and directors; and, all stockholders or partners holding an ownership of 10% or more.**

**(b) the name, location, and ownership of all operations for which applicant, affiliate, or subsidiary has received or applied for a permit for surface and subsurface mining operations in Oregon and the United States.**

**(c) the name address, and contact person for all federal, state, or local governments or agencies pursuant to (b) above.**

**(7) The Department shall not begin processing an application for a new or modified NPDES Permit unless the following is complete:**

**(a) the Department makes a written finding that an applicant, affiliates, and subsidiaries are not in violation of any provision of any permit, standard, regulation, condition, requirement, compliance agreement or order; or,**

**(b) the Environmental Quality Commission makes a finding, in a regular or special meeting, that the operating and closure record of an applicant, affiliates, or subsidiaries which are in violation of a permit, standard, regulation, condition, requirement, compliance agreement or order, does not represent a risk to the land, water, air, wildlife, and human health of Oregon.**

**Bold and Underlined = Amendment Language**

**Attachment B**

Western Governor's Association, *Inactive and Abandoned Noncoal Mines: A Scoping Study,* August 1991: Volume II

U. S. General Accounting Office, *Federal Land Management: An Assessment of Hardrock Mining Damage,* April 1988.

U. S. Department of Interior, Office of Inspector General, *Audit Report: Noncoal Reclamation, Abandoned Mine Land Reclamation Program, Office of Surface Mining Reclamation and Enforcement,* September, 1991.

Congressional Research Service, *The Federal Royalty and Tax Treatment of the Hard Rock Minerals Industry: An Economic Analysis,* October 1990.

John E. Young, *Mining the Earth,* Worldwatch Paper 109, Worldwatch Institute, July 1992.

*American Mines Handbook 1994,* Southam Magazine Group, 1993.

John D. Leshy, *The Mining Law: A Study in Perpetual Motion,* Resources For the Future, 1987.

U. S. General Accounting Office, *Federal Land Management: The Mining Law of 1872 Needs Revision,* March 1989.

U. S. Office of Technology Assessment, *Management of Fuel and Nonfuel Minerals in Federal Land,* 1979.

James S. Lyon, Thomas J. Hilliard, *Burden of Gilt,* Mineral Policy Center, June 1993.
U. S. General Accounting Office

Mineral Policy Center, *State's Rights, Miners' Wrongs: Case Studies of water contamination from hardrock mining, and the failure of States to prevent it.,* July, 1994.

ATTACHMENT B

Oregon

DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES

MINED LAND RECLAMATION

# FAX COVER SHEET

Please notify sender if facsimile is not satisfactory.

DATE: Jan Renfro

TO: 2-1-95

BUSINESS NAME: DEQ - Pdx

FAX NUMBER: 229-6037

FROM: Gary Lynch

FAX NUMBER: (503) 967-2075

NUMBER OF PAGES: 2 (Including cover sheet.)

MESSAGE:

Please call (503) 967-2039 if transmittal is incomplete or unreadable.

faxcover (Rev 5/92)

1536 Queen Avenue SE
Albany, OR 97321
(503) 967-2039

Governing Board
Feb. 13, 1995

## BACKGROUND

The petition for rulemaking proposing an interstate violator system network has several inaccuracies and appears to relies on misinformation.

The abandoned mine land problem in the US is a pre-law problem, that is these are the sites that existed prior to environmental and reclamation legislation that has come into effect in the in the last 20 years to deal with problems associated with mining. The situation has not continued. That is not to say the aren't problems.

The proposed petition would not have prevented the state from issuing permits to Formosa because the company did not have other active properties at the time. It is unclear how $10 million or more could be saved by the state of Oregon since the vast majority of all costs of programs are fee supported and clean up costs are paid by the company or by the state using the financial security. DOGAMI Div. 35 does have a bond ceiling that the agency has proposed to remove that potentially can cause problems under a narrow set of circumstances.

Considering the above still recent permits in mining states have not been airtight and problems and environmental impacts are a concern with regards to the mining industry. The petition proposes a system that would identify bad actors in the industry who have a record of operational and closure problems. This is analogous to the Automatic Violator System (AVS) under the Surface Mine Control and Reclamation Act which is the Dept. of Interior's enabling act for the regulation of coal mining in the US. No such program exists for hard rock mining. The federally mandated AVS is an 80% federally funded and while in principle is seems like a sound concept the devil appears to be in the details.

Regulators in the western coal producing states estimate the implementation costs were 10-20 million dollars for the coal program. Beyond the fiscal problems there is no federal authorization requiring states to supply such information to other states and obviously Oregon cannot require such information of other states. Should the state receive such information and the information is incorrect or reversed at a later date who accepts liability for another states misinformation. This is relevant because often violations are based on complex analysis and errors do occur. Also there are unique laws in each state reflecting cultural differences or traditions that might not exist in Oregon and those kinds of issues have caused significant problems in the coal producing states according to Mike Long, the director of the CO program.

## POLICY ISSUES

The industry has had more than its share of scams and shady promotions. The most effective tool in ensuring environmental violations are prevented is adequate financial security requirements. The Oregon financial security requirements adopted as part of the comprehensive HB 2244 process and subsequent DEQ corporate veil piercing provisions are considered the most stringent in the US. In addition the $50,000 dollar per day per violation civil penalty are believed to be a significant deterrent

## STAFF RECOMMENDATIONS

The staff recommendation is do not adopt

ATTACHMENT C

# CENTER FOR ENVIRONMENTAL EQUITY

610 SW Alder Suite 1021 Portland, Oregon 97205 (503) 221-1683 Fax: (503) 221-0599

January 13, 1995

Ms. Lydia Taylor, Acting Director
Department of Environmental Quality
811 SW Sixth Street
Portland, Oregon 97204

Dear Ms. Taylor,

On December 30, 1994, I submitted a Petition for rule making. I understand that the Environmental Quality Commission has a regularly scheduled meeting March 3, 1995. If the Petition is considered by the Environmental Quality Commission at its March 3, 1995, meeting, I will regard the actions of the Department and Commission to be timely.

Please inform me if there is any change from this schedule.

Sincerely,

Laurence A. Tuttle

CITY OF COTTAGE GROVE
400 Main Street, Cottage Grove, Oregon 97424

March 2, 1995



Bill Wessinger, Chair and
Members of the Environmental
Quality Commission
811 SW 6th Avenue
Portland, OR 97204

Dear Chair and Commission Members:

It has been my pleasure to represent local government as a member of the Environmental Partners for Oregon Communities (EPOC) Advisory Committee since its inception. I believe the program will prove to be a successful venture. The values of collaboration and cooperation will allow small communities, particularly those that may lack a broad range of technical expertise, to better understand their responsibilities to meet environmental standards and move them to compliance.

The program staff understand that community, environmental and department interests can be addressed in a process that relies on open communication and assistance rather than an enforcement oriented process that is often viewed as heavy-handed and inflexible. More importantly, compliance with the relevant environmental standards are not sacrificed. In fact, compliance will be achieved by EPOC with more public support and understanding and less anger and resistance than by doing business the way it has always been done.

In addition to expressing my support for EPOC, I want to encourage the Commission to actively promote the values and practices of this program throughout DEQ. I believe striving to find nontraditional ways of achieving compliance will be far more productive than relying on the sometimes hidebound practices of the past. Too often, local governments still find themselves trying to deal with DEQ staff that seem more interested in staying true to process and limiting their own labor than finding solutions to providing cleaner water, air and land. In a time when government credibility continues to decline, all of us who work in the public sector must rededicate ourselves to finding innovative solutions that will address the multitude of interests that exist in nearly every circumstance today. It is not easy to identify and address interests that are sometimes competing, but I believe it is far more productive in the long run.

Thank you for the opportunity to comment. I apologize for not being able to appear in person. Please feel free to contact me for any additional information.

Sincerely,

Jeff Towery
City Manager

JT:jh
cc: League of Oregon Cities

# ENVIRONMENTAL QUALITY COMMISSION
# REGULAR MEETING
# MARCH 3, 1995

I would like to comment on the evaluation process in determining the Department of Environmental Quality's recommendations on any given business that comes before the Environmental Quality Commission for action.

In the process of determining which course to follow the Department of Environmental Quality uses negative assertions when describing evaluations on any given issue. I find it difficult to believe that anyone who desires to alter our environment without having to guarantee a non destructive result of that intrusion can be taken seriously. There is a continuing felonious assault on the people of Oregon's basic right to expect our governmental agencies to protect our air, water and livability.

Using phrases like "extensive", "exhaustive", "time consuming" as reasons not to pursue rule protection for Oregon's citizens is not only an abrogation of the Department of Environmental Quality's fiduciary responsibilities, it is just plain wrong. And the points that "increased costs", "increased staff hours" are prohibitive in resolving any issue are really not an issue here. The real issue here is: Is the Environmental Quality Commission going to require a absolute protection of our environment? The very least requirement must be that all costs associated with the research and/or implementation of any permit or deviation that damages water quality in any way be paid for by the polluting entity. We cannot ignore our moral responsibility to protect Oregon's citizens.

The recent rule change on the three basins of North Santiam, Clackamas, and McKenzie rivers highlights another serious omission of democratic procedures. At this point I would like to thank the Commission for allowing at least this brief comment on our concerns on water issues. This does not alter the fact that the public did not have adequate opportunity and sometimes no opportunity to speak or testify on the extremely important Three Basin Rule changes to OAR 340-41-470 (1) made by the Commission on February 16, 1995.

When the public does not have the right to address our public officials and agencies we all suffer. After all, *"We the People"* is a very important phrase. It is the first three words in the preamble to U.S. Constitution. Freedom of speech is quite literally the most important freedom we have. The 1st Amendment to the U.S. Constitution says it all, *"Freedom of religion, speech, and press; right to assemble and petition."* And if that is not enough, Article 1, Section 8 of the Oregon Constitution says *"No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatsoever;....."*

Thank You for the opportunity to speak today,

Bob Robinson

BOB ROBINSON
2226 S.E. 35th Place
Portland, Oregon 97214
235-5498

# Formosa Exploration, Incorporated
# Silver Butte Mine
# Douglas County, Oregon

## Operational Background Information

The Silver Butte Mine consists of 68 mining claims owned by Formosa Exploration, Incorporated (FEI)[1] and 120 acres of patented mine under lease. The site is about 10 miles southwest of Canyonville with access provided by a BLM road leading to the forestry lookout tower at the Silver Butte summit at elevation 3973 feet. A location map is attached.

FEI operated the facility for four years between 1990 and 1993. All operations have ceased.

Operating permits were applied for and obtained from the Oregon Department of Geology and Mineral Industries (DOGAMI) and the Oregon Department of Environmental Quality (DEQ) in 1990. DOGAMI required a $500,000 reclamation bond for eventual mine closing costs. DEQ permits included a Water Pollution Control Facilities permit (WPCF) for the treatment and disposal of excess water from the mill and tailings pond and an Air Contaminant Discharge permit (ACDP) for emissions from the crusher. DEQ issued FEI a National Pollutant Discharge Elimination System (NPDES) stormwater permit during mine reclamation in 1993-1994.

Mining takes place underground. Ore is taken to the surface for processing. Production history indicates 6,620 tons were mined from 1910-1936 for copper and zinc. Gold and silver are also present. The ore deposit is volcanic in origin with mineralization that contains pyritic sulfur (sulfides). Sulfides, upon exposure to atmospheric oxygen and moisture, react to form sulfuric acid. Sulfuric acid mobilizes metals by dissolution and, in water, will lower pH from neutral conditions.

Mine drainage has occurred since the 1930s at a rate of five to twenty gallons per minute. The moisture originates from precipitation infiltrating from higher elevations. This drainage is acidic and contains dissolved metals which, along with natural weathering of outcroppings of the ore body, is the probable reason for elevated metal levels and low fish population in Middle Creek prior to activity by FEI.[2]

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[1] After extensive exploration of the property from 1984 through 1987, Formosa Exploration, Inc. formed in May, 1987 as U.S. subsidiary of Formosa Resources Corporation located in Roseburg, Oregon .

[2] Water analysis during a FEI baseline survey in 1988-89 reported metal levels in Middle Creek which exceeded Oregon water quality criteria for cadmium, copper and zinc, and were higher than other streams surveyed.

FEI enlarged the underground workings and added a crusher and a 200 tons/day flotation mill to produce an ore concentrate for off-site smelting. Crushing the ore increases the surface area of the ore available for sulfide reactivity. About 62,000 tons of ore and 25,000 tons of waste rock were removed from the Silver Butte Mine from 1990 to 1993[3].

The additional gradation of the ore also resulted in enhanced transport by stormwater of sulfide-bearing sediment from the access road toward Middle Creek. BLM inadvertently exacerbated the sediment runoff by installing a culvert to remove stormwater from the access road at some point during the period of FEI operation of the mine. No agency at the time recognized that the primary problem would be the effect of finely-crushed sulfides leaving the mine site and not the turbidity, per se, in the escaping stormwater. An estimated 20 tons of sulfide-bearing material was flushed into the headwaters of Middle Creek[4]. Discovery of the water quality impacts in 1993 was one of the key factors in the FEI decision to end operation of the mine.

During the development of the FEI mining plan at the pre-permit stage, residues of processed ore, called tailings, along with lean ore not economical to process, were to be backfilled in the mine on a fill-as-you-go basis. This did not prove feasible in practice because the volume of underground workings was underestimated by FEI, tailings volume was greater than expected, and the amount of sulfides in the lean ore was higher than encountered during mine development. As a result, aboveground storage and disposal of tailings and waste ore became an operational necessity.

The two-acre tailings pond, excavated into bedrock and lined with two layers of PVC, was intended to recycle water from the flotation circuit and temporarily store tailings before being placed back underground in a cement slurry. When this proved impracticable, FEI, without permission, used the pond for disposal. As time passed, the tailings were also dry stacked above the pond. The environmental danger from sudden pond failure or movement of dry tailings was significant and immediately recognized during the initial DEQ inspection in January, 1993.

FEI shut down the operation in August, 1993. The 1990 reclamation plan was quickly determined to be inadequate to deal with restoration of Middle Creek and recovery of thousands of tons of improperly discarded waste ore and ore concentrates. The reclamation bond administered by DOGAMI was increased from $500,000 to $980,000. Restoration was accomplished in a cooperative manner with FEI.

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[3] *Reclamation of Formosa Exploration's Silver Butte Mine*, Allan Throop, Oregon Department of Geology and Mineral Industries, January 11, 1995.

[4] To maintain consistency with contemporary reports on the Silver Butte Mine, Middle Creek is assumed to begin at the springs, noted on the location map as Ma and Mb.

Closure of the mine portals, or adits, at the mine included a limestone pack to buffer long term acid mine drainage and a concrete security seal. This technique has been shown by the Bureau of Mines to be as effective as a conventional concrete seal.

All buildings and structures were removed. The treatment pond was filled in with low acid-reactive waste rock and covered with a bentonite clay cap. Roads were obliterated in accordance with requirements of BLM and DOGAMI. Reestablishment of vegetation and trees was required. Erosion control measures were necessary until vegetation was established. About 25,000 gallons of digested sewage sludge was used as a soil amendment.

DEQ, using ORS 465.255, recovered oversight costs dating from October 23, 1993. DEQ issued a Stipulated Final Order (SFO) dated October 27, 1993 which included a $4,000 civil penalty. DOGAMI oversight costs were also paid by FEI in the amount of $14,000.

## Reflections From an Environmental Regulation Perspective

On paper, operation of the Silver Butte mine should not have created the host of environmental and site restoration problems remediated during the formal reclamation that occurred after shutdown of the operation in August, 1993. FEI accepted ultimate responsibility and spent significantly more than 1 million dollars on cleanup and restoration activities that were largely completed by May, 1994.[5] Monitoring the success of the reclamation, especially in Middle Creek, may well last another six or more years. The goal for Middle Creek is to restore aquatic life and reestablish fisheries to a pre1989 level. Background mineralization could affect runoff quality and aquatic habitat viability for many years.[6]

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[5] DOGAMI estimates the reclamation costs would have tripled if FEI had not shouldered full financial responsibility and cooperated in every respect with the agencies involved. The field-engineered stream sediment recovery techniques were especially successful. FEI hydraulically washed the creek bed after physically loosening the deposits of visible sulfides. The washings were directed into a moveable funnel which lead to a truck-mounted tank.

[6] The stream restoration goal is re-establishment of a diversity of macroinvertebrates. Insects will fly in and salmonid survival will occur if water quality is acceptable. Logging on the southern slopes of Middle Creek in 1994 are a factor in stream restoration due to acceleration of erosion of outcropping sulfides. Stream monitoring and verification will be by Oregon Department of Fish and Wildlife biologists using the DEQ protocol "Stream Bioassessment Field Manual". The taxonomic level of the assessment includes benthic macroinvertebrate surveys and development of a species diversity index. Juvenile and adult fish surveys will continue at least until 1999. Surveys will include shocking for juvenile salmonids in the spring. Quarterly monitoring includes sampling of surface water and sediments in Middle Creek. Analytes include total metals and dissolved metals, hardness, alkalinity, and sulfates. Surveys in Middle Creek done by BLM in 1982, and again in 1984, show improving conditions for

Major miscues by Formosa Exploration, Inc.:

- Underestimating the ability to dispose of all tailings and waste ore in the mine.
- Filling the tailings pond above the level of natural rimrock, thereby endangering release of waste and wastewater to the environment.
- Insufficient recognition and protective measures to stop stormwater transport of sulfide-bearing ore to surface waters. Fish and aquatic life were killed.
- Improper surface disposal of 25,000 tons of sulfide-bearing lean ore at the site.
- Diesel fuel spills at aboveground tanks at the mill.
- Improper surface disposal of 2,000 tons of zinc ore concentrate at the site.

Oregon DEQ hindsights:

- No site visits or formal compliance inspections until 1993 at mine or mill site after issuance of water quality permit in 1990.[7]
- No air quality inspections.
- No recognition during site development of stormwater control and drainage patterns.
- Lack of review of potential surface water impacts away from the mill and mine site.

There is little doubt that routine inspections by knowledgeable regulatory staff would have been effective in detecting operational glitches. Early detection of sources deviating from approved operating plans and permit limitations should be the goal of the regulatory agencies. It is not their role to be an ever-vigilant presence. This is contrary to the expressed views of the many citizens, media, and local governments that finger pointed at DEQ, DOGAMI, and BLM to share the blame for the problems at the Silver Butte Mine. As Anne Squier, on the staff of then-Governor Barbara Roberts stated in a March 7, 1994 letter to a citizen, "Any entity operating under a permit in this state is responsible for complying with every aspect of its permit. Especially in these difficult budget times, the State has neither personnel nor funds to monitor all private activity on a frequent basis."

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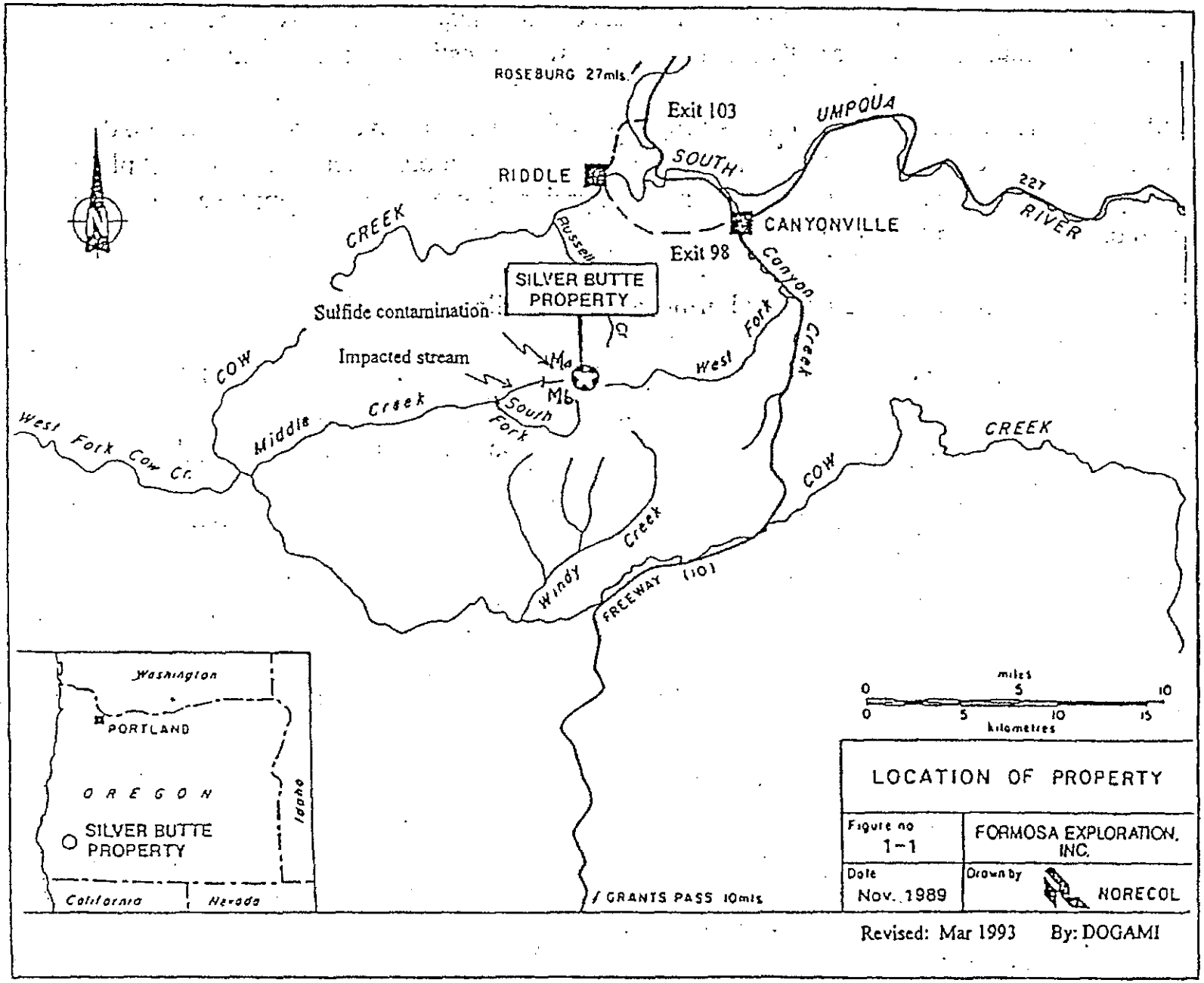
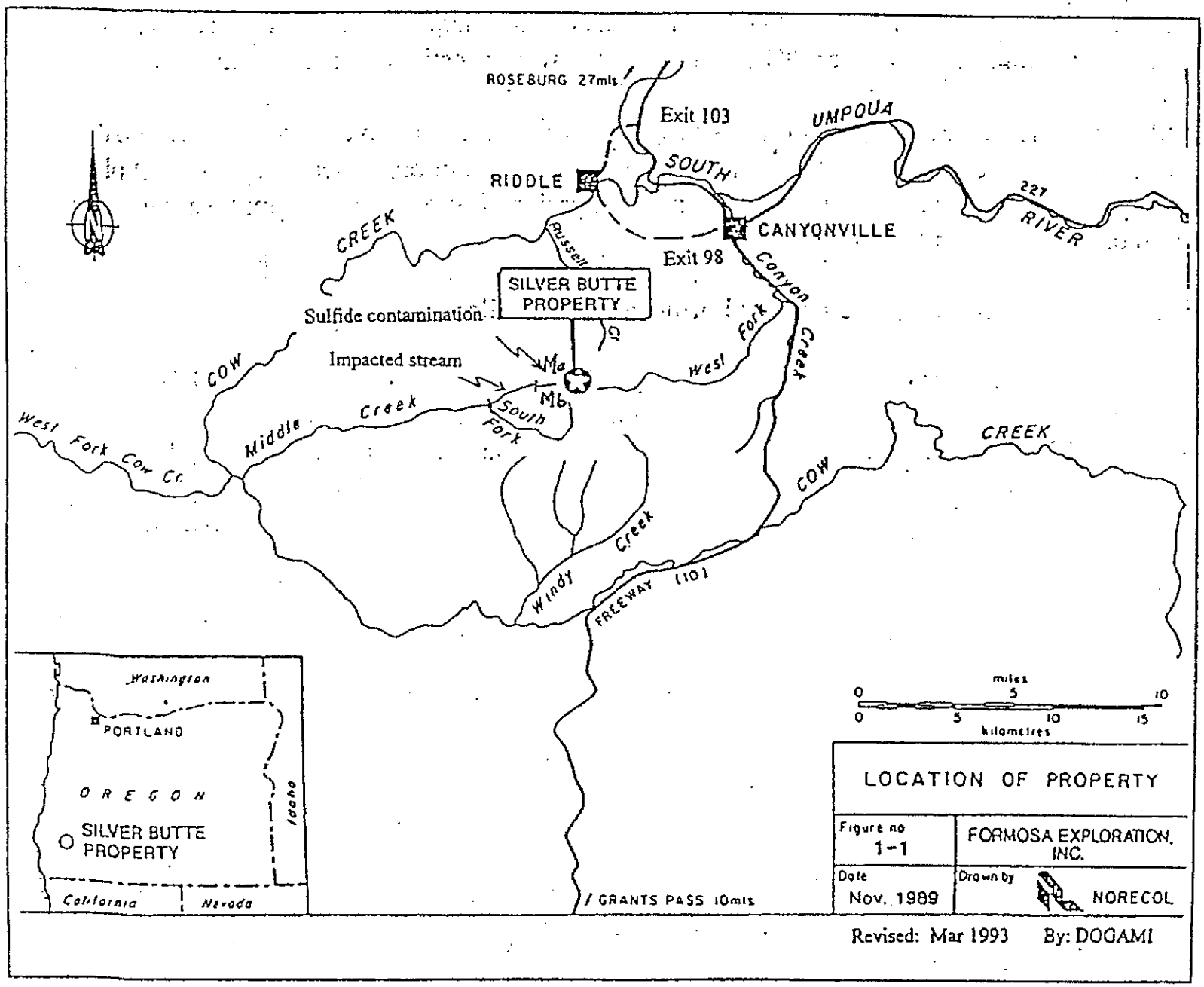
salmonid habitat qualified by the conclusion that the there was significant sedimentation with some indications of organic enrichment. BLM noted that there were no indications of "clean-water" species of macroinvertebrates in there surveys.

[7] Water quality inspections were not made until January 1993, and aggressive enforcement did not commence until August 1993. The site was given a very low priority for inspection by DEQ's then Southwest Region. The reasoning was that FEI should not have discharged since the permit application and WPCF permit prohibited wastewater disposal to surface waters.

# Figure 1 - Location Map of Formosa's Silver Butte Mine



# Figure 1 - Location Map of Formosa's Silver Butte Mine



# MEMORANDUM

**Date:** January 31, 1995

**To:** Jan Renfroe, D.E.Q., Water Quality Division

**From:** Terry Drever-Gee, President, Eastern Oregon Mining Assoc.; Dir. of Government Affairs, Oregon Independent Miners Terry

**Subject:** Comments relating to the Petition for rule change OAR 340-45-030

1) ***Need for the Amendments:***

As president of the Eastern Oregon Mining Assoc., and Environmental Coordinator for Bonnanza/Desert Rose Mining, Inc., I am aware of the permitting process a mining operation has to go through in order to mine in the state of Oregon.

Oregon now has in place the most stringent mining regulations in the country. I was a member of the committee that drafted HB 2244, (the chemical processing bill) which was passed in the 1991 legislative session. HB 2244 was a collective effort of industry, members of the environmental community and state agencies. We worked over a year to put together a comprehensive bill that even former Governor Roberts was satisfied would allow mining, in a responsible manner, to take place in Oregon.

On the Federal level, mining is regulated by over a dozen environmental and mining laws. The Bureau of Land Management and the Forest Service work together with the State Department of Geology and Mineral Industries in the form of Memorandums of Understanding (MOU's) to regulate mining on public lands within the State of Oregon. For chemical processing operations in the state there is a consolidated permitting process in place, with a technical advisory team, team members are from the various agencies that regulate mining.

There is already in place enough laws to responsibility regulate mining in Oregon. Mining is regulated in DOGAMI under OAR 632, within D.E.Q. OAR 340 Division 43. Last year D.E.Q. approved regulations that added permit conditions on liability for substantial environmental harm.

2) ***Fiscal and Economic Impact:***

The rules proposed in this Petition could leave the state open to litigation, thus could have a huge financial impact upon the state. There will be needed additional time to send out letters to other states and then to follow up on the letters. There will also be additional time for the governing boards to make findings on all applicants. The time it takes now for a mining permit application to be approved can take up to as long as two years after the process starts, and the application is complete. Here are some of the questions I have regarding the rules proposed in this Petition.

* If the state has to do a check on the applicant in all fifty states, what if another state does not intend to cooperate because of work load, or budgeting?

* What is done if there is a violation that is found, the application is denied,and later it is found that there has been a reporting mistake made within an agency?
* What happens if a permit is issued, the permittee is operating in a responsible manner; but a minor violation is later discovered by a subsidiary company that is connected to one of the corporate officers? Does the agency cancel the permit? What kind of legal liability is the state being opened up to by a permittee who is in compliance of an issued permit, but now the state rescinds the issued permit after the company has major capital investments in the project?

***In Summary:*** The economic cost to the state, of writing new regulstions, implementation, and possible litigation, could be substantial in comparison to the actual problems that have occurred to date. It is very plain to see that this Petition for Rule change is not for the good of the state, but another attempt to totally discourage any mining in the State of Oregon.

3) ***List of Principal Documents:***

* Forest Service mining policy and authority, taken from the R-4 Reclamation Field Guide.

* Environmental Laws Regulating Mining.

* Land Use in the United States in 1980.

* Map of the Western United States showing % of public land and both public and private land impacted by mining.

* A Critique of Mineral Policy Center's Burden of Gilt.

* Statement of Maxine Stewart, Solution Gold, LTD. BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES; SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES; OVERSIGHT HEARING ON UNRECLAIMED HARDROCK MINES. August 5, 1993.

* Statement of Nancy Winslow, Crown Butte Mines, Inc.; BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES; SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES; OVERSIGHT HEARING ON UNRECLAIMED HARDROCK MINES. August 5, 1993.

# Oregon For Responsible Mining

Oregon Legislators acted on several mining bills during the recent 1993 legislative session. Using an open, responsible and practical approach, the state accomplished what should serve as a model for both state and federal entities. Participants from the mining and environmental communities as well as several government agencies worked together to construct a number of bills which will benefit all Oregonians.

Senate Bill 190 states, "**It is the policy of the State of Oregon to recognize the important and essential contribution that the extraction of minerals makes to the economic well-being of the state and the nation and to prevent unacceptable adverse impacts to environmental, scenic, recreation, social, archaeological and historic resources of the state that may result from mining operations, while permitting operations that comply with the provisions set forth in .....**" This policy obviously takes the balanced approach recognizing the vital need for mineral development, but equally valuing many of the other out standing factors which make the state so special.

When the issue of abandoned claims was addressed, rather then require the expensive and unnecessary reclamation process on every site, the state agreed that there should be reclamation only on claims ".... that may pose a hazard to public health, safety or the environment." This common sense approach is both prudent and cost effective.

The state not only identified the need for reclamation but helped make it a positive process rather then burdensome for the mining community. The state "**Shall establish by rule a program to encourage voluntary reclamation practices that exceed the normal reclamation standards to provide maximum enhancement and benefits from mined lands. The program shall include incentives and other actions that will encourage voluntary reclamation practices.**" It has been recommended by the State Geologist that an advisory committee be formed to establish guidelines for this program.

When the Federal government put into effect the new BLM rental fee, the state responded quickly at the request of the mining community to pass House Bill 1005. The bill makes state mining recordation requirements parallel to federal mining requirements, thus avoiding a double jeopardy for the miners. If one chooses to pay the rental fee instead of doing the assessment work, the state will also now recognize this.

In 1991 the Oregon Legislature passed HB 2244, one of the most stringent cyanide heap leaching bills in the country. Yet, through dialogue with all the parties involved, a bill was designed which even the governor and the Audubon Society said they could accept. In this and other pieces of mining legislation the state has consistently recognized the uniqueness and special needs of the small mine owners, exempting them from some of the provisions not applicable to their level of activity.

I would encourage law makers at all levels of government to approach the many mining issues before Congress with this same open mindedness. There is no need to over react to implied problems. A practical, common sense approach will not only help protect the environment, but give the mining industry the incentive to invest it's money and efforts here at home. The State of Oregon should be commended for it's outstanding foresight.

Sue Hallett, 25199 Perkins Road, Veneta, OR 97487 Phone/fax (503) 935-1806 Small lode mine owner. Also associated with: Bohemia Mine Owners Assoc., Oregon Independent Miners, Western Mining Council, and the Women's Mining Coalition.


## R-4 RECLAMATION FIELD GUIDE

### 1.0 - INTRODUCTION AND PURPOSE

Reclamation of disturbed lands in Region 4 is becoming more important as mineral activity increases on National Forest System lands. Exploration and extraction methods involve more land area than in the past and operations are generally larger.

With the increase in activity the mineral administrator needs reclamation information readily available. These Field Guides are intended to bring together an array of existing information into a format that is more usable by field personnel. This intent is to provide the user with:

1. A statement of Forest Service reclamation policy.

2. A background of Forest Service authority.

3. A logical sequence of events for managing the reclamation process.

4. A summary of key reclamation principles.

5. A ready reference and checklist of technical information to be applied on the ground.

NOTES:



### 2.0 - POLICY

1. The Forest Service policy for managing minerals includes:

a. Encourage and facilitate the orderly exploration and development of the mineral resource as one of the multiple uses we manage.

b. Develop a good understanding of the mineral industry's practices and develop a strong working relationship with industry.

2. The Forest Service reclamation activity policy is to:

a. Ensure the uniform application of exploration, development and reclamation standards.

b. Ensure prompt reclamation of lands to productive uses consistent with land management policies.

c. Integrate appropriate disciplines in the natural sciences, engineering, and design arts in establishing criteria for reclaiming disturbed land, reviewing reclamation plans, and monitoring reclamation activities.

d. Identify information needs that can be provided by research and encourage research projects to provide such information.

e. Utilize the best available information in developing and reviewing reclamation plans.

NOTES:

## 3.0 - AUTHORITY

The following is a brief summary of some of the more important mineral laws that provide authority to the mineral administrator.

### 3.1 - The 1866 Mining Law

This was the first general mining law that declared all mineral lands owned by the public to be open to exploration and location.

### 3.2 - The 1872 Mining Law

This more comprehensive mining law replaced the 1866 law. It has become known as the General Mining Law. This law provides that all deposits in lands belonging to the United States be free and open to exploration and purchase. The 1872 Mining Law is still in effect and provides a basis for most subsequent acts.

The General Mining Law was amended and certain minerals were excluded from its provisions. Today, the 1872 Mining Law deals primarily with hardrock minerals known as locatables.

### 3.3 - The Organic Administration Act of 1897

This law established the "Forest Reserves." It also provided (a) the rights to conduct mining activities and (b) the right of ingress and egress on National Forest System lands to conduct mineral activity.

*This law specifically authorizes the Forest Service to manage the surface resources on National Forest System Lands.*

The Organic Act of 1897 is the one act which provides the authority for the Forest Service to administer reserved and outstanding mineral operations in conjunction with the Secretary of Agriculture Rules and Regulations of 1937, 1947, and 1963.

### 3.4 - The 1907 Act

This act provided that "Forest Reserves" become National Forests.

### 3.5 - The Mineral Leasing Act of 1920

The 1920 act allows the Department of Interior, Bureau of Land Management to issue leases for disposal of leasable minerals on National Forest System lands, including coal, phosphate, sodium, oil



and gas, oil shale, native asphalt, bitumin and bituminous rock.

### 3.6 - Multiple-Use Mining Act of 1955

This Act, among other things, provides for multiple use management of land and surface resources on mining claims. *This Act authorizes the United States to manage surface resources so long as these activities are not interfering with the claimants' rights.*

### 3.7 - Federal Land Policy and Management Act - 1976 (FLPMA)

FLMA requires a claimant to record location notices and assessment work with the Bureau of Land Management. It contains mineral withdrawal provisions and covers siting of pipelines, powerlines, authorization is given for special use right-of-way.

### 3.8 - National Mining and Minerals Policy Act 1970

This Act reaffirms the policy of the Federal government to foster and encourage private enterprise (a) to develop economically sound and stable domestic mining (and) minerals industries and (b) in the orderly and economic development of domestic mineral resources.

### 3.9 - Statuatory Authority - BLM and Forest Service Regulations

1. The Federal statutes relating to minerals on public lands of the United States are covered in Title 30 of the United States Code.

2. Regulations governing locatable and leasable minerals are found in Title 43, Code of Federal Regulations, and are administered by the BLM. BLM publishes its regulations in circulars.

3. Surface use (locatable minerals) operations conducted on National Forest System lands are administered by regulations found in Title 36 Code of Federal Regulations, Section 228, Subpart A, and are part of the Forest Service manual.

NOTES:



## 4.0 - DEVELOPING THE RECLAMATION PLAN

*THE WOMEN'S MINING COALITION*

# ENVIRONMENTAL LAWS REGULATING MINING

- **The Federal Land Policy & Management Act/Organic Administration Act**
  - Plans of Operation
  - Reclamation Plans and Bonds
- **The National Environmental Policy Act of 1969**
  - Environmental Assessments (EAs)/Environmental Impact Statements (EISs)
    Includes studies for: air quality, historical and cultural resources, wildlife, vegetation, threatened and endangered species, surface water and ground water hydrology, geology, visual resources, socioeconomics, soils, reclamation, public health and safety.
- **The Clean Water Act**
  - Surface Water Quality Protection Permits
- **The Clean Air Act**
  - Air Quality Protection Permits
- **The Safe Drinking Water Act**
  - Ground Water Quality Protection Permits (in conjunction with State regulations)
- **The National Historic Preservation Act**
  - Cultural/Archaeological Resources Protection
- **The Endangered Species Act**
  - Sensitive Species Protection
- **The Mine Safety and Health Act**
  - Worker Health and Safety
- **Other Federal Regulations:**
  - The Atomic Energy Act, the Emergency Planning and Community Right to Know Act, the Forest and Rangeland Renewable Resources Planning Act, the Resources Conservation and Recovery Act, the Toxic Substances Control Act, and the Uranium Mill Tailings Regulation Control Act
- **State Regulatory Requirements**
  - Plans of Operation
  - Reclamation Plans and Bonds
  - Surface Water Protection Permits
  - Ground Water Protection Permits
  - Air Quality Protection Permits
  - Cultural Resources Protection
- **Local Regulatory Requirements**
  - Zoning and Special Use Permits

**THE MINING INDUSTRY SUPPORTS THESE REQUIREMENTS AND THE ENVIRONMENTAL PROTECTION WHICH THEY PROVIDE**

*For more information contact: the WOMEN'S MINING COALITION*
*Kathleen Benedetto, Ruth Carraher, or Debra Struhsacker at 702/356-0616*

# Land Use in the United States in 1980

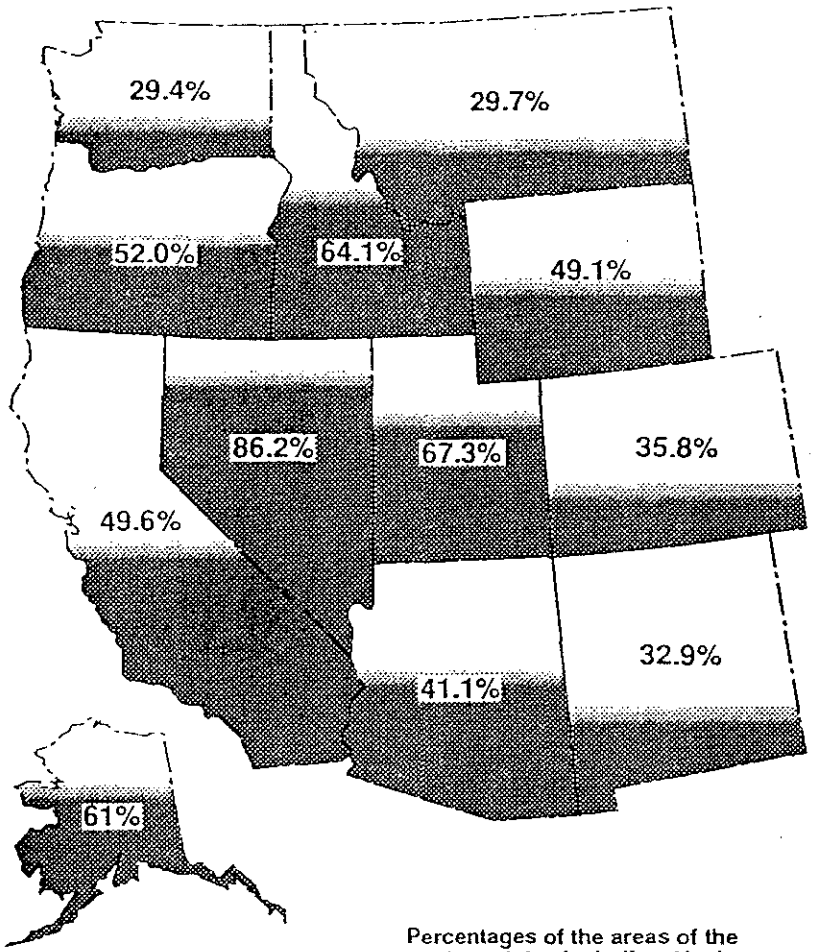
| | Millions of Acres |
|---|---|
| Agriculture | |
| Cropland | 413.0 |
| Grassland pasture, and range | 985.7 |
| Forest land grazed | 179.4 |
| Farmsteads, farm roads | 10.9 |
| Total agriculture | 1589.0 |
| Wildlife refuge system* | 88.7 |
| National park system* | 77.0 |
| Urban and built-up areas | 68.7 |
| Forest service wilderness* | 25.1 |
| Highways (1978) | 21.5 |
| Mining | 5.7 |
| Airports (1978) | 4.0 |
| Railroads (1978) | 3.0 |
| Other | 388.1 |
| Total, all uses | 2270.8 |

*public land areas are removed from mineral entry

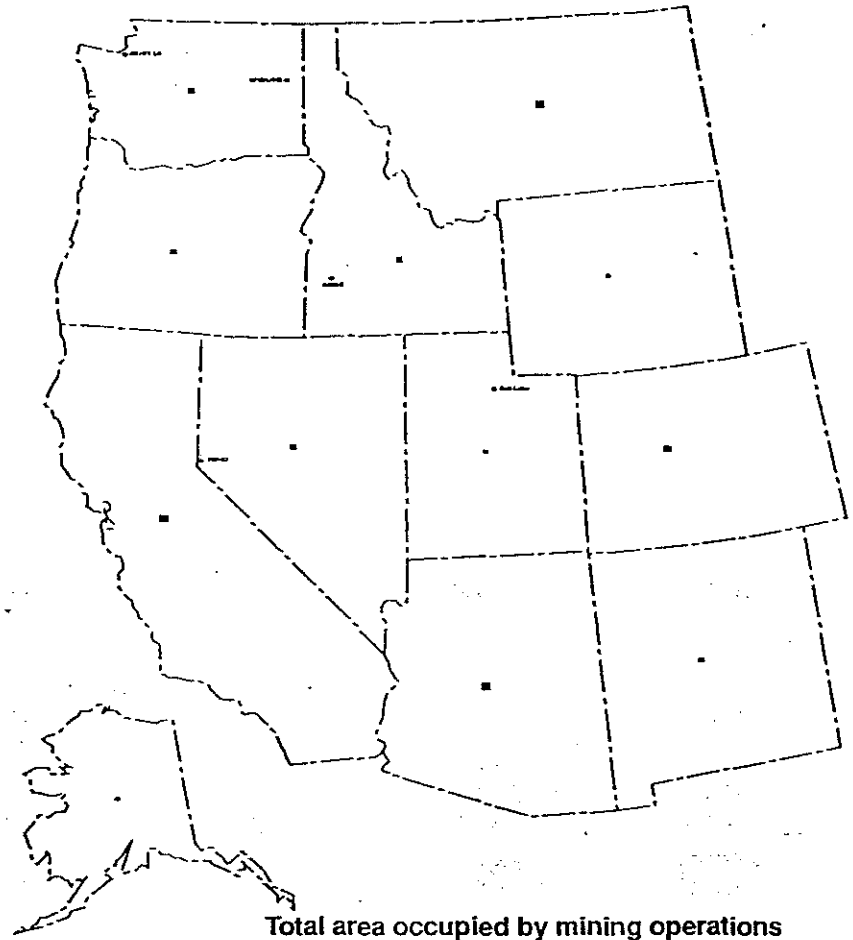
*Source:* U.S. Bureau of Mines, 1982
*(Cameron, 1986)*

## *WOMEN'S MINING COALITION*

***Map of the Western United States showing percentage of public land and both public and private land impacted by mining.***




Percentages of the areas of the western states including Alaska that are federal public lands.



**Total area occupied by mining operations in each western state is indicated, to scale, by a black rectangle.**

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***(After Cameron, 1986)***

# A Critique of Mineral Policy Center's Burden of Gilt

Prepared for the Mineral Resources Alliance
By Steven G. Barringer
of Holland & Hart[1]

September 9, 1993

On July 20, 1993, the Mineral Policy Center ("MPC") released *Burden of Gilt*, a 67-page document which proposes the creation of a federal program for the cleanup of abandoned hardrock mines.[2] The report's authors allege that as much as $ 71.5 billion will be required to accomplish the cleanup of as many as 557,650 sites around the country. The premise of the report is that mining in the United States is severely underregulated, and that unless Congress acts quickly, today's mines will continue to operate unregulated and will be abandoned in large numbers with catastrophic results for the environment.

This document examines some of the assertions of the *Burden of Gilt*, especially its allegations that the mining industry is underregulated, exempt

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[1]Jerry L. Haggard of Apker, Apker, Haggard & Kurtz, and David B. Crouch of the Kennecott Corporation contributed to this critique.

[2]Mineral Policy Center, *Burden of Gilt* (June 1993) (hereafter also cited as the "Report").

from most environmental regulation, and prone to abandon its sites without complying with applicable closure and reclamation obligations.

## General Conclusion

*Burden of Gilt* is not a good basis upon which to evaluate the need for a federal hardrock abandoned mine reclamation program. The Report has many flaws, starting with its premise that the mining industry is practically unregulated and will continue to pollute and abandon sites unless Congress acts. This view is a serious distortion of the current regulatory picture.

Even the Report's cover is misleading. The cover photograph depicts what is presumably an abandoned site. In fact, the photograph is of the Mike Horse Mine, which is not abandoned at all but is owned by a mining company. The owner and one other company are conducting a voluntary cleanup at the site. According to the companies, environmental studies delayed the cleanup effort for five years. As part of the plan underway, six mines in the area will also be cleaned up. Cleanup is based on a pilot treatment plan, with oversight provided by MSHA, OSHA, the Corps of Engineers, the Montana Soil Conservation District, and the Montana Water Quality Bureau. The companies will pay Montana state oversight costs. The cleanup plan is supported by the Governor and industry; however, environmental groups want to continue studying the area before allowing cleanup.

Unlike MPC's Report, a helpful and objective analysis of the mining industry should evaluate past mining practices before the era of environmental regulation and compare those with the current collection of federal and state environmental requirements that apply to mining operations. Past mining sites operated with little or no environmental regulation. In contrast, modern mining operations must comply with dozens of federal and state environmental requirements, including requirements to close and reclaim sites to protect the environment and meet air quality, water quality and other standards. The existence of these requirements and their quality and effectiveness all bear directly on the question whether a federal hardrock abandoned mine program is urgently necessary, and if so, what the scope of such a program should be.

MPC alleges that Congress must act quickly because current miners are not regulated and continue to create future "abandoned" mine sites. Significantly, the urgency expressed in the MPC proposal is based not on the existence of unreclaimed sites from the past, but on the current activities of the mining industry. Accordingly, a full analysis and critique of MPC's proposal must include a fair and objective assessment of the amount and effectiveness of current federal and state regulation.

Unfortunately, *Burden of Gilt* makes no attempt at a fair or objective assessment of current regulatory requirements. The picture it paints is biased and not factual, and hence the Report is unreliable. Following are 12 major flaws in the Report that undermine its credibility.

The document attached as Appendix A demonstrates the existence of numerous state regulatory requirements applicable to mining. If MPC is to be believed these requirements do not exist, or only "theoretically govern" mining activities.[3] Appendix A and many other surveys of state laws entirely refute this central distortion of the Report.[4]

## Twelve Major Problems with the MPC Report

### 1. The Report Deliberately Blurs The Distinction Between Historic and Modern Mining Operations.

Stewart Udall suggests erroneously in the first paragraph and throughout the introduction to *Burden of Gilt* that there is no difference in the mining that occurs today and historic mining

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[3]*Report* at p. 33 ("Most mining states have laws that theoretically govern active hardrock mining.")

[4]Office of Solid Waste, U.S. Environmental Protection Agency, *Mining Waste State Regulatory Programs* (May 1990), and Western Governor's Association, *Review of State Mine Regulatory Programs* (August 1990).

operations.[5] In fact, there is a very large difference. Until 30 years ago, there were virtually no environmental laws or regulations applicable to mining or other industries in the United States. It was legal and common well into this century for miners to dispose of wastes directly into streams and lakes, or onto the ground without impoundment or other precautions. Few if any states imposed reclamation obligations.

In the last thirty years, federal and state governments have enacted laws requiring environmental studies, protecting water quality and air quality, regulating land use, regulating the generation and disposal of solid wastes, and requiring reporting and cleanups of environmental problems. Mining operations being conducted today with dozens of federal and state environmental permits and approvals, and with stringent closure and reclamation obligations clearly do not pose the same risk as operations concluded a generation or longer ago.

Other parts of the Report suggest that it is just as possible (and just as common) for miners to abandon mine sites today as it was decades ago.[6] That assertion is not accurate. Decades ago it was legal to abandon mine sites and it was done routinely. Today it is illegal, and punishable by stiff civil (and in some cases criminal) penalties, bond forfeiture, and cleanup orders under various federal

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[5]*Report* at page 1 ("Burden of Gilt . . . captures just what hardrock mining has done - and is still doing - to America."); See also, *Id.* ("Thirty-three years ago . . . I wrote . . . 'we live in a land . . . of an overall environment that is diminished daily by pollution and noise and blight.' . . . As for hardrock mining, however, I could have written those same words this morning.").

[6]See *Report* at page 1 ("The hardrock mining industry has traditionally been able to 'externalize' costs . . . simply by abandoning its played-out mines."); *Id.* at page 3 ("the industry has habitually failed to clean up after itself."); *Id.* at page 10 ("For more than a century, the industry has been paying next to nothing for the privilege of extracting the nation's minerals and then abandoning its worked-out mines."); *Id.* at page 13 ("abandoned mines are not just a matter of historical curiosity. Irresponsible mining companies continue to walk away from problem sites.").

and state laws, including the federal Resource Conservation and Recovery Act (RCRA).[7] Under Section 7003 of RCRA, for example, the Environmental Protection Agency can order current miners and those who mined in the past to clean up a site that poses an imminent hazard to human health and the environment. EPA can obtain penalties of $10,000 per day for noncompliance with such orders.[8]

Appendix A to this document, which is a survey of federal and state environmental requirements that apply to gold mining operations, illustrates the kind and amount of regulation that applies to mining operations in the United States. The survey is over a year old, and therefore does not include references to a new reclamation law in New Mexico, or to other recently enacted state laws. However, it does constitute an accurate general representation of the amount and nature of environmental regulation applicable to mining sites.

## 2. The Report Inaccurately Portrays Mining Operations as Exempt From Environmental Requirements.

MPC claims erroneously in the Report that federal and state laws "provide little or no protection against continuing environment damage."[9] The mining industry currently is partially exempt, along with the utility, cement and oil and gas production industries, from parts of only one federal environmental law: RCRA. Section 3001 of RCRA exempts certain mining wastes from regulation as RCRA hazardous wastes while they are studied by EPA.[10] EPA now has studied the wastes and has recommended that Congress give it authority to regulate them as "nonhazardous" under RCRA, in part because of the low environmental hazards they pose.[11] This partial

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[7]42 U.S.C. §§ 6901 *et seq.*, 6973 (1988).

[8]42 U.S.C. § 6973 (1988).

[9]*Report* at page 32.

[10]42 U.S.C. § 6921(b)(2) - (b)(3) (1988).

[11]EPA Regulatory Determination, 51 Fed. Reg. 24,496 (July 3, 1986).

exemption is coming to an end, and will be replaced by a federal mine waste program when Congress reauthorizes RCRA.

Meanwhile, during the period of partial exemption, every state in which significant mining occurs has assumed regulatory control over mining wastes.[12] Some states have done it using water quality authorities, while others have adapted state solid waste regulatory schemes for the purpose.

Not all mining wastes qualify for the RCRA exemption; RCRA has always applied to these non-exempt wastes, and mining companies must dispose of them in compliance with RCRA or face severe civil or criminal penalties and/or compliance orders.[13] Under Section 7003 of RCRA, EPA can sue mining companies or issue them administrative orders requiring cleanup of mining wastes that pose an imminent hazard.[14]

Finally, the Clean Water Act, the Clean Air Act, and all other federal environmental laws apply to the mining industry.[15] (See discussion below in Section 3).

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[12]Office of Solid Waste, U.S. Environmental Protection Agency, *Mining Waste State Regulatory Programs* (May 1990).

[13]42 U.S.C. § 6928(c) - (g) (1988).

[14]42 U.S.C. § 6973 (1988).

[15]Clean Air Act, 42 U.S.C. §§ 7401 to 7642; Clean Water Act [also called the Federal Water Pollution Control Act] 33 U.S.C. §§ 1251 to 1387; Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA], 42 U.S.C. §§9601 to 9675; Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 to 11050; Endangered Species Act of 1973, 16 U.S.C. §§ 1531 to 1544; Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 to 1784; National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 to 4370b; National Forest Management Act of 1976, 16 U.S.C. §§ 1600, 1611 to 1614; Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-11; Toxic Substances Control Act [TSCA], 15 U.S.C. §§ 2601 to 2692; Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. §§ 7901 to 7942.

## 3. The Report Mischaracterizes the Applicability of the Major Federal Environmental Laws to Mining Operations.

The Report claims that major federal environmental laws--other than the Surface Mining Control and Reclamation Act and Superfund--only "narrowly touch on various problems caused by current mining" operations, "provide little or no protection against continuing environmental damage" from such operations and do not subject them to "national minimum environmental protection regulations."[16] This is a significant mischaracterization of the federal environmental laws. With one temporary exception, discussed above in Section 2, the major federal environmental laws apply to mining operations just like they apply to any other industrial activity. Mining operations are not exempt from the basic federal legal framework that protects the environment.

To cite just one example, the Clean Water Act prohibits any person, including owners and operators of mines, from discharging pollutants into the waters of the United States from a point source except in conformity with the requirements of a National Pollution Discharge Elimination System (NPDES) permit.[17] Such a permit will require that the discharge of any pollutant meet, at a minimum, standards based on the best technology available for treating the pollutant being discharged. EPA has developed a number of such technology-based standards that are specifically applicable to mining operations. The standards require mine operators to treat both their mine and process water before it is discharged and to monitor closely their conformance to the standards. In the case of copper, zinc, lead, gold, silver and molybdenum, EPA's standards prohibit altogether the discharge of waste water from the mills that process those ores.[18]

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[16] *Report* at pages 32 - 33.

[17] 33 U.S.C. § 1342 (1988).

[18] 40 C.F.R. part 440 (1992).

In addition to requiring compliance with technology-based standards, the Clean Water Act requires compliance with water quality standards adopted by the states.[19] These standards are designed to insure that waters receiving discharges of pollutants maintain the quality desired by the state. State water quality standards can be, and often are, much stricter than EPA's technology-based standards. Discharges from mining operations are fully subject to state water quality standards.

The Clean Water Act also imposes restraints on the storm water runoff from mine sites. In the storm water regulations recently adopted by EPA, storm water discharges from mine sites were specifically designated as requiring a storm water permit.[20] Storm water permits require mine operators to reduce significantly and control carefully the amount of contamination that is picked up by storm water as it washes over the sites of their operations and is then discharged into surrounding lakes or streams.

Finally, the Clean Water Act prohibits any person, including owners and operators of mines, from discharging fill material into waters of the United States, including wetlands, except in conformity with the requirements of a section 404 permit.[21] This requirement forces mine operators to give careful consideration to where they place waste rock and overburden or locate a tailings impoundment. To obtain a 404 permit, a mine operator must demonstrate that the placement of the fill material in a water of the United States cannot practicably be avoided and that any unavoidable impacts on the aquatic resource will be minimized to the extent possible.[22] Finally, the mine operator must compensate for any damage

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[19]33 U.S.C. § 1311(b)(1)(C) (1988).

[20]40 C.F.R. § 122.26(b)(14)(iii).

[21]33 U.S.C. § 1344 (1988).

[22]40 C.F.R. § 230.10 (1992)

that is done to the aquatic resource by its discharges of fill material.

Similarly, the provisions of the Clean Air Act apply with the same force to the owners and operators of mines as they do to anyone else whose activities may generate air pollution subject to the Act. If mine sites emit, or plan to emit, specified amounts of air pollutants that are considered harmful, they are subject to stringent control requirements that can be enforced by an impressive array of enforcement tools.[23] The Clean Air Act imposes emission control requirements on a number of air pollution sources, both stationary and mobile, that are commonly present at mine sites: primary and secondary crushers, thermal dryers, diesel-driven compressors and generators for electrical needs, haul trucks, scrapers, shovels, loaders and service vehicles. Moreover, the control requirements may vary in intensity depending on the severity of any air pollution problem in the area in which the mining operation is located. The Clean Air Act provides extra protection for areas that are in attainment of relevant ambient standards or that are considered pristine.[24]

A principal focus of the Clean Air Act has been the development and achievement of national ambient air quality standards (NAAQS) that are designed to protect public health and welfare. Of the six NAAQS that have been developed by EPA, one has particular application to mine sites--i.e., the NAAQS for particulate matter.[25] This is because many mining operations, especially those conducted on the surface, can generate significant amounts of particulate matter in the form of fugitive dust.

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[23]42 U.S.C. §§ 7401 - 7871 (1988 and Supp. IV. 1992).

[24]42 U.S.C. §§ 7471, 7475 (1988); 40 C.F.R. §§ 51.166(i) - (v) and 52.21(i) - (r) (1991).

[25]40 C.F.R. §§ 50.4 - .12 (1991).

States enforce the particulate matter NAAQS at mine sites through their State Implementation Plans, often by requiring that the mine site obtain a permit. In the future, emissions of particulate matter will be subject to the Federal permit requirement adopted by the 1990 amendments to the Clean Air Act. A typical set of control requirements for particulate matter at a mine site might include a range of control measures, such as watering, chemical suppressants, paving, vegetation, and wind screens. Alternatively, a performance standard may be specified, such as no visible particulate matter at the property boundary, or an opacity standard for emissions from fugitive sources.[26]

Significantly, as with the Clean Water Act, the Clean Air Act requirements apply whether the site is in active operation or not.

## 4. The Report Misrepresents the States' Role in Regulating Mining Activities.

*Burden of Gilt* is designed to create the popular impression that state regulatory programs are weak and ineffective, and that mining today is no different than it was decades ago before state environmental laws were adopted. While the quality and extent of state regulation undoubtedly varies, many states deal aggressively and in coordination with the federal government's authority to effect comprehensive regulation of mining activities. In addition to federal requirements, states often implement more stringent requirements. MPC's charge that most state regulatory programs are "weak and inconsistent" is an overstatement and is conclusory. Neither the diversity of state efforts nor the results are reflected in MPC's document.

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[26]See 40 C.F.R. pt. 52, subpts. B - ZZ (1991); See also, Holland & Hart, *Summary and Compilation of State Fugitive Dust Control Regulations* (Exhibit E to comments submitted on behalf of the American Mining Congress, *et al*, EPA Rulemaking Docket A-82-83, dated October 11, 1983).

## 5. The MPC Report Counts Active Facilities As Abandoned Mines.

MPC does not define "abandoned mine," and the Report counts as "abandoned" facilities that are not "abandoned" in any sense of the word. For instance, the Report counts as "abandoned mines" all mining-related Superfund sites. Some of these sites are operating smelters, mines or other facilities, and by definition are not abandoned.[27] Others, while they might not be operational, have owners who are involved in site cleanup. These sites can not be characterized as abandoned. One of the mining sites featured prominently in the Report -- the Clark Fork Superfund site in Montana -- is being cleaned up by one of the site owners, the Atlantic Richfield Company.

## 6. The MPC Report Contains a Significantly Inflated Estimate of Abandoned Sites.

Of 557,650 abandoned sites estimated by MPC, 194,500, or fully one-third, have no relevance to the question of whether a hard rock mining reclamation program is necessary. MPC itself characterizes these sites in the Report as "benign," posing "no safety hazards or threats to water quality."[28] In estimating total cleanup costs, MPC assigned no costs to these sites. Their inclusion in the Report is not necessary or relevant.

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[27]A footnote in the Report at page 4 suggests that the Report does not include non-hardrock mineral abandoned mine sites such as sand, gravel, and limestone. However, the Report at page 29 includes "unreclaimed borrow pits" in the "landscape disturbance" category of 231,000 abandoned mines needing reclamation.

[28]*Report* at page 29.

## 7. The MPC Report is Not a Balanced Examination of the Issue of Abandoned Mines.

The MPC Report contains only information that favors MPC's conclusion, and much of it is undocumented. For instance, MPC cited a General Accounting Office (GAO) report attempting to inventory abandoned mine lands on Federal lands.[29] However, MPC made no mention of a 1991 GAO report on mining operations using cyanide that reached the following conclusion: "Existing statutes and regulations provide federal and state agencies with adequate authority to regulate cyanide operations on federal land and thereby protect wildlife and the environment."[30] Information in this report contradicts MPC's assertions in *Burden of Gilt* that the current regulatory landscape is not acceptable.

Similarly, MPC relied on the Western Governors Association's (WGA) 1990 inventory of abandoned mine lands to come up with its own estimates for *Burden of Gilt*, but ignored a 1990 survey of state laws by the WGA which concluded that most states have adequate authority in place to regulate mining activities.[31] The WGA survey contradicts MPC's assertion in the report that state laws are "weak" and "inconsistent."

Finally, MPC asserts that because of the "weakness" and "inconsistency" of state laws, state regulators "often fail to prevent today's mining operations from becoming tomorrow's abandoned mines."[32] There is no documentation for the assertion that state regulators often "fail" in their jobs. The evidence, while anecdotal, actually suggests otherwise: states are aggressively regulating mining and addressing the environmental issues that mining raises. New

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[29]*Report* at page 27.

[30]U.S. General Accounting Office, *Increased Attention Being Given to Cyanide Operations*, June 1991.

[31]Western Governor's Association, *Review of State Mine Regulatory Programs* (August 1990).

[32]*Report* at page 33.

Mexico recently enacted a reclamation law, and the state of Oregon has enacted arguably the most strenuous rules governing heap leach mining in the country.

## 8. MPC's Cost Estimate Is Artificially Inflated.

It is inconsistent with the purpose of MPC's proposal to include in its cost estimate the cost of cleaning up Superfund sites. These sites are covered currently under Superfund, and their cleanup would not be part of any abandoned mine cleanup program unless Congress amended current law to accomplish that. Inclusion of Superfund sites artificially inflates the cost estimate for the program MPC proposes by $ 17.5 billion, or almost 25% of the total estimate.

## 9. MPC's Cost Estimate Has A Questionable Basis and Is Premature.

MPC's cost estimate is based on the number of abandoned mines it estimates need attention. However, MPC's estimate is based in large part on the 1990 WGA inventory, which both WGA and MPC agree is not complete and definitive.[33] Until a reliable inventory identifies the number of sites that pose environmental and safety hazards, it is impossible to assign a price tag to the task.

Second, the basis of MPC's cost estimates is undocumented. For instance, MPC calculated the cost of cleaning up sites with ground water contamination based "on MPC's knowledge of specific sites and EPA's reports of costs associated with remediation and decontamination of groundwater at Superfund sites."[34] MPC's methodology was not disclosed, and so it is impossible to make a judgment about the quality of this estimate. However, MPC's expertise is policy and lobbying, not engineering and ground water remediation. Unless MPC hired experts to prepare this estimate it must be viewed with skepticism.

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[33] *Report* at page 26.

[34] *Report* at page 30.

## 10. The Mineral Policy Center Distorts the Results of Its Own Study on Summitville.

The MPC's commentary in *Burden of Gilt* on the Summitville mining site distorts the results of a study conducted by the Summitville Study Group[35], of which MPC was a part. The two-page section entitled "Welcome to Summitville,"[36] contains several inaccuracies.

For instance, *Burden of Gilt* states that "[c]yanide began leaking through the plastic liner into the creek, and from there into groundwater."[37] On the contrary, the engineering report on Summitville prepared for MPC concludes that "[n]either cyanide or high pH were detectable in the ground water, except in October of 1990 when cyanide was just above the detection limit. Cyanide was not detected the following month."[38] Similarly, the Study Group report concludes that

> [a] number of studies have recently been undertaken associated with [downstream water quality] concerns. In a meeting of the Summitville Technical Assessment Group, held on May 10, 1993, in Capulin, Colorado, participants reported the results of tests and analysis conducted on local ground water and livestock since the beginning of 1993. It was reported that no measured adverse effects on livestock or ground water from increased metal

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[35]Knight Piesold and Co. report to Summitville Study Group, *Chronologic Site History, Summitville Mine, Rio Grande County, Colorado*, Volume 1 (hereafter "Study Group").

[36]*Report* at pages 22-23.

[37]*Report* at page 22.

[38]*Study Group* at page 44.